



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

October 20, 2015

Mr. Ring Lardner
Davis, Bowed & Friedel, Inc.
23 North Walnut Street
Milford, DE 19963

RE: PLUS review 2015-09-02; WMF Watercraft and Marine

Dear Ring:

Thank you for meeting with State agency planners on September 23, 2015 to discuss the proposed plans for the WMF Watercraft and Marine project. According to the information received you are seeking review of a rezoning of 5.56 acres from C-1 and AR-1 to CR-1 and C1 along Rt. 24 in Sussex County.

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 Sussex 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 project is located in Investment Level 3 according to the *Strategies for State Policies and Spending*. Investment Level 3 reflects areas where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. State investments may support future growth in these areas, but please be advised that the State has other priorities for the near future. We encourage you to design the site with respect for the environmental features which are present.

Code Requirements/Agency Permitting Requirements

Department of Transportation – Contact Bill Brockenbrough 760-2109

- Per Section 2.2.2.1 of the Development Coordination Manual, Traffic Impact Studies (TIS) are warranted for developments generating more than 500 vehicle trip ends per day or 50 vehicle trip ends per hour in any hour of the day. While the total daily trips is

122 Martin Luther King Jr. Blvd. South – Haslet Armory · Third Floor · Dover, DE 19901
Phone (302)739-3090 · Fax (302) 739-5661 · www.stateplanning.delaware.gov

missing from the PLUS application, we do not expect that the existing business generates enough traffic to meet these warrants or that it would do so if all of the lands now proposed for rezoning were included in the business. If the nature of the business were to change following the rezoning we would revisit the need for a TIS.

- Any new site access or changes to the existing site access on Route 24 and Layton Davis Road must be designed in accordance with DeLDOT's Development Coordination Manual (formerly the Standards and Regulations for Subdivision Streets and State Highway Access), which is available at <http://www.deldot.gov/information/business/subdivisions/changes/index.shtml>. Because the existing building is so close to the corner, there is little that can be done to improve the existing access, but with the additional commercial frontage it would be possible to add an access farther east on Route 24 to serve some of the business' traffic. We urge the applicant to consider including that additional access in their plans and would urge the County to consider this situation in evaluating the rezoning application.

Department of Natural Resources and Environmental Control – Contact Michael Tholstrup 735-3352

TMDLs.

- The project is located in the low nutrient reduction zone of the greater Inland Bays watershed. In this watershed, Total Maximum Daily Load (TMDL) pollutant reduction targets have been developed by the State of Delaware (under the auspices of Section 303(d) of the 1972 Federal Clean Water Act) 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 waterbody” 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 low reduction zone of the Inland Bays watershed calls for 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 40 percent reduction (17 percent for marine waters) in bacteria from baseline conditions. Please view the following web link for further information on the regulatory requirements and technical analysis involved in the development of the specific TMDLs: <http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx>
- The Inland Bays Pollution Control Strategy (PCS) and the accompanying regulations were finalized by order of the DNREC Secretary on October 2008. The PCS regulations can be reviewed at <http://regulations.delaware.gov/documents/November2008c.pdf>. Background information about the PCS with guidance documents and mapping tools can be retrieved from http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm

Water Supply.

- The project information sheets state water will be provided to the project by Tidewater Utilities via a central water system. Our records indicate that the project is located within the public water service area granted to Public Water Supply (a.k.a. Tidewater Utilities) under Certificate of Public Convenience and Necessity 87-WR-04.
- 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.
- Potential Contamination Sources exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case there is an Underground Storage Tank associated with the Davis Property located within 1000 feet of the proposed project. Should you have any questions concerning these comments, please contact Rick Rios at (302) 739-9944.

Sediment and Stormwater Management.

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on 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 practicable. 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 Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees.

Air Quality.

- Because the estimated average weekday vehicle trips were omitted from the application, the air emissions components for the business could not be quantified. Should that information become available, DNREC will calculate the emissions associated with this business, based on the ITE Trip Generation Manual, 8th Edition.
- Please be advised that the applicant shall comply with all applicable Delaware air quality regulations. For a complete listing of all Delaware applicable regulations, please look at our website: <http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>. The DNREC Division of Air Quality (DAQ) point of contact is Rachel Yocum, and she may be reached at (302) 739-9402 or Rachel.yocum@state.de.us.

Tank Management.

- 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) project is located within the boundary of the project parcel area:

- Layton Davis Store, Facility: 5-000118, Project: S9207199 (Inactive)
 - Seven (7) USTs removed from project parcel including gasoline, heating fuel, and kerosene. Project closed in 2013 with conditions. For follow up, please contact David Lerner at David.Lerner@state.de.us.

