



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

April 20, 2018

Carol Houck
City of Delaware City
P.O. Box 4159
407 Clinton Street
Delaware City, DE 19709

RE: PLUS review 2018-03-07; City of Delaware City Comprehensive Plan Pre-Update

Dear Carol:

Thank you for meeting with State agency planners on March 28, 2018 to discuss the Pre-PLUS review of the City of Delaware City's Comprehensive plan. State agencies have reviewed the documents submitted and offer the following comments. We hope that these comments and recommendations assist the Town as the Plan Update is being prepared. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting.

Certification Comments: These comments must be addressed in order for our office to consider the plan update consistent with the requirements of Title 22, § 702 and Title 29, § 9103 of the Del. Code.

- The Office of State Planning Coordination advises the applicant to provide clearly stated positions on the elements of Delaware Code required for comprehensive plans for all communities (i.e. position on population growth, housing growth, expansion of boundaries, etc.). These ten elements can be found on page 1 of the revised State of Delaware Comprehensive Plan Checklist available on the Office of State Planning Coordination website here: <http://stateplanning.delaware.gov/docs/comprehensive-plan-checklist-guide.pdf>

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

Office of State Planning Coordination – Contact: Tricia Arndt 739-3090

- In addition to the ten required elements for all communities mentioned under Certification Comments above, Delaware City is encouraged to address the additional elements of the comprehensive plans for communities of more than 2000 persons. Population estimates projected from the American Community Survey 5-year survey indicate that Delaware City will be very close to the 2000 person threshold within the timeframe covered by this plan update. These additional elements can also be found on page one of the checklist referenced above.
- Based on the discussion at the PLUS meeting, several reports, plans, and studies have been completed by Delaware City since the 2008 plan certification, which can be used to inform the development of the revised comprehensive plan. Plans mentioned at the PLUS meeting included a 2009 transportation plan, a 2015 Emergency Operations Plan, a drainage study of the Dragon Run watershed, and studies on sea level rise adaptation strategies. The City is encouraged to incorporate the information and findings of these efforts into the revised plan. Additionally, the 2014 Ft. DuPont Master Plan was included as an update to the 2008 plan. The City should incorporate this master plan, at least in summary fashion, to the new comprehensive plan.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- Since the 2008 Plan was prepared, there have been two significant changes. First, in 2009, the City added a Transportation Plan prepared by WILMAPCO to the 2008 Plan as an appendix. Then in 2014, the City adopted an update to the 2009 to accommodate the City's annexation of the Fort DuPont complex. In addition to the task of comprehensively updating the 2008 Plan to reflect other changes that have occurred in the past ten years, it is important for the City to integrate content of the two more recent documents into the Comprehensive Plan to form a unified whole.
- Since the 2008 Plan was prepared, two State Scenic and Historic Byways have been established traversing the city. One, the Delaware Bayshore Byway, passes straight through on Delaware Route 9 (Fifth Street). Delaware City and its intrinsic resources (including the historic downtown) is a key discovery zone and contributing hub of this byway. The other byway, the Harriet Tubman Underground Railroad Byway, enters and exits on Route 9 but loops east through the city's historic district, along Clinton and Washington Streets to Delaware Avenue. Each municipality has treated byways differently, but the presence of the byway, and potential planning measures to address it should be included in the new Plan.

If the structure of the 2008 Plan is retained, Section 2-4, Historic Preservation, would be the first logical place to address the two byways. Section 2-8, Transportation, is another logical place and DelDOT would recommend that both sections at least mention the byway(s) and refer to the other section as appropriate. DelDOT recommends that future transportation plans and possible transportation objectives and preservation goals should be included in the Plan with reference to similar transportation or preservation goals

under the byway's Corridor Management Program, i.e. the byway's own comprehensive plan. The byways are also relevant to Section 2-5, Government and Community Services and Facilities especially the subsection on Recreation and Open Space, and Section 2-9, Economic and Community Development with regard to tourism.

For information and assistance in more fully incorporating the byways into the Plan, DelDOT recommends that the County contact Mr. Michael Hahn, Byways Coordinator, in DelDOT's Local Systems Improvement Section. Mr. Hahn may be reached at (302) 760-2131 or at MichaelC.Hahn@state.de.us. A smart map of all of Delaware's byways, including these two, is available at <http://deldot.maps.arcgis.com/apps/webappviewer/index.html?id=03d5049bc49041658cfecad5fd6ba8b9>.

