



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

May 25, 2011

Gejza J. Csoltko  
Engineering Consulting, Inc.  
57 Hillary Circle  
New Castle, DE 19720

RE: PLUS review – 2011-04-02; Newark Town Center

Dear Mr. Csoltko:

Thank you for meeting with State agency planners on April 27, 2011 to discuss the proposed plans for the Newark Town Center project to be located at the Northwest corner of Possum Park Road and Kirkwood Highway.

According to the information received, you are seeking a rezoning from S to CR for 255,600 sq. ft. of retail space on 54 acres.

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 New Castle 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 2 according to the *State Strategies for Policies and Spending*. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas.

**Code Requirements/Agency Permitting Requirements**

State Historic Preservation Office – Contact Terrence Burns 736-7404

- The developer should be aware that there is a cultural and historic resource very close or slightly on the parcel (property), the Roseville Mill (N-1471); the stone race walls related

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to the mill may still exist. There was also another cultural and historic resource on parcel, the D. Chillas House (N-10080), but this appears to have been demolished. In addition, the Meeteer House (N-206), which is listed in the National Register of Historic Places, is located just east of this parcel on Old Possum Park Road, as well as a number of other historic houses and bridges in the area as well.

The Beers Atlas of 1868, which is an historic map shows that the D. Chillas House (N-10080) was on this parcel, as well as six houses along Capitol Trail, two mills on each side of the race in the Roseville tract, and the W. M. Peters House in the western tip of the parcel. Furthermore, there may be archaeological remains associated with these historic houses, as well as a small, rural or family cemetery, which is often related to a specific historic farm complex, such as the Chillas and Peters houses. They are usually a good distance behind or to the side of the house. With this in mind, it is important that the developer be aware of the Delaware Unmarked Human Remains Act of 1987, in Chapter 54 of Title 7 of the Delaware Code, which pertains to the discovery and disposition of such remains. It is also important to keep in mind that the unexpected discovery of unmarked human remains during construction can result in significant delays, while the process is carried out.

Therefore, prior to any demolition or ground-disturbing activities, the developer should 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 the project's effects on any known or potential culture or historic resources.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The proposed development would warrant a Traffic Impact Study in accordance with Chapter 2 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access, and such a study was done by the developer's engineer in 2009. DelDOT wrote to New Castle County in February 2010, commenting on the study and recommending extensive road improvements that would be necessary to accommodate the proposed development. A copy of that letter is enclosed.
- The site entrances 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 mentioned above, DelDOT anticipates that New Castle County will require a “Letter of No Objection” from the Department for this project. Per Section 3.4 of the Standards and Regulations, 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. Joshua Schwartz, Subdivision Manager. The entrance plan will not be reviewed until after the “Letter of No Objection” has been issued.

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

### **Wetlands**

- There are two features which appear as blue lines on the USGS topographical map for the subject parcel. If any impacts are proposed to these features, a Jurisdictional Determination request form should be submitted to the Wetlands and Subaqueous Lands Section (WSLS) in order to determine if a permit is required to conduct the proposed activity. No tidal wetlands were shown to be present.

### **TMDLs**

- The project is located in the greater Piedmont drainage, specifically within the Christina River watershed. Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Christina River 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 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.
- TMDLs are required by federal law (Section 303(d) of the 1972 Clean Water Act), and the states are charged with developing and implementing specific land use practices that support these desired use goals. The project is located in the Piedmont drainage, specifically within the greater Christina River watershed (specifically in White Clay Creek subwatershed). In the Christina River watershed, post-development nitrogen and phosphorus loading must be capped at the pre-development or baseline loading rate (or a 0% post-construction increase in N & P in Delaware’s portion of the Christina River Basin) to meet the required TMDL for each nutrient. Moreover, bacteria must be reduced by 74.23% to meet the required TMDL. The specific required nutrient and bacterial requirements for various stream segments in the watershed – including background information - is contained within the report entitled “*Christina River Basin High-Flow TMDL*” by the EPA. This report can be retrieved from the following weblink: [http://www.epa.gov/reg3wapd/tmdl/pa\\_tmdl/ChristinaMeetingTMDL/index.htm](http://www.epa.gov/reg3wapd/tmdl/pa_tmdl/ChristinaMeetingTMDL/index.htm)

- A nutrient management plan is required under the Delaware Nutrient Management law (3 Del. Chapter 22) for all persons or entities who apply nutrients to lands or areas of open space in excess of 10 acres. This project's open space may exceed this 10-acre threshold. Please contact the Delaware Nutrient Management Program at 739-4811 for further information concerning compliance requirements – or, view the following web link for additional information: <http://dda.delaware.gov/nutrients/index.shtml>

### **Water Supply**

- The information provided indicates that the City of Newark will provide water to the proposed projects through a public water system. Our files reflect that the City of Newark does not currently hold a Certificate of Public Convenience and Necessity (CPCN) to provide public water in these areas. They will need to file an application for a CPCN with the Public Service Commission, if they have not done so already. Information on CPCN requirements and applications can be obtained by contacting the Public Service Commission at 302-736-7547. Should an on-site public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area, and at least 150 feet from the outermost boundaries of the project. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any wells.
- 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.

