



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

September 16, 2011

Mr. Rob Meding  
Meding Seafood  
3697 Bay Road  
Milford, DE 19962

RE: PLUS review – 2011-08-06; Meding Property Rezoning

Dear Mr. Meding:

Thank you for meeting with State agency planners on August 24, 2011 to discuss the proposed rezoning of approximately 32 acres located at 2730 Tub Mil Pond Road, 3581 Bay Road, and 3697 Bay Road from Ac to BG for an unknown future commercial use.

This application is a review of the rezoning of these properties. While there may be comments regarding future development, you may need to file a PLUS application once the use for this property and the square footage of the buildings have been determined. If the rezoning is approved and construction is planned, you should contact Kent County to determine if a PLUS review is needed.

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 Kent 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**

- These parcels are listed in Levels 2 and 3 according to the *Strategies for State Policies and Spending* document. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. 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.

- This PLUS review includes both a comprehensive plan amendment and a rezoning request. The rezoning of this property is at the discretion of Kent County Levy Court. Should the Levy Court ultimately choose to grant this rezoning request, the comprehensive plan amendment must be adopted prior to or concurrently with the zoning change.

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

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

- There are no known cultural or historic resources such as a national registered listed property, archaeological site, or historic structure or dwelling on this parcel (property). However, it is still important that developer be aware of the Unmarked Human Burials and Human Skeletal Remains Law of 1987 (Delaware Code: Title 7, Chapter 54), which pertains to the discovery and disposition of such remains in the State of Delaware.

Abandoned or unmarked family cemeteries are very common in Delaware. Especially on historic farm sites, rural areas, and open space lands. Disturbing unmarked burials triggers Delaware's Unmarked Human Burials and Human Skeletal Remains Law of 1987 (Delaware Code: Title 7, Chapter 54), and such discoveries can result in substantial delays while the procedures required under this law are carried out. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area for the presence of such a cemetery. If one is discovered and delineated, it is very costly to have it archaeologically excavated and the burials moved. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the cemetery on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with a homeowners association or development. For further information, please see following websites at: [www.history.delaware.gov/preservation/umhr.shtml](http://www.history.delaware.gov/preservation/umhr.shtml) and [www.history.delaware.gov/preservation/cemeteries.shtml](http://www.history.delaware.gov/preservation/cemeteries.shtml)

- 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.
- In addition, 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 culture or historic resources. Owners and developers who may plan to apply for an Army Corps of Engineers permit or for federal funding, such as HUD or USDA grants, should be aware of the National Historic Preservation Act of 1966 (as amended). Regulations promulgated for Section 106 of this Act stipulate that no ground-disturbing or demolition activities

should take place before the Corps or other involved federal agency determines the area of potential effect of the project undertaking. These stipulations are in place to allow for comment from the public, the Delaware State Historic Preservation Office, and the Advisory Council for Historic Preservation about the project's effects on historic properties. Any preconstruction activities without adherence to these stipulations may jeopardize the issuance of a permit or receipt of funding if it is determined that such opportunity to comment has been foreclosed. For further information on Section 106 and the Advisory Council's role, please review the Advisory Council's website at [www.achp.gov](http://www.achp.gov)

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

- The information on the PLUS application indicates that a specific use or uses have not been identified for the subject land. Therefore, it is not possible to determine how much traffic the commercial development of the land would generate or how that traffic would be distributed. While we anticipate that the development of the site will warrant a Traffic Impact Study (TIS) in accordance with Section 2.3 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access, we cannot determine that until more is known about how the site would be developed. Therefore, we would recommend to Kent County that this rezoning application be considered without the benefit of a TIS and that a TIS be required, if necessary, in advance of site plan approval.

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

#### Wetlands

- This site does not contain State regulated wetlands. The site may contain wetlands regulated by the U.S. Army Corps of Engineers or by the County. There is a drainage way or stream feature on the south side of the site which is regulated by the Department. Any work involving the stream/drainage way would require a permit from DNREC. Piping or otherwise burying regulated streams or ditches must be avoided.

