



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

September 25, 2013

Mr. Michael Fortner
City of Newark
220 South Main Street
Newark, DE 19711

RE: PLUS 2013-08-05, Newark Comprehensive Plan Pre-Update

Dear Mr. Fortner,

Thank you for meeting with State agency planners on June 25, 2013 to discuss the update of the City of Newark's comprehensive plan. State agencies have reviewed the documents submitted and have asked that the following be considered when you update your plan for certification.

Our office strongly recommends that the City consider these recommendations from the various State agencies as you review your plan for final approval.

This office has received the following comments from State agencies:

Office of State Planning Coordination – Contact: 739-3090

Office of State Planning Coordination greatly appreciates Newark participating in the Pre-PLUS review for your current comprehensive plan. The Pre-PLUS review is intended to make the certification process much smoother for the City as you will know up front what potential issues concerns there are from state agencies and also be informed of state code and departmental administrative changes since your last plan was adopted.

We also want to recognize the effort the City has and continues to put into updating its comprehensive plan, including the use of a new format. This is no easy task and we want you to know that we are here to help in any way we can. Additionally, if you feel it is necessary, you can request a submission extension as we understand how big a task this is and the importance of doing the best job possible may take more time than originally anticipated.

We further appreciate the fact that you want to make sure that the public will understand how Newark intends to use this plan as you explain in the Preface "Why We Plan". You also give a good summary of this in the first paragraph of Chapter 1. With that said, we have a little concern regarding the paragraphs in the Preface that start with "A

Comprehensive Plan is not ...” as they seem to be a little overstated which we feel tends to minimize the importance of what a comprehensive plan is even though we know that this not your intent. Again, we feel you give a good explanation of what a comprehensive plan is already, but, if you need to clarify further, we would appreciate you do it in a more concise manner to avoid this possible misperception.

We are particularly encouraged to hear that you will be including in the Visions’ Chapter (Chapter 3) such themes as “healthy living”, “sustainable growth”, and, “living in place”. These are all very important considerations for a population as diverse as Newark’s is especially considering growth pressures from both University students as well as an aging population. We look forward to reading the draft when prepared.

State Historic Preservation Office (SHPO) – Contact: Terrence Burns 739-5685

- The City of Newark may be interested in considering an update to the historic properties survey that was done in the early 1980s. More properties will now meet the 50-year consideration limit for National Register potential, and there may be historic districts that could be defined in the City. Such listings would make more Newark property owners eligible for the State historic preservation tax credit, and provide assistance in undertaking rehabilitation projects. We would be happy to discuss this with the City’s planners as they draft the revised comprehensive plan. If you have any questions or concerns, please contact Alice Guerrant at 302-736-7412.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- One subject not mentioned in the draft is Transportation Improvement Districts (TIDs). Per Section 2.13.2.7 of DelDOT’s Standards and Regulations for Subdivision Streets and State Highway Access, if a local government wants to work with DelDOT to create such a district, they should identify their intention to do so in their comprehensive plan. Absent at least a statement in that regard in the Plan, DelDOT would be unwilling to expend significant resources on the creation of such a district wholly or partially in the City. The City is, of course, not obligated to create a TID or TIDs but if they want to do so, they need to include the idea in their Plan.
- Section 2.9.12.1, Paragraph 3, of DelDOT’s Standards and Regulations for Subdivision Streets and State Highway Access allows DelDOT to consider a local government’s Level of Service standards rather than its own (C in rural areas, D elsewhere) when evaluating the traffic impacts of land development, provided that those standards are included in that government’s comprehensive plan. DelDOT recommends that the City consider adopting Level of Service standards that they find appropriate in specific areas, such as the central business district, where they may find some measure of congestion necessary and appropriate to the pattern of development that they want to preserve or create.
- DelDOT’s review of the Plan is confined to Chapter 6 – Transportation. Briefly, DelDOT believes the chapter should be rewritten. In view of the City’s goal to obtain certification by December 2013, the easiest approach might be to set aside the draft developed thus far and in its place import and update the Executive Summary from

2011 City of Newark Transportation Plan prepared by WILMAPCO. As the City has pointed out, some of the information in the 2011 Plan is dated, but it is more current than much of the information in the draft chapter. Further, it is organized well with regard to goals, objectives and priorities, whereas the present draft chapter is not.