- On page 28 of the 2008 Plan, Section 2-8, Transportation, references a WILMAPCO plan that was to be submitted as an addendum to the Plan. The City adopted the WILMAPCO Plan as an appendix to the 2008 Plan on April 13, 2009. The 2009 Transportation Plan was not available on the City's website. If this situation is indicative of concerns about the Plan, those concerns should be addressed in the update process. Regardless, the 2009 Plan is now somewhat dated. Specific items that should be updated are as follows:
 - In several places there are references to a lack of transportation alternatives. DART First State Route 25 now provides bus service to Delaware City and the Michael Castle Trail, and an extension thereof to the city, provides a paved bicycle and pedestrian connection along the Chesapeake and Delaware Canal as far as Chesapeake City, Maryland.
 - In several places, there are references to one or more scenic byways being planned. As detailed elsewhere in these comments, there are now two Scenic Byways that pass through the city.
 - The existing and projected traffic volumes on page 18 will need to be updated. Existing 2016 volumes are available on the DelDOT website at https://www.deldot.gov/Publications/manuals/traffic_counts/index.shtml. Future year volumes are available from DelDOT's Regional Systems Planning Section. An initial contact there would be Mr. Michael DuRoss, the Assistant director of Planning in charge of that section. Mr. DuRoss may be reached at (302) 760-2155 or Michael.DuRoss@state.de.us.
 - The crash data on page 21 should be updated. An initial contact for crash reports would be Ms. Kari Glanden, Statistical Information Supervisor in DelDOT's Traffic Section. Ms. Glanden may be reached at (302) 659-4069 or Kari.Glanden@state.de.us.
- On page 28 of the 2008 Plan, in the subsection on Streets and Highway, the last sentence reads "Surface run-off is also a problem that weakens a road's weight-bearing capacity,

causing potholes.” More precisely, the problem is flooding, regardless of the cause. Whether the flooding is caused by a storm or by high tides, when there is water in the pavement or the material supporting the pavement, the road’s weight-bearing capacity is reduced.

- On page 28 of the 2008 Plan, the subsection on Bus Transportation says that the Delaware Transit Corporation (DTC) does not provide bus service to Delaware City. That has changed. DTC now provides service as part of DART First State Bus Route 25.
- On page 31 of the 2008 Plan, the subsection on Air says that there is limited commercial passenger service available at the New Castle County Airport. That service is no longer in operation.
- On page 31 of the 2008 Plan, in the Strategies subsection, one of the Strategies is to “Request that DelDOT construct traffic calming features on SR 9 entering the town to reduce the speed of through-traffic.” If this Strategy is still important, the reasons for it and the type of traffic calming measures that are of interest should be included earlier in this section. Mr. Michael Somers, DelDOT’s Traffic Calming Supervisor, is available to assist the City in developing the text for this part of the Plan if necessary. Mr. Somers may be reached at (302) 659-4099 or Michael.Somers@state.de.us.
- On page 31 of the 2008 Plan, in the Strategies subsection, one of the Strategies is to “Encourage developers to provide sidewalk, curb, drainage, and parking infrastructure where deemed appropriate.” DelDOT recommends that the City consider take a more active stance in this regard by changing the Strategy to “Modify the Municipal Code to require that developers provide sidewalk, curb, drainage, and parking infrastructure where deemed appropriate.” DelDOT’s [Development Coordination Manual](#) is available at <https://www.deldot.gov/Business/subdivisions/index.shtml?dc=changes>, should the City wish to consult it but DelDOT cautions that the [Manual](#) contemplates a more rural or suburban scale of development than the City may want to encourage.

State Historic Preservation Office – Contact: Carlton Hall 302-736-7404

- Delaware City is a Certified Local Government (CLG) and has a Historic District listed in the National Register of Historic Places. The CLG Program strengthens preservation efforts by providing technical and financial assistance, while encouraging preservation programs and practices.
- One of the main goals in the current statewide historic preservation plan, Preserving Our Past for a Better Future, is to encourage active participation in historic preservation by all local governments. This will continue to be a focus of the 2018-2022 historic preservation plan which is currently being drafted. We will also be happy to provide technical assistance for the town’s upcoming revisions. Delaware’s Historic Preservation Plan is available online at:
<http://history.delaware.gov/pdfs/Preservation%20Plan%202013-2017.pdf>.

