



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

October 26, 2016

Mr. Morris Deputy, P.E.
Town of Middletown
19 West Green Street
Middletown, DE 19709

RE: PLUS review 2016-09-01; Middletown Comprehensive Plan Amendment

Dear Morris:

We appreciate your staff meeting with State agency planners on September 26, 2016 to discuss the proposed amendment to the Middletown Comprehensive plan's Future Land Use Map and Annexation Areas.

Please note that changes to these ordinances, 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. It should also be mentioned that currently, this land is within the jurisdiction of New Castle County and is zoned Suburban Reserve (SR). If you haven't already, you should make the County aware of this addition to you annexation area.

This office has received the following comments from State agencies:

Office of State Planning Coordination – Contact Herb Inden 739-3090

- The area to be added to the Town's potential annexation area is currently in the Delaware Strategies for State Policies and Spending Level 4 area. This area should be cautiously approached, especially in consideration of comments from DelDOT and the Department of Agriculture below.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- The original concept embodied in the Westown Master Plan (map attached) was to develop inside the Westown development area and create a "green belt" to mark the western boundary of the Town. Several parcels were preserved as "agricultural open space" and some transfer of development rights were proposed to keep this boundary. The original development concept was to concentrate residential, schools, and commercial sites closer to the existing town where trips could be made by walking and

biking more easily. Local auto trips would also be shorter. Agricultural uses, spray irrigation sites and parks were proposed in the "green belt".

The proposed annexation would run counter to this concept and would place pressure on other parcels outside the US 301 Corridor and east of this site, such as the Money Farm, to annex also. The planned "green belt" in the original plan and the US 301 toll road form a neat western boundary to the Town of Middletown. Breaking this concept would negate the good planning that went into the Westown Master Plan and we would encourage the Town to not do that.

This parcel was not considered as a developed parcel in the last (2015) Westown Traffic Study. Even without additional development in this area, the intersection of Warwick Road and existing US 301 was projected to operate at Level of Service F (160 seconds of delay even after planned improvements) in the full build out of Westown. If the parcel is annexed, we would not agree to including it in Westown as the infrastructure planned for Westown cannot support additional traffic in this area. The developer would need to do their own traffic study and pay for improvements at the Warwick Rd - existing US 301 intersection and possibly elsewhere.

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

- The Department notes that the tax parcel proposed for annexation is in an excellent recharge area and, as such, the Town's course water protection ordinance will apply.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are known archaeological sites or a National Register listed property, on this parcel. There are known archaeological sites (N14498, 7NC-F-118, N14499, 7NC-F-119) just southeast of the parcel, and the Samuel Price Farm (N-5223), southwest of the parcel. If any development proceeds on this parcel, the developer should be aware about the Unmarked Human Burials and Human Skeletal Remains Law.
- 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 Unmarked Human Burials and Human Skeletal Remains Law (Del. 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 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 and plan to avoid those sites or areas. 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.

Department of Agriculture – Contact Scott Blaier 698-4532

- The proposed project is adjacent to a property permanently protected through the State's Agricultural Lands Preservation Program (Baker Farms District N-97-11-187), (Parcel # 1302100010). Therefore, the activities conducted on this preserved property are protected by the agricultural use protections outlined in **Title 3, Del. C., Chapter 9**. These protections effect adjoining developing properties. The 300 foot notification requirement affects **all new deeds** in a subdivision located in whole or part within 300 feet of an Agricultural District. Please take note of these restrictions as follows:

§ 910. Agricultural use protections.

(a) Normal agricultural uses and activities conducted in a lawful manner are preferred and priority uses and activities in Agricultural Preservation Districts. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land use adjacent to Agricultural Preservation Districts shall be subject to the following restrictions:

(1) For any new subdivision development located in whole or in part within 300 feet of the boundary of an Agricultural Preservation District, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

This property is located in the vicinity of an established Agricultural Preservation District in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

(2) For any new subdivision development located in whole or in part within 50 feet of the boundary of an Agricultural Preservation District, no improvement requiring an occupancy approval shall be constructed within 50 feet of the boundary of the Agricultural Preservation District.

(b) Normal agricultural uses and activities conducted in accordance with good husbandry and best management practices in Agricultural Preservation Districts shall be deemed protected actions and not subject to any claim or complaint of nuisance, including any such claims under any existing or future county or municipal code or ordinance. In the event a formal complaint alleging nuisance related to normal agricultural uses and activities is filed against an owner of lands located in an Agricultural Preservation District, such owner, upon prevailing in any such action, shall be entitled to recover reasonably incurred costs and expenses related to the defense of any such action, including reasonable attorney's fees (68 Del. Laws, c. 118, § 2.).

In addition, if any wells are to be installed, **Section 4.01(A)(2) of the Delaware Regulations Governing the Construction and Use of Wells** will apply. This regulation states:

(2) For any parcel, lot, or subdivision created or recorded within fifty (50) feet of, or within the boundaries of, an Agricultural Lands Preservation District (as defined in Title 3, Del. C., Chapter 9); all wells constructed on such parcels shall be located a minimum of fifty (50) feet from any boundary of the Agricultural Lands Preservation District. This requirement does not apply to parcels recorded prior to the implementation date of these Regulations. However, it is recommended that all wells be placed the maximum distance possible from lands which are or have been used for the production of crops which have been subjected to the application of land applied federally regulated chemicals.

Please note that this property is in close proximity to Puglisi Farms egg laying operation. Operations such as these can generate odors, noise, and dust that new residents to the proposed residential subdivision may be unfamiliar with, and offended by. However, as noted above, this agricultural operation is protected against such nuisance complaints by

state statute. Please keep this in mind as you move forward with the annexation and development of this property.

Once a decision has been reached on this proposed comprehensive plan amendment, please forward a copy of the plan amendment to the Office of State Planning Coordination for our records. The plan amendment must include a revised version of any maps that were updated as well as any text that was approved in amending the comprehensive plan.

Thank you for the opportunity to review this Comprehensive Plan amendment. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in blue ink, appearing to read "Constance C. Holland".

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

CC: New Castle County