- If the City prefers not to rely so heavily on the 2011 Plan, DelDOT recommends that meeting separately to discuss Chapter 6. Even if they do use the 2011 Plan, DelDOT would be open to a meeting to discuss their efforts. An initial contact in this regard would be our Director of Planning, Mr. Drew Boyce. He may be reached at (302) 760-2111.
- Other resource persons within the Department whom they may wish to consult include Bicycle Coordinator, Mr. Anthony Aglio at (302) 760-2509, Pedestrian Coordinator, Ms. Sarah Coakley at (302) 760-2236, and Bill Brockenbrough at (302) 760-2109 regarding TIDS.
- While it is not specifically a transportation concern, DelDOT also suggests that the plan should include a study to do storm water modeling in cooperation with the Department of Natural Resources and Environmental Control, the Delaware Emergency Management Agency and DelDOT. An initial DelDOT contact in that regard would be Storm Water Engineer, Mr. Vince Davis, who can be reached at (302) 760-2251.

That said, the rest of the comments here focus on the current draft of Chapter 6. DelDOT is not commenting here on specific matters of style and proofreading as this document is a draft, but recommends a thorough and significant editing in these regards, before it is advertised for public review.

- Much of the Background section, on pages 41 through 44 should be deleted or moved to an Appendix. In 2008, perhaps it was necessary, but with the 2011 Plan it is no longer needed.
- DelDOT strongly disagrees with the statement on page 41 that “Because the major roadways in the City of Newark...are State highways, the City’s ability to improve our local roadway system is severely restricted.” Most of the lane-miles in the City are municipally maintained and the City is entirely free to manage these streets as they see fit. DelDOT does have responsibility for the major roads in the City, but is, and has been, willing to work with the City on improving these roads and bring State and Federal funds to the effort. Having State highways pass through their downtown area is a reality for every municipality in Delaware and probably most municipalities in the country.
- On page 45, under Roads and Highways, at the end of the first paragraph, the text reads “In this regard, the Planning and Development Department routinely advises potential land developers against applying for land use development changes, if the proposed use is located on a heavily congested roadway and is a significant traffic generator. DelDOT plans to continue this policy.”

The terms “heavily congested” and “significant traffic generator” are subjective, and do not appear to be defined. While it is entirely reasonable to advise developers new to the City that traffic congestion is an important issue, the statement as written suggests that the City is largely closed to economic development. DeIDOT recommend that the City remove it from the Plan and consider the advice that it gives people seeking to develop in Newark.