#### TMDLs

- The project is located in the greater Delaware River and Bay drainage; specifically, within the Murderkill watershed. In this watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nitrogen, phosphorus, and bacteria (under the auspices of Section 303(d) of the Clean Water Act). 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 Murderkill River watershed calls for a 30 and 50 percent reduction in nitrogen and phosphorus, respectively, from baseline conditions. The TMDL also calls for a 32 percent reduction in bacteria from baseline conditions.

- 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 project information sheets state that individual on-site well(s) will be used to provide water for the proposed project. Our records indicate that the project is not located in an area where public water service is available. Should an on-site Public/Miscellaneous 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 it must also be located 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 current Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing each and every well(s).
- 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 detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. It is strongly recommended that the owner and consultant contact the Kent Conservation District to schedule a project application meeting to discuss the sediment and erosion control and stormwater management components of the plan. 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 Kent Conservation District. Contact Jared Adkins,

Program Manager, at the Kent Conservation District at (302) 741-2600, ext. 3 for details regarding submittal requirements and fees. (Title 7, Delaware Code, Chapter 40 and Delaware Regulations, Title 7, Administrative Code, 5101)

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

This Agency has no objection to the re-zoning request. The information provided below shall be considered when plans are being designed.

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:

- Since the structures of the complex are proposed to be served by individual on-site wells (No Central or Public Water System within 1000' of property), set back and separation requirements will apply.

Fire Protection Features:

- For commercial buildings greater than 5000 sq. ft., a fire alarm signaling system which is monitored off-site is required
- For commercial buildings greater than 10,000 sq. ft. Class B (2-hour rated) fire barriers are required to subdivide buildings into areas of 10,000 sq. ft. or less
- 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
- Most Places of Assembly, such as restaurants, may be required to be protected with an automatic sprinkler system.

Accessibility:

- All premises, which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road must be constructed so fire department apparatus may negotiate it.
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.

- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.

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)
- 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.

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

- DelDOT has one project in the immediate area of the subject land, our State Route 1 South Frederica Grade Separated Intersection project. Through a series of ramps and

service roads, this project would eliminate the at-grade intersections of Route 1 with Frederica Road (Kent Road 10), Tub Mill Pond Road (Kent Road 119) and Milford Neck Road (Kent Road 120). This project is currently under design, and construction is scheduled to begin in the fall of 2013. For more information, see the project website at [http://www.deldot.gov/information/projects/sr1\\_frederica/index.shtml](http://www.deldot.gov/information/projects/sr1_frederica/index.shtml). We recommend that the applicant consider how this project will affect access to their property as they contemplate future uses for it.

- At the PLUS meeting, Mr. Meding asked whether DelDOT had any plans to improve Tub Mill Pond Road south (or west) of the grade separated intersection project. We do not, and in fact we only recently renewed the bituminous surface treatment on it. There has been some legislative interest in having the surface upgraded to hot-mix bituminous concrete, but the road does not presently meet our threshold (500 vehicles per day Average Daily Traffic) for consideration in that regard.

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

Additional information on TMDL

- 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 designated for that watershed. However, the PCS for the Murderkill watershed has not been formally completed to date. In absence of a current PCS, the applicant is strongly urged to reduce nutrient and bacterial pollutants through the voluntary commitment to the implementation of the following recommended BMPs:
  - Maximize open space by establishing maintaining and/establishing additional tree cover on this parcel.
  - 100-foot upland buffers (planted with native vegetation) should be established from wetlands and/or water bodies
  - The applicant should 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.
  - Since this project will likely generate additional amounts of impervious cover, 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, is encouraged.

- Rain gardens and green-technology storm water management structures (in lieu of open-water management structures) should be utilized as BMPs to reduce nutrient pollutant impacts.
- The applicant should 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 (e.g., nitrogen and phosphorus) and bacterial loading 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.

**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.

**Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.**

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,



Constance C. Holland, AICP  
Director, Office of State Planning Coordination

CC: Kent County