



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

April 23, 2012

Mr. Tim Smith
Baker Residential of PA
3 Creek Pkwy, Ste. 220,
Naamans Creek Business Center
Boothwyn, PA 19061

RE: PLUS review – 2012-03-03; Independence Towns

Dear Mr. Smith:

Thank you for meeting with State agency planners on March 28, 2012 to discuss the proposed plans for the Independence Town project to be located in Pennsylvania at the Delaware State Line. According to the information received, you are seeking approval to build an access connecting to East Fulton Road, a privately maintained subdivision street located in Delaware. The road would be built through an existing residential lot, Tax Parcel No. 06-005.00-026. East Fulton Road is a cul-de-sac street, accessible only by way of Owensby Drive, which is also privately maintained.

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 parcel is located in Investment Level 1 according to the *Strategies for State Policies and Spending*. Investment Level 1 reflects areas that are already developed in an urban or suburban fashion, where infrastructure is existing or readily available, and where future redevelopment or infill projects are expected and encouraged by State policy.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are no known cultural or historic resources of any kind, including an Archeological Site or National Register-listed property on this parcel (property). However, if this proposed project proceeds, the developer should be aware of Delaware's Unmarked Human Burials and Human Skeletal Remains Law, which is outlined in Chapter 54 of Title 7 of the Delaware Code.

Abandoned or unmarked family cemeteries are very common in the State of Delaware, and often they are on historic farm sites, rural areas or open space lands. Disturbing unmarked burials triggers Delaware's Unmarked Human Burials and Human Skeletal Remains Law (Delaware Code Title 7, Chapter 54), and such remains or 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 a cemetery is discovered, 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 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. If you need or would like to read more information that pertains to cemeteries or unmarked human remains, please go to the following websites for additional information at www.history.delaware.gov/preservation/umhr.shtml and www.history.delaware.gov/preservation/cemeteries.shtml .

Prior to any demolition or ground-disturbing activities (such as development or construction 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 their project's effects on any known or potential cultural 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. If you need further information or additional details pertaining to the Section 106 process and the Advisory Council's role, please review the Advisory Council's website at www.achp.gov.

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

Water Supply

- The project information sheets state that water will be provided to the project by United Water (Bethel, PA) via a public water system. Our records indicate that the project is located within the public water service area granted to United Water of Delaware under Certificate of Public Convenience and Necessity 88-CPCN-03. Since this property crosses state lines and water is supplied by the same water Utility, yet different States, it is recommended that the developer contact the Public Service Commission at (302) 736-7547.

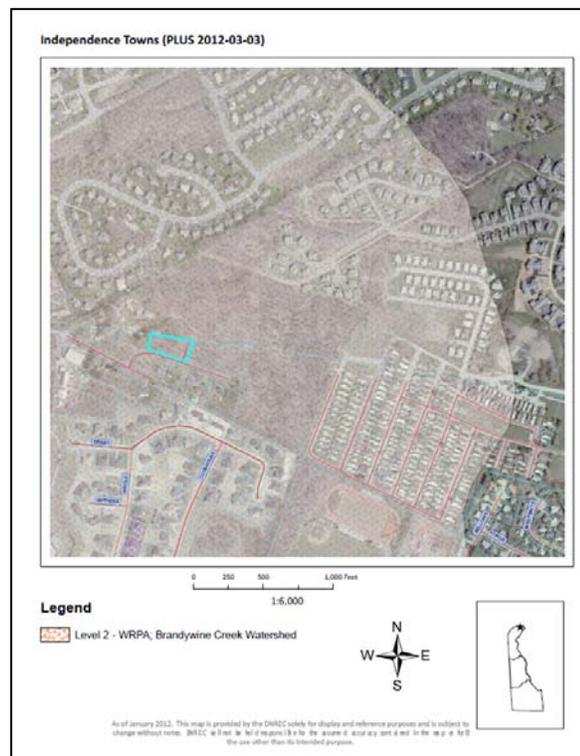
Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per 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 parcel falls entirely within the Brandywine Creek Drinking Water Watershed. This area is a Level 2 Source Water Protection Area for New Castle County (see map).

Level 2 Source Water Protection Areas are the delineated watershed upstream from a surface water intake that supplies water to a drinking water system. Land Use or Land Activity within this area has the potential to influence water quality or quantity to the system.



Sediment and Stormwater Program

- A sediment and stormwater plan will 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 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 New Castle County Dept. of Land Use Engineering Section. Contact Dept. of Land Use at (302) 395-5470 for details regarding submittal requirements and fees. (Title 7, Delaware Code, Chapter 40 and Delaware Regulations, Title 7, Administrative Code, 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 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.
- The following confirmed leaking underground storage tank (LUST) projects are located within a quarter mile from the proposed project area:
 - State Line Machine Inc., Facility: 3-000446, Project: N9103042, N9110249, N9903062 (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 Section by calling 302-395-2500.

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

- From US Route 202 to the proposed development, access would be by way of State Line Road, Owensby Drive and East Fulton Road. While it is not maintained by DelDOT, some of the road is located on State-owned land in Delaware. Also, while the intersection of Route 202 and State Line Road is in Pennsylvania, any needed right turn deceleration lane would necessarily be located in Delaware.

At the PLUS meeting, the applicant indicated that they had fully coordinated with the DelDOT Subdivision Section and that all issues were resolved. Subsequently, however, the Subdivision Manager for this portion of New Castle County, Mr. Pao Lin, recalled only one, relatively preliminary, meeting with the applicant. DelDOT strongly recommends that the developer contact Mr. Lin, to determine the requirements with regard to State Line Road and its intersection with Route 202. Mr. Lin may be reached at (302) 760-2157.

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

Rare Species and Habitat Impacts

- This project will provide access to a proposed development in Pennsylvania. The parcel to be developed in Pennsylvania is mostly forested with several areas of wetlands. While we do not have GIS data or rare species information for Pennsylvania, a population of the federally protected bog turtle occurs in Delaware just over a mile from the site and there are additional pockets of potential habitat near the state line in the vicinity. Because bog turtles are protected by the federal Endangered Species Act, their presence can affect the scope of work. There may also be state laws/regulations in Pennsylvania protecting bog turtles, other species of concern and/or wildlife habitat. To ensure this project does not impact bog turtle or other species of concern that may occur on this parcel, we highly recommend the applicant contact: Christopher A. Urban, Nongame & Endangered Species Coordinator Chief, Natural Diversity Section, Pennsylvania Fish & Boat Commission at 450 Robinson Lane Bellefonte, PA 16823, (phone) 814-359-5113 (-5175 fax).
- In addition, for the work in Delaware, DNREC also recommends efforts be made to minimize tree clearing and to avoid impacts to wetlands. This is important because the access being provided will allow a development which proposes further forest loss and wetland impacts in Pennsylvania.

Additional information on hazardous substances

- There is one SIRS site within a ½ miles radius of the proposed project. Brandywine Hunt Soil Piles (DE-1305) is located 0.24 miles south of the proposed project. The Site went through soil remediation with the Tanks Management Section in the mid-1990's for the pre-construction of the Brandywine Town Center Mall. Soil sampling of soil stock piles from construction activities occurred with the over site of SIRS in November of 2003. The Site was given a No Further Action designation in January of 2004.

SIRS 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.

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). SIRS 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 TMS. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMS.

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: New Castle County