- Further on page 45, in the second paragraph under Roads and Highways, there is a sentence “Fortunately, some relief was provided by the long delayed Christina Parkway, finally completed in the early 1980’s.” The “early 1980’s” were 30 years ago, when many of the Plan’s readers were still children or perhaps unborn. While it is true that most of the City’s east-west routes go through the downtown area and therefore operate at relatively low speeds, the whole paragraph seems dated. DeIDOT recommends that it be removed.
- Finally on page 45, the third paragraph under Roads and Highways begins with a statement that “Because of the diverse nature of Newark’s development pattern, transportation planning for our City is exceedingly complex,“ but the paragraph does not go on to identify anything out of the ordinary. This theme is packed up again in the Summary on page 49, where transportation planning in Newark is described as “complicated and challenging.” While every municipality’s issues are in a sense uniquely theirs, transportation planning for Newark appears no more complex or difficult than transportation planning for any college town of a similar size. Such language only serves to suggest that the City administration may be unequal to the task before it, a view that DeIDOT does not support. DeIDOT recommends that this paragraph be rewritten with a more positive tone. Also, the reference to “Chrysler Corporation shift changes” is now dated.
- On page 46, to examine the rate of increase in traffic, there are references back to “the original Comprehensive Development Plan, the 1975 ‘Micro Transportation Study,’ and the most recent Delaware Department of Transportation Division of Highways’ traffic counts.” DeIDOT believes this paragraph should be deleted or rewritten. The paragraph is taken from the 2008 Plan and goes on to introduce a table of traffic counts that table does not appear to be included in this draft. Similar information to what was in that table can be found in the 2011 Plan. The Division of Highways has not existed by that name for about 20 years.
- The Newark Transit Hub, which is described on pages 45 and 47 as “coming,” opened in August 2008 and is still in service.
- The “experimental DART route” between Newark and Elkton, Maryland, mentioned on page 47 is now DART Route 65.
- The Pomeroy rail trail, described on page 47 as “recently state approved,” and on page 48 as forthcoming, is now open to traffic.
- On page 48, relocation of the CSX railroad line is identified as a “continuing long term goal for the City.” While we respect the City’s right to set its own goals, we suggest that this one is unrealistic. No source of funds or possible alignment for the relocation is

suggested, and the rail line has been there longer than most of the development along it. If the line is the concern for the City that the Plan suggests, DelDOT recommends that they consider beginning to plan for buffering and/or compatible uses along it. These changes would need to be implemented over a long period but they seem more feasible than the proposed relocation. Another goal the City might consider is grade separation of the railroad and North College Avenue, where it seems possible to take the road under the railroad. This would be an expensive and impactful project, but again it seems more feasible than the relocation of the rail line.

- Again on page 48, the mid-block pedestrian crossing installed on Main Street in 1981 was done over DelDOT's objections at the time and that it has helped with pedestrian traffic. In that regard, DelDOT has two observations. First, it helped pedestrian traffic at the expense of through traffic on Main Street, which the Plan complains about on page 45. If it is important to discuss this improvement, DelDOT suggests that the City should take responsibility and acknowledge the trade-off on their part rather than attributing the opposition to the crossing entirely to DelDOT. Second, the crossing was installed 32 years ago; the discussion contributes to the Plan's seeming dated. DelDOT suggests that it be removed.
- At the top of page 49, there is a reference to the DelDOT Elkton Road improvement plan as being described in Chapter II and including "significant pedestrian way upgrades to be constructed." This discussion should be updated to reflect both that part of our Elkton Road improvements are built and that the City has renamed the road South Main Street.
- The Transportation Network Map on page 48 should be updated to show the Pomeroy Rail Trail.
- Looking beyond what is written in the current draft, at least in Chapter 6, there is no discussion of the redevelopment of the Chrysler property, including the Newark Regional Transit Center (rail station) and development proposals associated specifically with that. The transportation impacts of these projects would appear to be significant. DelDOT recommends that discussion be added.

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

DNREC offers several comments and suggestions to improve conservation and protection of the City's resources. While the cumulative impact of various program suggestions and concerns may sound negative, the intent is to improve the plan elements related to environmental protection, open space, recreation and water quality and supply. DNREC would welcome the opportunity to meet with the City in a collaborative manner to discuss these recommendations and possible future ordinances.

Recommendations for Comprehensive Plan Revisions

- Without the benefit of having read in draft form Chapters 4 (Public Utilities and Infrastructure), 7 (Environmental Quality and Natural Environment), and 8 (Parks, Recreation, and Open Space), all of great interest to the Department, DNREC offers the following:

- **Chapter 4, Public Utilities and Infrastructure:** In this chapter, DNREC would expect the City to discuss water supply (to include water allocation projections based on population/employment projections, as well as source water protection), wastewater, and stormwater management (to include, possibly, a discussion of the creation of a stormwater utility; please be advised that the new sediment and stormwater regulations go into effect in January 2014).
- **Source Water Protection:** The Comprehensive Plan must contain the following elements per the Memorandum of Understanding between the Office of State Planning Coordination and the Division of Water dated July 2011: *Counties and Municipalities Over 2,000 Population* (as reported in the most recent decennial Census):
 - Text of the comprehensive plan must include description of source water requirements in 7 Del. C. 6082(b), and include goals and objectives related to the protection of the resource. This text shall be placed within the water and sewer element of the local government's comprehensive plan, as prescribed by Title 9 or Title 22 of the Delaware Code.
 - A map of source water resources (excellent recharge areas, wellhead protection areas) shall be included in the plan. This map must be derived from the most current source water protection datasets¹ provided by the Department of Natural Resources and Environmental Control (DNREC).
 - The map and plan text must clearly include the note that the regulatory provisions of any source water ordinance will refer to the most current source water protection datasets¹.
 - The local government shall adopt, after consultation with DNREC, an ordinance that is protective of the resource. The ordinance shall refer to the most current official source water map and relevant data, as provided in the current Comprehensive Plan and as amended from time to time or include a map update procedure.
- **Chapter 7, Environmental Quality and Natural Environment.** In this chapter, DNREC would expect the City to discuss issues like Total Maximum Daily Loads (TMDLs) and water quality, wetlands/water bodies/buffers, air quality, floodplains (please be advised that new Flood Insurance Rate Maps are available), wildlife habitat (how the City intends to preserve and enhance), and urban forestry.
- **TMDLs.** Under Section 303(d) of the 1972 Federal Clean Water Act (CWA), states are required to identify all impaired waters and establish total maximum daily loads to restore their beneficial uses (e.g., swimming, fishing, drinking water, and shellfish harvesting). A TMDL defines the amount a given pollutant (i.e., or the pollutant loading rate reduction for a given pollutant) that may be discharged to a water body from all point, nonpoint, and natural background sources; thus enabling that water body to meet or attain all applicable narrative and numerical water quality criterion (e.g., nutrient/bacteria concentrations,

dissolved oxygen, and temperature) in the State of Delaware’s Water Quality Standards. A TMDL may also include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a TMDL matches the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate that pollutant without adverse impact. The realization of these TMDL pollutant load reductions will be through a pollution control strategy (PCS). A Pollution Control Strategy (PCS) identifies the specific strategies and actions (e.g., best management practices) necessary for reducing pollutants in a given water body (or watershed); thus realizing the water quality criterion or standards set forth in the State of Delaware’s

¹ <http://www.nav.dnrec.delaware.gov/DEN3/DataDownload.aspx>

Water Quality Standards – ultimately leading to the restoration of a given water body’s (or watersheds) designated beneficial use(s). Currently, the PCS for Christina River Basin contains only non-regulatory suggested recommendations.

The City of Newark is located within the Piedmont drainage, specifically within the greater Christina River Basin. The Christina River Basin includes the Christina River Sub-basin and the White Clay Creek Sub-basin. In this Basin, specifically-designated nutrient (nitrogen and phosphorus) and bacterial TMDL load reduction requirements are displayed in the following table (Table 1):

Piedmont Drainage	N	P	Bacteria
Christina River Basin	Capped at pre-development baseline (0% increase allowed)	Capped at pre-development baseline (0% increase allowed)	29-95% High Flow

Table 1: TMDL reduction requirements for the Christina River Basin

- **Chapter 8, Parks, Recreation, and Open Space.** Please see information to include in the Plan at http://www.dnrec.delaware.gov/parks/Information/Documents/nemours-brief/2011.05.33%20Newark%20Insert_alt.pdf. In addition, the 2009-2011 Statewide Comprehensive Outdoor Recreation Program (SCORP) identified the following:

Newark Outdoor Recreation Facility Needs

High Priorities

Walking or Jogging Paths
 Bike Paths

Moderate Priorities

Nature Programs
 Basketball Courts

Low Priorities

Skate Parks
 Powerboat

Access		
Hiking Trails	Baseball/Softball Fields	
Equestrian Trails		
Playgrounds	Camping Areas	Disc
Golf Courses		
Swimming Pools	Golf Courses	Lacrosse Fields
Open Space/Passive Recreation Areas	Tennis Courts	Hunting
Access to Historic Sites	Soccer Fields	ATV
Trails		
Beach Access	Canoe/Kayak Access	Roller Hockey
Areas		
Picnic Areas	Football Fields	Dog
Parks		
Fishing Access	Volleyball Courts	
Mountain Bike Trials		
Rollerblading/Roller-skating Areas		

- **Chapter X, Sustainability.** In this chapter, DNREC would encourage the City to present its health and sustainability visions and goals and discuss issues like resiliency, assessment of infrastructure vulnerabilities in increased temperature and precipitation scenarios, green buildings, energy conservation, recycling, etc.

Recommendations for Ordinances and Plan Implementation

- **Wetlands Delineations:** Require all applicants to submit to the City a copy of the development site plan showing the extent of State-regulated wetlands (as depicted by the State Wetland Regulatory Maps), and a United States Army Corps of Engineers (USACE) approved wetlands delineation as conditional approval for any new commercial and/or residential development. Additionally, the site plan should depict all streams and ditches which are jurisdictional pursuant to the Subaqueous Act (7 Del. C., Chapter 72) as determined by DNREC.
- **Freshwater Wetlands Protections:** Implement regulations to protect freshwater wetlands where regulatory gaps exist (i.e., isolated wetlands and headwater wetlands).
- **100 Foot Upland Buffer:** Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878-882.), an adequately-sized buffer that effectively protects water quality in wetlands and streams, in most circumstances, is about 100 feet in width. In recognition of this research and the need to protect water quality, the Watershed Assessment Section recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from all water bodies (including ditches) and wetlands. Require a 100-foot upland buffer width from all delineated wetlands (approved by the USACE and DNREC) or water bodies (including ditches).

- **Impervious Surface Mitigation Plan:** Require the calculation for surface imperviousness (for both commercial and residential development) take in to account all constructed forms of surface imperviousness - including all paved surfaces (roads, parking lots, and sidewalks), rooftops, and open-water storm water management structures. To encourage compact development and redevelopment in the City's central business area, require an impervious surface mitigation plan for all residential and commercial developments exceeding 20% imperviousness outside that area, or at least in excellent recharge areas outside that area. The impervious surface mitigation plan should demonstrate that the impervious cover in excess of 20% will not impact ground water recharge, surface water hydrology, and/or water quality of the site and/or adjacent properties. If impacts to groundwater recharge, surface water hydrology will occur, the plan should then demonstrate how these impacts will be mitigated. If the impacts cannot be mitigated, the site plan should then be modified to reduce the impacts from impervious cover.
- **Poorly Drained (Hydric) Soils:** Prohibit development in poorly or very poorly-drained (hydric) soil mapping units. Building in such areas predictably leads to flooding and drainage concerns from homeowners, as well as significant expense for them and, often, taxpayers. Proof or evidence of hydric soil mapping units should be provided through the submission of the most recent NRCS soil survey mapping of the parcel, or through the submission of a field soil survey of the parcel by a licensed soil scientist.
- **Green Technology Stormwater Management:** Require the applicant to use "green-technology" storm water management in lieu of "open-water" storm water management ponds whenever practicable.
- **Stormwater Utility:** Explore the feasibility of a stormwater utility to fund upgrades to existing stormwater infrastructure. Upgrades to the stormwater system may reduce pollutant loads and help reach the established total maximum daily load for nitrogen, phosphorus, and bacteria. Reach out to the New Castle Conservation District, New Castle County, and the Delaware Clean Water Advisory Council as partners in funding stormwater retrofits.
- **Drainage Easements:** The City should pursue drainage easements along waterways and storm drains where currently there is none.

