



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

April 23, 2013

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

RE: PLUS review – 2013-03-02; Levels Business Park – Lot 2

Dear Mr. Woodin:

Thank you for meeting with State agency planners on March 27, 2013 to discuss the proposed plans for Lot 2 of the Levels Business Park located at the corner of Levels Road and Patriot Drive in Middletown.

According to the information received, you are seeking to rezone 2.2 acres from MI to C-3 for a retail and apartment building.

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 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 County.**

**Strategies for State Policies and Spending**

- This project is located in Investment Level 2 according to the *Strategies for State Policies and Spending*. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investment will support growth in these areas.
- The rezoning should also be consistent with the Town of Middletown current comprehensive plan.

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

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are no known historic or cultural resources such as an archaeological site or National Register-listed property on this parcel. However, if any development project does proceed on this parcel, it is still important that the developer be aware of the Delaware 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. They are usually in rural or open space areas, and sometimes near or within the boundary of an historic farm site. Even a marked cemetery can frequently have unmarked graves or burials outside of the known boundary line or limit. Disturbing unmarked graves or burials triggers the 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. If there is a discovery of any unmarked graves, burials or a cemetery, it is very costly to have them archaeologically excavated and the burials moved. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area, to the full extent, to see if there is any unmarked cemetery, graves, or burial sites. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the full extent of the cemeteries or any burials on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with the landowner association or development. If you would like to know more information that pertains to unmarked human remains or cemeteries, please check the following websites for additional information: [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 potential historic or cultural resources, such as a potential archaeological site, a cemetery or unmarked human remains. Furthermore, 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. Furthermore, any preconstruction activities without adherence to these stipulations may jeopardize the issuance of any permit or funds. 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](http://www.achp.gov).

Department of Transportation – Contact Bill Brockenbrough 760-2109

- While the proposed development would generate enough traffic to warrant a Traffic Impact Study per Section 2.3.1 of the Standards and Regulations for Subdivision Streets, the development also qualifies for a waiver of that requirement per Section 2.3.4 of the Standards and Regulations due to its location within the Westown Transportation Improvement District (TID).
- The site access on Levels Road must be designed in accordance with DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access, which is available at [http://www.deldot.gov/information/pubs\\_forms/manuals/subdivisions/pdf/Subdivision\\_Mannual\\_Revision\\_1\\_proposed\\_060110.pdf](http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Mannual_Revision_1_proposed_060110.pdf). In that regard, we see the potential for the proposed right turn out of the site to be used for illegal left-turns to go north on Levels Road. Therefore DelDOT anticipates requiring an extension of the existing concrete median to discourage that movement.
- On the concept plan presented, Levels Road is dimensioned as 120 feet wide. To what specific dimension does this distance apply? It seems too wide to be the right-of-way.
- In accordance with Section 3.6.5 and Figure 3-3 of the Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT will require dedication of right-of-way along the site's frontage on Levels Road to provide a minimum of 30 feet of right-of-way from the road centerline. From the concept plan presented, it appears that the developer's site engineer has accounted for this requirement already.
- In accordance with Section 3.6.5 of the Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT anticipates requiring the establishment of a 15-foot wide permanent easement across the property frontage on Levels Road for a future pedestrian facility. The location of the easement shall be outside the limits of the ultimate right-of-way for the road. The easement area can be used as part of the open space calculation for the site. In the absence of a local requirement, DelDOT would require a 10-foot wide multi-use path in the easement but might not require its construction by this developer. However, we understand that the Town will require construction of a four-foot sidewalk similar to the ones being required on Patriot Drive. Given their requirement, we find the sidewalk to be an acceptable substitute for the multi-use path.

Department of Natural Resources and Environmental Control – Contact Bahareh van Boekhold  
735-3495

### **TMDLs**

- The project is located in the greater Delaware River and Bay drainage, specifically within the Appoquinimink River 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 Appoquinimink River watershed calls for a 60 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for an 8 percent (freshwaters) reduction in bacteria from baseline conditions.

### **Water Resource Protection Areas**

- The DNREC Ground-Water Protection Branch (GPB) has determined that the entire project falls within an area of excellent ground-water recharge potential for the Town of Middletown (see map). A change in zoning from manufacturing-industrial to commercial has the potential to introduce additional contaminants associated with commercial land use (DNREC, 1999).
- Although the Town of Middletown’s Source Water Protection Ordinance meets the minimum standards of protection, this protection does not limit impervious cover in excellent ground-water recharge potential areas. Impervious cover prevents precipitation from infiltrating through the soil to the water table aquifer. Impervious cover refers to structures including but not limited to roads, sidewalks, parking lots, and buildings. Any impervious cover within an area of excellent ground-water recharge potential area has the potential to have a negative effect the quality and quantity of drinking water available.
- Excellent Ground-Water Recharge Areas are those areas mapped by the Delaware Geological Survey where the first 20 feet of subsurface soils and geologic materials are exceptionally sandy. These soils are able to transmit water very quickly from the land surface to the water table. This map category (excellent) is an indicator of how fast contaminants will move and how much water may become contaminated (Andres, 2004). Land use activities or impervious cover on areas of excellent ground-water recharge potential may adversely affect ground water in these areas.

