



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

April 23, 2012

Mr. Richard Woodin
Woodin & Associates
111 Patriot Drive, Ste. D
Middletown, DE 19709

RE: PLUS review – 2012-03-05; Kohl South

Dear Mr. Woodin:

Thank you for meeting with State agency planners on March 28, 2012 to discuss the proposed plans for the Kohl South property located along the southerly side of Middletown-Warwick Rod, bounded by Merrimac Avenue, Patriot Drive, and Hedgelawn Way, within the Town of Middletown.

According to the information received, you are seeking a rezoning of 32 acres from Industrial for an unknown commercial use. Please note that comments below relate to the rezoning of this property and while there may be comments included regarding future building on the property, any site plan for future development that meets the PLUS criteria will need to be seen through the Preliminary Land Use Service (PLUS) for comment.

In addition, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. **The owners will also need to comply with any Federal, State and local regulations regarding this property. We also note that as the Town of Middletown is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the Town.**

Strategies for State Policies and Spending

This project is located in Investment Level 2 according to the *State Strategies for Policies and Spending* and within the Town of Middletown. 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. It should be noted that a plan amendment will be needed if this rezoning is inconsistent with the designation of this area on the Future Land Use map.

Code Requirements/Agency Permitting Requirements

- The developer should be aware that there are a couple of known historic properties nearby, which are listed in the National Register of Historic Places. These National Register-listed properties are Hedgelawn (N-118), which is towards the north, and Cochran Grange (N-117), which is towards the east. With this in mind, the developer should also 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. The developer should also include sufficient landscaping or barrier between the proposed development or construction project and the National Register-listed property known as Hedgelawn (N-118), which is nearby, in order to protect it from any type of visual or sound effects that may impact or affect it in an adverse way.
- 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 Transportation – Contact Bill Brockenbrough 760-2109

- This PLUS application is a property within the Westown Master Plan, a partnership between the Town of Middletown, DelDOT, and area property owners that addresses the growth in an area on the west side of Middletown. The Westown Master Plan included a Circulation Concept Plan in June 2005 that, among other things, consolidated traffic studies required by developers rather than each developer conducting independent studies, resulting in an improved circulation plan and recommendations for comprehensive improvements to existing state roadways in the area. In lieu of the requirement of an individual traffic impact study (TIS), properties within the Master Plan are required to pay a fee based upon the proposed land use, which would be used to either pay for the transportation improvements on state roadways or reimburse DelDOT if the improvements have already been completed. Already completed improvements included widening existing US 301 within the Town limits, and improvements to Levels Rd, St. Annes Church Road, and Bunker Hill Road.
In the context of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access, this means that in accordance with Section 2.3.4, the requirement for a TIS can be waived due to the project's being located in a Transportation Improvement District, provided that the requirements of that section are met. In that regard, there are two issues that need to be addressed:
 - This 32-acre property in the Westown Master Plan was proposed as manufacturing/residential, and had a fee associated with it of \$ 8,198/acre (includes January 2012 escalation) for a total of \$262,336.00. A rezoning to Commercial Use will change the required fee to \$ 16,396/acre (includes January 2012 escalation), which would equal \$524,672.00. If this property is rezoned, a new agreement will need to be executed to reflect the change in use and the higher fee.
 - This property was assumed to be manufacturing/industrial in the Master Plan and subsequent traffic analysis, and a commercial use will likely increase the amount of trips that are generated by the property. Standard Institute of Transportation Engineers formulas indicate that, while the AM peak hour may be similar, the PM peak hour and Average Daily Traffic will be more. This may impact congestion levels at area intersections, including US301/Levels Rd and US301/Merrimac Drive.
- If the proposed rezoning is approved, the developer's site engineer should submit a site plan to the DelDOT Subdivision Manager for southern New Castle County, Mr. Pao Lin

for a Letter of No Objection. If direct access on US Route 301 is desired, an entrance plan will also need to be submitted. Mr. Lin may be reached at (302) 760-2157.

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

The Department has no objections to the proposed rezoning. Should any development occur on-site, the following comments would apply.

TMDLs

- The project is located in the greater Delaware River and Bay drainage, specifically within the Appoquinimink watershed. In this watershed -under the auspices of Section 303(d) of the 1972 Clean Water Act - the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets 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 Appoquinimink watershed calls for a 60 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for an 8 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 information provided indicates that The Town of Middletown will provide water to the proposed projects through a public water system. Our files reflect that The Town of Middletown 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 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 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. (Title 7, Delaware Code, Chapter 40 and Delaware Regulations, Title 7, Administrative Code, 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 no confirmed leaking underground storage tank (LUST) projects located within a quarter mile from the proposed project area:
- No environmental impact is anticipated; however, 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

- Based upon the above issues and that some other land use changes have occurred on properties with the Westown Master Plan since 2005, along with a Record of Decision (ROD) for a new US 301, DelDOT would recommend to the Town that the rezoning be put on hold until an update to the traffic analysis found in the original Westown Circulation Concept Plan can be completed. The update would be paid for by the Westown Transportation Fund.

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

Additional information on TMDLs and water quality

- 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 Appoquinimink 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:
 - The applicant should 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. DNREC recommends that the applicant implement best management practices (BMPs) that reduce or mitigate some of its most likely adverse impacts.
 - Reducing the amount of surface imperviousness via the application/use of pervious paving materials (“pervious pavers”) in lieu of asphalt or concrete in conjunction with an increase in forest cover preservation (or establishment of additional forest cover acreage) are some examples of practical BMPs that could easily be implemented to help reduce surface imperviousness.

- We recommend 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.
- 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 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.

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: Town of Middletown