Department of Agriculture - Contact: Scott Blaier 739-4811

- The Department urges the city to continue working with the Department's Forestry Section to meet its urban forestry and tree canopy goals. The Department also encourages the city to promote agribusinesses such as farm markets whenever possible. The Department has several agricultural marketing specialist on staff that would be glad to provide assistance (302) 698-4500.

Delaware State Housing Authority – Contact Vicki Powers 739-4263

- Incorporate demographic trends into the Housing Analysis. A growing body of research indicates that Delaware, like the rest of the nation, is in the midst of a significant market shift. 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.

In addition, many families did not recover from the national economic crisis unscathed. Many families lost their homes, or suffered significant credit damage making it difficult to return quickly to homeownership. As households reverted from ownership to renting, or postponed purchasing a home, both nationally and in Delaware the 2000s marked the highest decade-long growth in renter households in the last 60 years. This trend is only expected to continue. This is resulting in a tighter rental market pushing rents up. Median gross rent in Delaware rose 49% from 2000 to 2010, while median family income in the state rose only 24%. Cost-burden among renter households also remains high in Delaware. There are an estimated 25,600 cost-burdened very low-income renter households in Delaware. These stressors are compounded for persons with disabilities and other vulnerable households. At the same time, development is more complex than ever, resources to reduce costs remain scarce, and bridging affordability gaps using existing programs is a perpetual challenge.

All of these factors indicate that it is *critical* that communities *proactively* provide a variety of housing options to meet the needs of their residents.

- DSHA encourages municipalities receiving federal funds for housing to be aware of their Civil Rights obligations at the U.S. Department of Housing and Urban Development (HUD). Specifically, federal fund recipients are obligated to Affirmatively Further Fair Housing (AFFH) by taking proactive steps to promote racially, ethnically, and socioeconomically diverse communities. To assist with this obligation, in July 2011, DSHA collaborated with the Cities of Wilmington and Dover, and New Castle County to conduct the *Statewide Analysis of Impediments to Fair Housing Choice*. (<http://www.destatehousing.com/FormsAndInformation/pubs.php>). The Analysis contains several recommendations for local jurisdictions. These include the following:
 - Local government entities throughout the State of Delaware should reduce and/or waive their respective sewer, water, and/or public facilities and services impact fees for area developers and non-profit organizations seeking to build affordable housing units, both renter and owner units.

- Currently, the City of Newark does not have a definition encompassing the "group home" use. In addition, the land use was not listed as a permitted use in any zoning district. However, in practice the City of Newark relies on the jurisdiction of state law to define a group home. The Delaware State Code states the following in relation to residential facilities for persons with disabilities: "For purposes of all local zoning ordinances a residential facility licensed or approved by a state agency serving 10 or fewer persons with disabilities on a 24-hour-per-day basis shall be construed to be a permitted single family residential use of such property." This definition is consistent with the Fair Housing Act. To promote consistency and clarity, the City of Newark should amend its zoning ordinance to include the definition of group homes as cited under State Law.
- Ease zoning and other regulatory barriers to affordable rental housing for families.
- Area localities should encourage members of appointed boards and commissions, elected officials, real estate agents, and municipal and county staff that deal with housing, community development, zoning, and code enforcement issues to attend an annual fair housing training.
- DSHA offers technical assistance to the City in reviewing tools and strategies to increase affordable housing opportunities within the City.
- DSHA has developed a website, **Affordable Housing Resource Center**, to learn about resources and tools to help create housing for households earning 100% of median income or below. Our website can be found at: www.destatehousing.com "Affordable Housing Resource Center" under Other Programs.
- If you have any questions or would like more information on the above recommendations, please feel free to call me at (302) 739-4263 ext. 251 or via e-mail at karenh@destatehousing.com.

Once the amendment is voted on by Planning and Zoning and/or Town Council, please forward a copy of the decision regarding the amendment to this office for our files. Thank you for the opportunity to review this amendment. If you have any questions, please contact me at 302-739-3090.

Sincerely,



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