- Ground Water Protection Branch recommends:
  - Keep impervious cover to less than 50%
  - Perform an environmental assessment report showing that *water quality* as well as *water quantity* of post development recharge is equal to or greater than pre-development recharge (Kaufmann, 2005).
  - Quantify amount of recharge lost due to impervious cover and provide for onsite infiltration of water at least equal to or greater than pre-development recharge (Kaufmann, 2005).
  - Pretreatment of parking area runoff to remove dissolved chemical and nutrient loads prior to infiltration
  - Use Better Management Practices in the design, construction, and maintenance of a storm water management system designed to address water quality with respect to nutrient and other pollutant loads.
- In addition, because the excellent ground water recharge area can readily affect the underlying aquifer if contaminants are spilled or discharged across the area, the storage of hazardous substances or wastes should not be allowed within the area unless specific approval is obtained from the relevant state, federal, or local program.

#### *References*

Andres, A. Scott, 2004, Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware: Delaware Geological Survey Report of Investigations No. 66, p. 14.

<http://www.udel.edu/dgs/Publications/pubform.html#investigations>

Delaware Department of Natural Resources and Environmental Control (DNREC), 1999, the State of Delaware Source Water Assessment Plan: Dover, DE, p. 301.

Kauffman, G.J., Wozniak, S.L., and Vonck, K.J., 2005, *Delaware Ground-Water Recharge Design Manual*: Newark, DE, Water Resources Agency, University of Delaware, p. 31.

<http://www.wr.udel.edu/swaphome/Publications/SWPguidancemanual.html>

### **Sediment and Stormwater Program**

- A sediment and stormwater plan will be required for the site. Contact the reviewing agency to schedule a pre-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 Town of Middletown. Contact Town of Middletown at (302) 378-

9120 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.

**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:

<b>Table 1: Potential Regulatory Requirements</b>	
<b>Regulation</b>	<b>Requirements</b>
<b>7 DE Admin. Code 1106</b> - Particulate Emissions from Construction and Materials Handling	<ul style="list-style-type: none"> <li>• Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads.</li> <li>• Use covers on trucks that transport material to and from site to prevent visible emissions.</li> </ul>
<b>7 DE Admin. Code 1113</b> – Open Burning	<ul style="list-style-type: none"> <li>• Prohibit open burns statewide during the Ozone Season from May 1-Sept. 30 each year.</li> <li>• Prohibit the burning of land clearing debris.</li> <li>• Prohibit the burning of trash or building materials/debris.</li> </ul>
<b>7 DE Admin. Code 1135</b> – Conformity of General Federal Actions to the State Implementation Plan	<ul style="list-style-type: none"> <li>• 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)</li> </ul>
<b>7 DE Admin. Code 1141</b> – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products	<ul style="list-style-type: none"> <li>• Use structural/ paint coatings that are low in Volatile Organic Compounds.</li> <li>• Use covers on paint containers when paint containers are not in use.</li> </ul>
<b>7 DE Admin. Code 1144</b> – Control of Stationary	<ul style="list-style-type: none"> <li>• Ensure that emissions of nitrogen oxides (NO<sub>x</sub>), non-methane hydrocarbons</li> </ul>

Generator Emissions	(NMHC), particulate matter (PM), sulfur dioxide (SO <sub>2</sub> ), carbon monoxide (CO), and carbon dioxide (CO <sub>2</sub> ) from emergency generators meet the emissions limits established. (See section 3.2). <ul style="list-style-type: none"> <li>• Maintain recordkeeping and reporting requirements.</li> </ul>
<b>7 DE Admin. Code 1145 – Excessive Idling of Heavy Duty Vehicles</b>	<ul style="list-style-type: none"> <li>• Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.</li> </ul>

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

Delaware Department of Education – Contact Despina Wilson 735-4199

- This project is subject to the Voluntary School Assessment (VSA) Statutes 14 Del. Code §103© and 9 Del. Code, Chapter 26, §2661.
- A certificate of adequate school capacity must be requested in writing by the developer from the Department of Education, attention Despina Wilson to determine applicability of the VSA fees. The request shall contain all pertinent information about the development including but not limited to tax parcel # and New Castle County application number. As per Delaware Code, the school capacity determination process has a 60-day maximum turnaround time.

**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

- **The developer has already contributed toward infrastructure in the Westtown TID in association with the creation of the Levels Business Park. However, that contribution was based on the development of the property with industrial uses. With the proposed rezoning and subsequent development of the property for commercial use, their fee will increase and they will need to pay an additional \$16,469.**

- DelDOT recommends that the developer's engineer contact Mr. Pao Lin of this office to schedule a Pre-Submittal Meeting. As necessary, Mr. Lin can be reached at (302) 760-2157.