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.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are no known archaeological sites or National Register-listed property on this parcel. However, there was a historic dwelling (S-3120) on the parcel, but it is now demolished. Furthermore, there may be archaeological remains associated with it as well.

If any project proceeds on this parcel, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law, which is in Title 7, of Chapter 54, 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 (7 Del. C. Ch. 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 pertaining to unmarked human remains or cemeteries, please check the following websites for additional information: www.history.delaware.gov/preservation/umhr.shtml and www.history.delaware.gov/preservation/cemeteries.shtml.

Therefore, prior to any demolition or ground-disturbing activities, the developer may want to hire an archaeological consultant to examine the parcel for any potential archaeological site or archaeological resources, such as cemetery, burial site, 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.

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 the suggestions can benefit the project.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- Section 3.2 of the Development Coordination Manual addresses standard right-of-way dedications and easements that DelDOT would require along the site frontage if the

applicant were filing a record plan. Using Google Earth, we estimate that the right-of-way line is 25 feet from the centerline of Route 24, whereas our standard right-of-way dedication is 40 feet from the centerline.

- The applicant is not filing a plan so there is no requirement for dedication but the fact that the existing right-of-way along Route 24 does not meet our standard raises a possible concern for them. Presently the applicant parks boats and other watercraft close to the right-of-way line, apparently to display them for sale. They are within their rights to do so, but it places their merchandise at risk from errant vehicles.
- The speed limit on this section of Route 24 is an unposted 50 miles per hour and the site is located on the outside of a curve. We recommend that the applicants consider placing their merchandise farther from the road and possibly have their site engineer determine the appropriate clear zone they should maintain from the edge of the road.

Department of Natural Resources and Environmental Control – Michael Tholstrup 735-3352

Soils Assessment.

- Based on soils survey mapping update, Downer (DnA) is the primary soil mapping unit mapped in this parcel. Downer is a well-drained upland soil that generally, has few limitations for development (Figure 1).

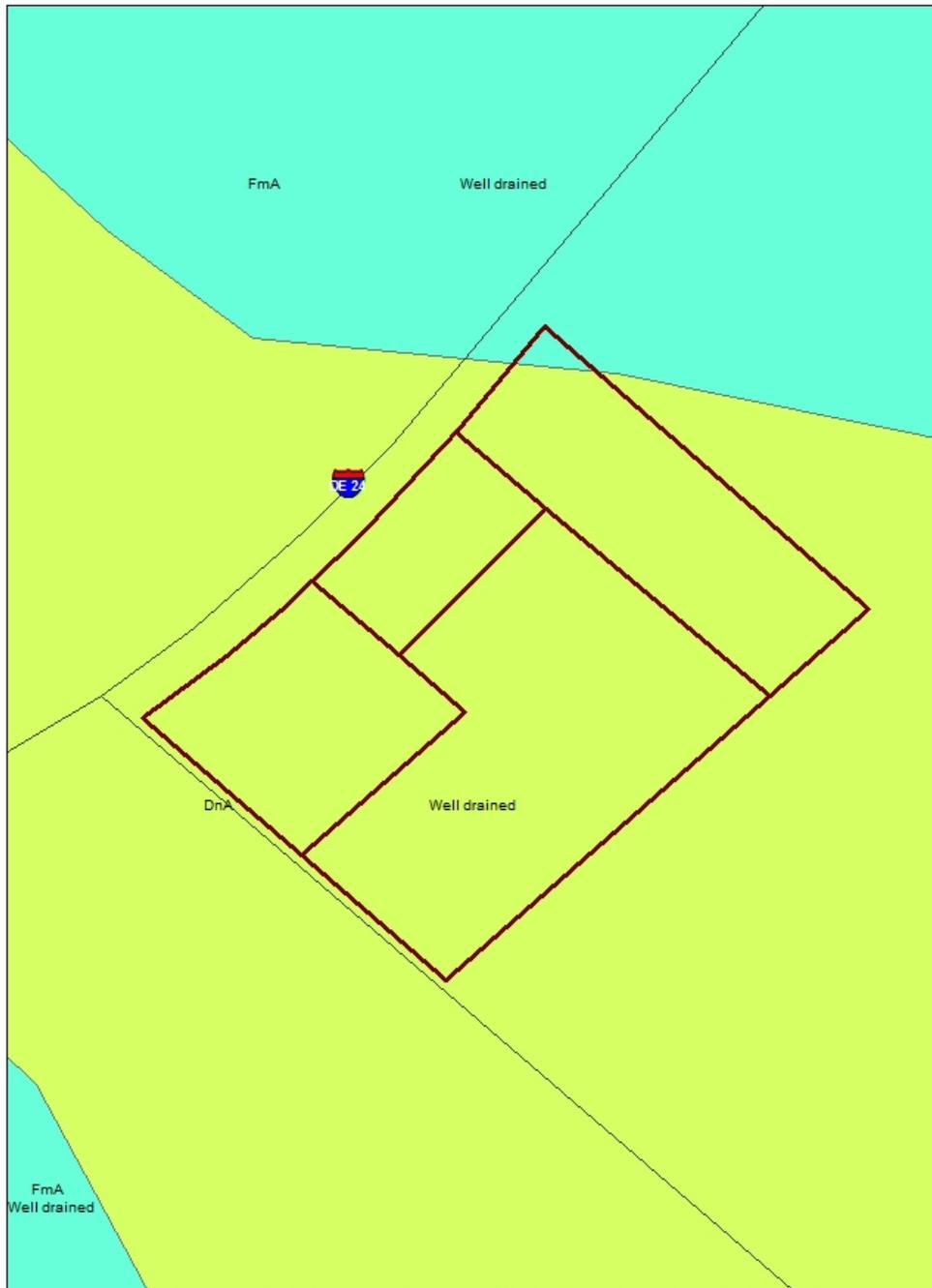
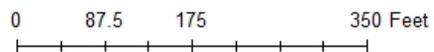