- Our office is currently assisting the city in determining appropriate language to include in its floodplain ordinance with respect to historic properties.

State Housing Authority – Contact: Karen Horton 739-4263

- According to Title 22, Section 702 Del C., towns with a population of less than 2,000 are required to state their position on housing growth within the municipality.
- Over the last few years, there has been a proliferation of Criminal Activity Nuisance Ordinances (CANO) throughout Delaware. However, depending how they are written and implemented, these ordinances can have the effect of subjecting tenants to eviction for a broad range of offenses and presents several concerns, particularly:
 - Discouraging crime victims who need emergency aid from calling for assistance or to report a crime, particularly survivors of domestic violence where additional protections were recently enacted under the Violence Against Women Act (VAWA).
 - The federal Fair Housing Act (FHA), which protects tenants from discriminatory housing policies and practices. Tenants' rights to be free from discrimination, to contact the government for assistance, and to receive due process can be curtailed in the implementation of these ordinances.

We understand that Delaware City adopted this type of ordinance and was further amended in 2016. There are legitimate concerns about nuisance properties and the problems they create for the neighborhood and community. Unfortunately, the ordinance in place in Delaware City does raise some concerns, especially in light of recent court decisions related to fair housing. In 2015, the Supreme Court upheld the application of citing disparate impact in housing discrimination cases in Texas Dept. of Housing & Community Affairs v. The Inclusive Communities Project, Inc. In recent years, the U.S. Department of Housing and Urban Development (HUD) has vigorously pursued violations, including CANO ordinances:

- Briggs v. Borough of Norristown, PA
- Conciliation Agreement between HUD and City of Berlin, NH

HUD has also pursued several fair housing-related cases with Delaware jurisdictions and HOAs. While none are related to CANO ordinances to date, jurisdictions should be very careful to consider fair housing issues in the development and implementation of local ordinances. Even local efforts which are intended to improve neighborhood conditions in distressed areas can have a disparate impact on protected classes.

As a result, as Delaware City updates its Comprehensive Plan, we strongly recommend that the Delaware City revisit Chapter 22 of their Code as part of the update. DSHA would be glad to work with you to ensure the ordinance is revised in a manner that addresses the above concerns.

- DSHA offers the following information as Delaware City updates its Comprehensive Plan:
 - The *2015-2020 Statewide Housing Needs Assessment (HNA)* is a great resource and can be found at the below link. There is the full document, executive summaries,

handouts, a reporting portal (that takes you to an interactive map).

<http://www.destatehousing.com/FormsAndInformation/needs.php>

- In addition to the HNA, the following housing information is available on DSHA's 'Research and Plans' website

<http://www.destatehousing.com/FormsAndInformation/datastats.php>. DSHA

updates this data regularly and produces the following reports:

-New Castle County Housing Fact Sheet –

http://www.destatehousing.com/FormsAndInformation/datastatmedia/ds_ncc_fs.pdf

-Median Home Price and Affordability Gap data for each year for the most recent quarter and the past 10 years -

<http://www.destatehousing.com/FormsAndInformation/affordgap.php>

-Sheriff Sale data from 2008 to 2018 by Zip Code –

http://www.delawarehomeownerrelief.com/media/sheriffsale_2008_ncc.pdf

-Monthly Foreclosure and Sheriff Sale Data -

<http://www.delawarehomeownerrelief.com/data.php>

- 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 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.

Department of Agriculture – Contact: Scott Blaier 698-4532

- The Department of Agriculture encourages city to continue working on its tree canopy and infrastructure goals. Please feel free to contact the department's Urban Forester, Kesha Braunskill, for assistance (698-4578).

The Department of Natural Resources and Environmental Control – Contact: Michael Tholstrup 739-9071

The Department envisions a Delaware that offers a healthy environment where people embrace a commitment to the protection, enhancement and enjoyment of the environment in their daily lives; where Delawareans' stewardship of natural resources ensures the sustainability of these resources for the appreciation and enjoyment of future generations; and where people recognize that a healthy environment and a strong economy support one another.