Department of Natural Resources and Environmental Control – Contact Bahareh van Boekhold  
735-3495

#### **Additional information on TMDLs and water quality**

- In response to concerns about the need for reducing nonpoint source nutrient (nitrogen and phosphorus) and bacterial pollutants to levels sufficient to meet the prescribed TMDL reduction requirements in the Appoquinimink watershed, a multifaceted and comprehensive process known as a Pollution Control Strategy (PCS) has been developed to enable such reductions. Specifically, a PCS is a combination of best management practices and control technologies that reduce nutrient and bacterial pollutant runoff loading in waters of a given watershed to level(s) consistent with the TMDL(s) reduction levels specified for that watershed. The PCS for the Appoquinimink River watershed consists of recommendations from the following four areas: agriculture, land preservation (open space), stormwater, and wastewater. Additional information about Appoquinimink River PCS is available from the follow web link:  
<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedManagementPlans.aspx>.
- In further support of the PCS, the applicant is also strongly urged to reduce nutrient and bacterial pollutants through voluntary commitment to the implementation of the following recommended BMPs:
  - DNREC encourages that the applicant maintain as much of the existing open space as possible; we further suggest additional native tree and native herbaceous planting, wherever possible.
  - 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.
  - Since this proposed project will significantly increase impervious cover which will subsequently increase surface water runoff impacts, we strongly recommend, wherever practicable, installation of pervious paving materials (instead of conventional asphalt and concrete) by the applicant as a means of mitigating for said impacts.
  - DNREC encourages 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 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 John Martin or Jen Walls at 302-739-9939 for further information on the protocol.

#### **Additional information on hazardous waste sites**

- DNREC's Site Investigation and Restoration Section (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.
- Additional remediation may be required if the project property or site is re-zoned by the county.
- 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 air quality**

- DNREC encourages developers and builders to consider sustainable growth practices in their design, but we believe, however, that all the air quality impacts associated with the project should be considered. New homes and 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 new 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 homes and commercial space, and
  - All transportation activity.
- Based on the information provided, the three air emissions components (i.e., area, electric power generation, and mobile sources) could not be quantified. DAQ was able, however, to quantify the mobile emissions based on the proposed daily trip data presented in the application and data taken from the ITE Trip Generation Manual, 8<sup>th</sup> Edition. Table 2 – Projected Air Quality Emissions represents the actual impact the Levels Business Park – Lot 2 project may have on air quality.

<b>Table 2: Projected Air Quality Emissions for Levels Business Park (Lot 2)</b>					
Emissions Attributable to Levels Business Park – Lot 2 (Tons per Year)	Volatile Organic Compounds (VOC)	Nitrogen Oxides (NOx)	Sulfur Dioxide (SO <sub>2</sub> )	Fine Particulate Matter (PM <sub>2.5</sub> )	Carbon Dioxide (CO <sub>2</sub> )
Mobile	1.7	2.2	*	*	*

(\*) Indicates data is not available.

- Note that emissions associated with the actual construction of the road, including automobile and truck traffic from working in, or delivering products to the site, as well as site preparation, earth moving activities, road paving and other miscellaneous air emissions, are not reflected in the table above.
- DAQ encourages sustainable growth practices that:
  - Control sprawl;
  - Preserve rural and forested areas;
  - Identify conflicting land use priorities;
  - Encourage growth on previously developed sites and denser communities;
  - Coordinate transportation, housing, environment, and climate protection plans with land use plans; and
  - Demonstrate that communities can achieve the qualities of privacy, community, and contact with nature without degrading the natural environment or generating

unacceptable environmental costs in terms of congestion, use of natural resources, or pollution.

- Additional measures may be taken to substantially reduce the air emissions which 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 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. **For every vehicle trip that is replaced by the use of a sidewalk, a bike path or mass transit, 7 pounds of VOC and 11.5 pounds of NOx are reduced each year.**
  - **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 low VOC emitting trees in vegetative buffer areas.** Trees reduce energy emissions by cooling during the summer and by providing wind breaks in the winter, thereby 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 project. The applicant should submit a plan to the DNREC DAQ which address the above listed measures, and that details all of the specific emission mitigation measures that will be incorporated into the Levels Business Park – Lot 2 project.

Delaware Department of Education – Contact Despina Wilson 735-4199

- The DOE recognizes the integral role of educational facilities within communities. As such, the DOE seeks to assure that residential growth, that generates additional demand

on educational facilities, is managed with adequate educational infrastructure being made a part of sub-division plans as appropriate such as adequate width of roads to accommodate school buses and designated pick up and drop off sites.

Delaware State Housing Authority – Contact Karen Horton 739-4263

- DSHA supports the Levels Business Park – Lot 2 proposal to rezone 2.2 acres from 23M-I Manufacturing-Industrial to C-3 Regional Commercial that will permit 24 apartments and 15,300 sq. ft. of retail space for the following reasons:
  - Apartments can be the most economical type of home to construct and are needed to meet the needs of low- and moderate-income families.
  - A growing body of research indicates that we are in the midst of a significant market shift. The baby boomers that once drove suburban development are now aging and are looking to downsize into something more manageable. The Delaware Population Consortium (DPC) projections for the next ten years indicate that not only will there be a large amount of suburban homes placed on the market by baby boomers, but that there will be a *decline* in households in age ranges that typically seek large homes. These same DPC projections show growth in the younger age ranges most likely at stages in their life and income to support entry level homes like those proposed.

**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