Figure 1: NRCS soil survey mapping update in the immediate vicinity of the proposed construction



Additional information on TMDLs and water quality.

- Compliance with the specified TMDL nutrient and bacterial reduction requirements for the Inland Bays watershed can be facilitated by adherence to the strategies and requirements described in the Inland Bays PCS, and the implementation of the following recommended BMPs:
 - Maintain/preserve as much of the existing forest cover (if some is still present) in this parcel as possible. We further suggest, wherever possible, additional native tree and/or native herbaceous plantings for purposes of creating additional environmentally-friendly open space.
- Use of green-technology storm water management and a rain gardens (in lieu of open-water management structures) as BMPs to mitigate or reduce nutrient and bacterial pollutant runoff increases that often track post-development increases in surface imperviousness. Please contact Lara Allison at (302) 739-9939 for further information about the possibility for installing a rain gardens on this parcel.
- 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, ponds, and roads) included in the calculation. Omission of any of the above-stated forms of surface imperviousness will result in an underestimate of the actual post-development surface imperviousness and associated environmental impacts.
- Since this project will create additional surface imperviousness that will increase the probability for increased flooding and increased pollutant load runoff impacts to adjoining streams and wetlands in the greater Inland Bays watershed, we strongly encourage, wherever practicable, the use of pervious paving materials (instead of conventional asphalt and concrete) to mitigate these impacts. At minimum, we strongly recommend that the applicant consider the use of pervious paving materials for all parking areas.
- 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) resulting from the conversion of individual or combined land parcels to a changed land use(s); thus providing applicants and governmental entities with quantitative information about the 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 (Division of Watershed Stewardship, (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.

Additional information on hazardous waste sites.

- DNREC 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 with 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). DNREC's Site Investigation and Restoration Section (SIRS) should also be contacted as soon as possible at (302) 395-2600 for further instructions.

Additional information on air quality.

- The applicant proposes to rezone four properties located at the intersection of Layton Davis Road (Rd 312A) and John J Williams Highway (DE 24) in Millsboro in order to match the zoning to their actual use. Three of the four properties are currently zoned Agricultural Residential (AR-1), and one is zoned General Commercial (C-1). As the site has been used for selling, repairing, and storing recreational watercraft for several years, the rezoning will bring all four properties into a commercial classification: three as Commercial Residential (CR-1) and one as General Commercial (C-1).

The overall scope includes 5.56 acres, none of which are forested.

- The existing properties have no sidewalks and no bike paths, and the application appears to indicate that neither will be added. At present, there are no DART bus stops within walking distance, and there are none in the surrounding area, as the business lies outside the intended growth zone for the community. The overall parcel footprint is currently bounded on three sides by farms.

- Additional measures may be taken to substantially reduce the air emissions. These measures include:
 - **Using only energy efficient products.** Energy Star qualified products are up to 30 percent 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 an excellent way to save on energy costs and reduce air pollution.
 - **Planting trees in open vegetative buffer areas.** Native trees reduce emissions by trapping dust particles and replenishing oxygen. Trees also reduce energy emissions by cooling during the summer and by providing wind breaks in the winter, whereby 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 business. The applicant may submit a plan to the DNREC Division of Air Quality (DAQ) which addresses the above measures, and that details all of the specific emission mitigation measures that will be incorporated into WMF Watercraft and Marine. The DAQ point of contact is Rachel Yocum, and she may be reached at (302) 739-9402 or Rachel.yocum@state.de.us.

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: Sussex County