



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

August 24, 2015

Mr. Brian Lilly
1612 Pearsons Corner Rd.
Hartly, DE 19953

RE: PLUS review 2016-07-01; Lilly Property

Dear Brian,

Thank you for meeting with State agency planners on July 27, 2016 to discuss the proposed plans for the Lilly Property. According to the information received, you are seeking review of a proposed rezoning of one acre from IL to BN along Rose Valley School in Kent 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 Kent 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 proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*. The comments in this letter are technical, and are not intended to suggest that the State supports this development proposal. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to rezone this property, construct the development you indicate, or any subdivision thereof on these lands.

This project represents rezoning that will result in commercial use in an Investment Level 4 area according to the *Strategies for State Policies and Spending*. This project is also located outside of the Growth Zone according to Kent County's certified comprehensive plan. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4. These areas are comprised of prime

agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

From a fiscal responsibility perspective, development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. The project as proposed is likely to bring commercial activities to an area where the State has no plans to invest in infrastructure upgrades or additional services. The current industrial zoning and previous agricultural industrial use are more appropriate for the area than commercial use. Should this rezoning be approved by Kent County it will likely be incompatible with the rural character of the surrounding area.

Because the development is inconsistent with the Strategies for State Policies and Spending, the State is opposed to this proposed rezoning.

Code Requirements/Agency Permitting Requirements

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The site access on Rose Valley School Road must be designed in accordance with DelDOT's Development Coordination Manual. A copy of the Manual is available at <http://www.deldot.gov/information/business/subdivisions/changes/index.shtml>. From aerial photography and our current understanding of the proposed change in use, it may be that the existing site access is acceptable for the proposed use.
- Section P.6 of the Manual, addresses DelDOT's procedures with regard to commercial entrances serving fewer than 200 Average Daily Trips. A trip is a vehicle entering or exiting. A document summarizing these procedures is available at http://www.deldot.gov/information/business/subdivisions/changes/pdfs/199_AD_T_or_less_LONC.pdf. Briefly, if the proposed rezoning is approved, the business owner will need to file a Permit Application before changing the use of the property. DelDOT will conduct a cursory review and respond within three weeks as to what further action, if any, is required.
- This project may (but is not guaranteed to) qualify for the Letter of No Contention (LONC)/ Permit for Entrance Construction (PEC) process offered by DelDOT. Prior to your submission to DelDOT, please review the LONC/ PEC process and be familiar with its requirements. If you have questions on the process, you may contact our Subdivision Reviewer for this part of Kent County, Mr. Jon Moore, at (302) 760-2145.

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

Executive Summary.

The application for a rezoning does not indicate a change in activities on this parcel. However, if redevelopment occurs it may result in increased impervious surface and new sources of greenhouse gas emissions. Opportunities exist to preserve natural resources while reducing the environmental impact on-site and providing additional energy efficiency alternatives to business owners and clients.

The State of Delaware is threatened by climate change and has a goal of reducing greenhouse gas emissions by 30 percent by 2030. Appropriate development and re-development that provides access to public transportation and opportunities to walk and bike to shopping and recreation are among key strategies to meet these goals. We also encourage energy efficiency and the use of high performance energy efficient building standards (with consideration for alternative energy sources), and the use of green infrastructure including an abundant use of native vegetation and shade trees throughout the landscape to help protect water quality and adapt to the effects of climate change.

The following pages provide applicable regulations and detailed recommendations associated with this project from various DNREC Divisions. We would like to be a partner in creating appropriate development that highlights the environment as a natural amenity of the landscape. The Department has resources and expertise that are available to help make this a reality, often at no expense to the landowner.

TMDLs.

- The project is located in the greater Delaware River and Bay drainage area, specifically within the St. Jones 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 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 St. Jones River watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 90 percent reduction in bacteria from baseline conditions.

Water Supply.

- The project information sheets state that an individual on-site well will be used to provide water for the proposed project. Our records indicate that the project is not located in an area where public water service is available. Any existing wells that will supply water to this business will need to be re-classified to its intended use. Should an on-site Industrial, Public/Miscellaneous Public well be needed, a minimum isolation distance of 150 feet is

required between the well and any potential source of contamination, such as central sewer lines, 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 and/or reclassification of on-site wells provided the wells can or are to be constructed and located in compliance with all requirements of the current Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing each and every well(s).

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 take approximately four weeks to process, which allows the necessary time for technical review and advertising. Should you have any questions concerning these comments, please contact Rick Rios, at (302) 739-9944.

Sediment and Erosion Control/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 pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan. 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 Kent Conservation District. Contact Jared Adkins, Program Manager, at (302) 741-2600, ext. 3, for details regarding submittal requirements and fees.

Hazardous Waste.

- 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.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are no known archaeological sites or National Register listed property, on this parcel. However, it is still important that the developer be aware of the Unmarked Human Burials and Skeletal Remains Law, in Title 7, 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 go to 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 should hire an archaeological consultant, to examine the parcel for archaeological resources. If there is any federal involvement with the project, in the form of licenses, permits, or funds, the federal agency 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.

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 PLUS 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,

A handwritten signature in cursive script that reads "Constance C. Holland".

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

CC: Kent County