



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION

October 24, 2017

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

RE: PLUS review 2017-09-05, Middletown Comprehensive Plan Amendment

Dear Morris,

Thank you for meeting with State agency planners on September 25, 2017 to discuss the proposed comprehensive Plan Amendment for the Town of Middletown. This amendment will change the future land use designation of 2 parcels from Industrial to Commercial.

Please note that changes to the plan could result in additional comments from the State. Additionally, the comments below reflect only issues that are the responsibility of the agencies that were represented at the meeting.

This office has received the following comments from State agencies:

**Office of State Planning Coordination – Connie Holland 739-3090**

The Office of State Planning Coordination has no objection to the comprehensive plan amendment as submitted. If the amendment is approved and the parcels are rezoned the owner/developer may have to submit the proposed project for comments through the Preliminary Land Use Service (PLUS). Once the proposed development is decided, the town and the owner should refer to the PLUS MOU between the Office of State Planning Coordination and Middletown to determine if the development meets the PLUS criteria.

With that said, below are State agency comments related to future development of the site:

**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. The subject lands are located in the Westown Business Park (known to DelDOT as Kohl South) which would have warranted a TIS. However, per Section 2.2.2.4 of the Manual, if a development is located within a Transportation Improvement District (TID) and is consistent with the Land Use and Transportation Plan for that TID, then under certain conditions DelDOT may require participation in the TID in lieu of conducting a TIS and making improvements based on the TIS.

The Business Park is located in the Westown TID, is consistent with the plan for that TID and the conditions in Section 2.2.2.4 are met. Further, the proposed commercial use, as opposed to industrial use, of the subject lots is consistent with the 2015 Westown Circulation Concept Plan Update (an update of the traffic study on which the TID is based). With that said, the Town should understand that the 2015 study predicted Level of Service F under full build conditions at the intersection US 301 Business and Levels Road, one block away from the subject lots. Commercial development on the subject land would likely mean more traffic at that intersection, and therefore longer delays, than would industrial development.

The Westown TID pre-dates Section 2.4 of the Manual, so its administration is somewhat different from what is described there. The commercial development on the subject lots would owe a total contribution to the Westown Transportation Infrastructure Fund of \$100,302. This contribution would be payable to the Town and due at Building Permit application. The amount just specified is calculated based on payment in 2017 and would escalate each January if not paid. As part of the larger development known as Kohl South, the subject parcel may have some previous credits that the land owner can apply toward the contribution. If there are credits, the land owner would need to inform DelDOT and the Town would need to concur.

Technical or procedural questions regarding the TID may be directed to DelDOT's consultant, Mr. Ray Harbeson, at [h4designllc@yahoo.com](mailto:h4designllc@yahoo.com). Any substantive questions or concerns should be directed to Mr. Marc Coté, DelDOT's Assistant Director for Development Coordination. Mr. Coté may be reached at (302) 760-2165.

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

**Source Water Protection Areas**

- The DNREC Water Supply Section, Groundwater Protection Branch (GPB), has reviewed the Town of Middletown Comprehensive Plan Amendment and found that the parcels fall entirely within an area of excellent groundwater recharge potential. This

amendment is proposing to amend its 2012 Comprehensive Plan by requesting a zoning change of Tax Parcel Nos. 23-065.00-007 and 23-065.00-008 on their “Map 7. Future Land Use and Annexation Areas” Map from “Industrial” to “Commercial”.

This zoning designation puts attention on the Town of Middletown’s Source Water Protection Ordinance that meets the minimum standards of protection by requiring the volume and quality of post development groundwater recharge be maintained at predevelopment levels. However, it does not limit impervious cover in excellent groundwater recharge potential areas. Run off from impervious cover adds to the pollutant load of stormwater (Li et al., 2006).

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 groundwater recharge potential area has the potential to have a negative effect the quality and quantity of drinking water available. Additionally, impervious cover in areas of excellent groundwater recharge potential may contribute to flooding.

Excellent groundwater 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.

DNREC Source Water Protection Program staff is available to work with the Town to improve upon the protection afforded by the Town’s source water protection ordinance.

#### **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>

Li, L., Yin, C., He, Q., and Kong, L., 2006, First flush of storm runoff pollution from an urban catchment in China: Journal of Environmental Sciences v. 19, no. 1-2, p. 295 - 299.

#### **State Historic Preservation Office – Contact Terrence Burns 736-7404**

- There is no known archaeological site or National Register-listed property on these parcels. If any project or development proceeds, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law. 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.

- Abandoned or unmarked cemeteries are very common in Delaware. They are usually in a rural or open space area, and 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 (Del. C. Title 7, 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 see more information, please review the following websites: [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).
- If there is federal involvement, 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 the following: [www.achp.gov](http://www.achp.gov).

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 cursive script, appearing to read "Constance C. Holland".

Constance C. Holland, AICP

Director, Office of State Planning Coordination