### **Sediment and Stormwater Program**

- A new sediment and stormwater plan may be required for 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 revised plan as soon as possible. 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 County Department of Land Use Engineering

Section. Contact the Department of Land Use at (302) 395-5470 for details regarding submittal requirements and fees (Delaware Code: Title 7 Chapter 40) (Delaware Regulations: Administrative Code: Title 7: 5101).

### **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.

### **Tank Management.** 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.
- The below LUST projects with corresponding project status are located within a quarter mile of the project site:
  - St Johns Holy Angels School, Facility: 3-000895, Project: N9109210 (Inactive)
  - Jiffy Lube, Facility: 3-000696, Project: N9902029 (Inactive)
  - Sunoco 0004/8967, Facility: 3-000423, Project: N9107129 (Inactive)
  - S&R Service Inc., Facility: 3-000270, Project: N9710163 (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 by calling 302-395-2500.”

### Delaware State Fire Marshall’s Office – Contact Duane Fox 739-4394

- 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:

**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 for Mercantile sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.

**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

**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 both access roads to the site from Possum Park Road and from Kirkwood 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.

**Gas Piping and System Information:**

- Provide type of fuel proposed, and show locations of bulk containers on plan.

**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

**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.

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

- As noted on page one of this letter, though this property is in an area (Level 2 of the State Spending Strategies) that anticipates development, we would like to see development that respects the location of this highly visible and environmentally sensitive piece of land through well designed facilities. As presented, the proposal shows what appears to be a typical shopping center design with the dominant feature being the parking lot – certainly not a town center as its name suggests. We hope the developer will consult the **Delaware**

by **Design** booklet that was left with Mr. Abbott and other related professional publications on the topic of shopping center design in regard to a possible redesign of the project that might enhance the project through such a redesign

State Historic Preservation Office – Contact Terrence Burns 736-7404

- The developer should consider putting sufficient landscaping around this development to block any noise or visual intrusions on the nearby historic houses, especially along the south and east sides of the development.

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

**Additional information on TMDLs**

- A Pollution Control Strategy (PCS) is the regulatory directive requiring the implementation of various best management practices (BMPs) that help reduce transport of nutrient and bacterial pollutant runoff from all waters draining into a “greater” common watershed, with the ultimate objective of achieving the obligatory TMDL reduction requirements for that watershed. However, the PCS for the Christina River watershed has not been formally completed to date. In absence of a finalized PCS, the applicant is strongly urged to reduce nutrient and bacterial pollutants through voluntary commitment to the implementation of the following recommended BMPs:
  - Maintain the recommended 100-foot buffer width from all delineated wetlands (USACE approved wetland delineations) and water bodies.
  - Avoid steeply-sloping areas associated with the Brinklow channery loam (BkD; 15-25% slopes) soil mapping unit (See figure 1).

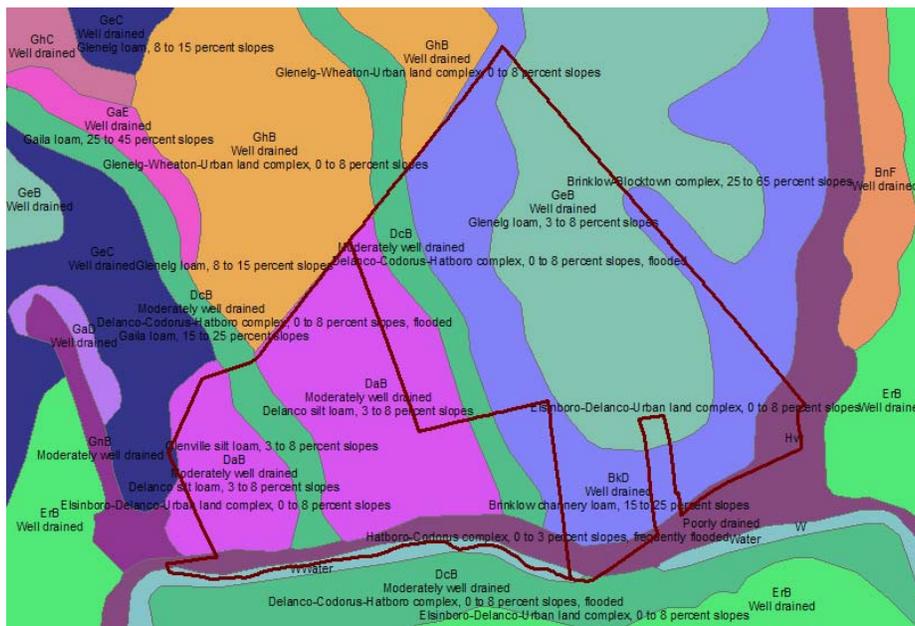


Figure 1: Soil survey update mapping in the immediate vicinity of the proposed project

- Maximize the amount and/or preservation of passive wooded open space.
- Calculate post-construction surface imperviousness with all forms of created (or constructed) surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, and roads) included in the calculation.
- Since this is a commercial project that will likely generate large amounts of impervious cover, we strongly advise the use of pervious paving materials (instead of conventional asphalt and concrete) as a BMP to reduce the impacts associated with surface imperviousness, wherever practicable.
- Utilize 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.
- Voluntarily assess nutrient and bacterial pollutant loading at the preliminary project design phase. To this end, the Watershed Assessment Section has developed a 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.

### **General Comments from the Natural Heritage and Endangered Species Program**

- Tax parcel 08-059.20-001 is primarily forested and according to our GIS database supports wetlands and two tributaries of White Clay Creek. There is text on the site plan (sheet 1 of 9) on this tax parcel but it is not legible even if zoomed in over 1600%. Is not clear what the text says or what the plans are for this parcel. Considering the potential value of this parcel as wildlife habitat, plans to develop this parcel as ‘part II’ of this project or plans to preserve it as open space would be pertinent to this review.
- According to question #20 on the PLUS application, there is 0.96 acres of forest within the project area of which 0.67 acres will be removed. If you examine the site plan in relation to aerial photographs, the amount of forest within areas of impact appears to be greater than 0.67 acres. The estimated forest cover and removal within the project areas appears to be underestimated and should be reevaluated and corrected if inaccurate. It should be noted that the forest cover figures in question do not include tax parcel 08-059.20-001 which is almost entirely forested.

### **Site Visit Request**

- The Division of Fish and Wildlife 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 order to provide more informed comments, our Division scientists request the opportunity to conduct a survey of the property to evaluate habitat and determine the potential for species of conservation concern. Please note that our scientists have extensive knowledge of the flora and fauna of the state. The survey will be conducted at no expense to the landowner. Please contact Edna Stetzar at (302) 735-8654 or at [Edna.Stetzar@state.de.us](mailto:Edna.Stetzar@state.de.us) if the landowner will grant a site visit.

### **Unique Wetland Type**

- According to our GIS database, interpretation of aerial photographs and topography, a unique wetland type could occur on tax parcel 0805920001. This wetland appears to be a Piedmont streamside seepage wetland which occurs at the base of steep slopes and is fed by groundwater year-round. This small wetland community typically supports a variable but highly diverse array of plant species. A site survey by our community ecologist could confirm the occurrence of this wetland type.

### **White Clay Creek Natural Area**

- This property contains forest land that is on the State Registry of Natural Areas and is known as the White Clay Creek Natural Area. No development is proposed within the Natural Area; however, a stormwater management facility is proposed directly north of the Natural Area. Given the significantly steeped slopes of the site and the stormwater facility directly north of the Natural Area, there is concern that erosion and sedimentation within the Natural Area will result. Stormwater overflow and outfall areas should be designed to insure this does not result.

### **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 Environmental Site Assessment (including a title search to identify environmental covenants) 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 is one SIRB site within a ½ mile radius of the proposed project.
  - The Windy Hills site (DE-0162) is located directly across White Clay Creek to the southeast of the project area. A Preliminary Assessment was performed at the site in 1987. No further investigation was recommended because a release of hazardous substances had not occurred.

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 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 Tank Management Branch (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.

Delaware State Fire Marshall's Office – Contact Duane Fox 739-4394

- Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: [www.statefiremarshal.delaware.gov](http://www.statefiremarshal.delaware.gov), technical services link, plan review, applications or brochures.

Department of Agriculture – Contact Scott Blaier 698-4529

- 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 reduce heating and cooling costs. In addition, a landscape design that encompasses this approach will avoid future maintenance cost to the property owner and ensure a lasting forest resource. To further support this concept the Delaware Forest Service does not recommend the planting of the following species due to the high risk of mortality from insects and disease:

Callery Pear

Ash Trees

Leyland Cypress

Red Oak (except for Willow Oak)

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

- The Delaware Department of Agriculture and the Delaware Forest Service encourage 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.

**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: New Castle County