We look forward to helping the Delaware City create a Comprehensive Development Plan which expresses its vision to conserve and protect its natural surroundings, and supports healthy, walkable, and connected communities. DNREC is available to discuss the recommendations below, implement future ordinance improvements and make grant and technical assistance programs available.

Source Water Protection Areas

- DNREC has reviewed the above referenced PLUS project and determined that there are no excellent ground water recharge potential areas within the municipal boundaries however, the City has two wellhead protection areas.
- The City's 2008 Comprehensive Plan included an element discussing the Safe Drinking Water Act Amendment of 1996, the City's 2002 Source Water Assessment and Senate Bill 119. Senate Bill 119 was written into code and should be discussed as Title 7 Del. C. 6082. The location of the assessment report has changed and there are new tools for developing ordinances (see below).
- For Municipalities under 2,000 Population (as reported in the most recent decennial Census), it is recommended that:
 - Text of the comprehensive plan may include description of source water requirements in 7 Del. C. 6082(c), 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 22 of the Delaware Code.
 - A map of source water resources (excellent recharge areas, wellhead protection areas) may be included in the plan. This map must be derived from the most current datasets¹ provided by the Department of Natural Resources and Environmental Control (DNREC).
 - If included, 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 may adopt, after consultation with DNREC, an ordinance that is protective of the resource. If adopted, 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.

¹ <http://opendata.firstmap.delaware.gov/datasets/delaware-well-head-protection-areas>

The link to the assessment: <http://delawaresourcewater.org/>

The link to a resource for developing an ordinance: http://delawaresourcewater.org/wp-content/Publications/FinalDraftModelOrdinance_KnS_041408.pdf

Climate Change

- Since the development of the Delaware City's 2008 Comprehensive Plan, an enormous amount of data and information has become available regarding climate change and its impacts to Delaware and we encourage you to utilize this information to make plans for the Delaware City's future. **We further encourage the City to ensure that the information and recommendations from the Delaware City Hazard Mitigation and**

Climate Adaptation Action Plan (2014) are incorporated into the Comprehensive Plan and updated and/or refined.

The comprehensive planning process is a unique opportunity to view all aspects of Delaware City's future through a climate change lens to ensure that plans laid out today will be sustainable in the long term. We recommend that the City's comprehensive plan consider climate change in each major plan component, but particularly in the Housing, Environment, Transportation and Water sections.

- Climate change will result in three primary impacts for the state and Delaware City:
 1. Sea Level Rise: Sea level rise affects all tidal bodies of water. Sea levels are anticipated to rise by 1.5 meters by the end of century, and as much as 0.6 meters (1.9 feet) by 2050. Sea level rise can lead to inundation of infrastructure and natural areas adjacent to waterbodies, water quality problems through saltwater intrusion into drinking water wells and wastewater treatment issues through rising water tables affecting septic systems.
 2. Increased Heavy Precipitation Events: Climate change is expected to result in more frequent heavy precipitation events. This can lead to flooding, especially in areas with inadequately sized drainage infrastructure. This flooding can result in safety hazards, inaccessible roadways, travel delays, and damage to buildings or other infrastructure.
 3. Rising temperatures. Rising temperatures will result in a longer growing season, heat waves, and more days where it doesn't cool off at night. This has many implications for infrastructure and human health. Air conditioning systems in buildings may not be sized appropriately for increasing temperatures and shorter, milder winters can mean residents are dealing with more ticks and mosquitoes. Of particular concern are vulnerable populations (e.g. elderly, low-income and non-English speakers) who may not have access to air conditioning in the summer.
- Several towns in New Castle County and throughout the state have incorporated climate change concerns into their comprehensive development plans and there are several good examples to follow. Perhaps the more useful is a recent report prepared by the UD Institute for Public Administration that details how climate change was incorporated into the City of Milford Comprehensive Plan and describes best practices for incorporating climate change into comp plans. It is available online: <http://www.ipa.udel.edu/publications/cccpd-2017.pdf>.
- There is an incredible volume of information available about climate change impacts. The following is a short list of the most relevant and useful information for your comprehensive development plan efforts:

1. Comprehensive information about climate change and climate impacts in Delaware can be found here: <https://dnrec.alpha.delaware.gov/energy-climate/climate-change/>
 2. New sea level rise scenarios and maps are available. The new maps provide inundation at 1-foot increments and the new scenarios provide improved information about sea level rise impacts mid-century. The report and links to maps can be found on the Delaware Geological Survey website: <http://www.dgs.udel.edu/projects/determination-future-sea-level-rise-planning-scenarios-delaware>
 3. The Delaware Sea Level Rise Vulnerability Assessment provides information about sea level rise impacts to infrastructure, natural resources and economy: <http://de.gov/slrva>.
 4. The Creating a Flood Ready Community training site provides links to a wide variety of resources that can be used to plan for sea level rise: <http://dnrec.delaware.gov/coastal/DNERR/Pages/CTP%20Pages/FloodReadyCommunityResources.aspx>
 5. Climate change impacts to human health are reviewed in the fall issue of the Delaware Journal of Public Health: https://issuu.com/dam-dpha/docs/djph_october2017
- In addition to preparing for the effects of climate change, Delaware City is also encouraged to help reduce the emissions of greenhouse gases that are the root cause of climate change. Often, strategies to reduce greenhouse gas emissions can also save money and improve public health. Incorporating electric vehicles into the City's fleet would reduce tailpipe emissions and save money. Providing electric vehicle charging stations incentivizes electric vehicle drivers to work, visit and play in downtown areas. Weatherizing homes and deploying energy efficiency measures help cut energy costs and makes homes and work spaces more comfortable for occupants.
 - In addition, the City may wish to consider opportunities for grant funding and technical assistance. DNREC offers grant funding for sustainability and climate change planning through the Sustainable Communities Planning Grant Program and the Resilient Community Partnership. The Grant program provides funding for local governments to develop a long term plan for climate change and/or sustainability. The Partnership provides direct staff support, policy expertise, technical assistance and funding to help a community through the resilience planning process.

DNREC staff are always available to assist and would be happy to meet with City staff and its consultants to discuss climate change vulnerabilities in the City and greenhouse gas reduction strategies.

Coastal Zone Act

This act, signed by Governor Carney in August 2017, allows new industrial development and bulk product transfer on 14 sites in the Coastal Zone. A number of these sites are north of Delaware City. The comprehensive plan should consider and plan for the effects of additional heavy industrial development nearby, including housing demand, demand for services, economic impact and environmental effects.

Air Quality.

- DNREC would like to see Delaware City's Comprehensive Plan address air quality impacts in the city. According to the 2000 Census determined that Delaware City has a 0 to 4 year old population percentage of 5.2% and a 65 and older population of 12% (page 8). Those aged 5 and younger, the elderly and those with pre-existing medical conditions are at risk due to the negative effects of air pollution. Particulate matter (PM) is a pollutant that can be attributed to the transportation and industrial sectors and consists of small particles. Air pollution has the ability to further exacerbate cardiopulmonary conditions such as asthma, emphysema and COPD. DNREC would like to see these health impacts as part of the general discussion throughout the plan, particularly on transportation safety with recommendations to mitigate this issue.
- Additionally, DAQ recommends the following considerations for Delaware City in mitigating potential air pollution issues:
 - Encouraging mixed-use development where applicable,
 - Allowing opportunities for the increased use of public transit,
 - Expansion of the current bicycle and pedestrian network,
 - Increasing economic development and by extension, the number of people using alternative transportation modes.
- As an added component to address air quality concerns in the area, Delaware City is encouraged to add electric vehicle supply equipment (EVSE) and charging where feasible in common areas to accommodate cleaner vehicular transportation through the area. Adding EVSEs can attract visitors who have electric vehicles downtown to shop and charge their vehicles, while also helping to reduce tailpipe emissions. DNREC has a number of programs to incentive the purchase of electric vehicles and the deployment of charging stations. Additional information is available online at de.gov/cleantransportation

Water Quality

- TMDLs: DNREC recommends that the Delaware City be proactive and make specific "*actionable*" strategies "to attain the TMDL nutrient and bacteria reductions necessary for restoring water quality and "beneficial uses" (e.g., fishing, swimming, & drinking water) to waters of the Delaware River Drainage.

In simple 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. DNREC supports the use of a combination of best management practices (e.g., wetland buffers, green technology stormwater treatment, pervious paving materials, rain gardens...etc.) that will efficiently reduce nutrient and bacterial pollutant runoff loading.

DNREC would be interested in helping to implement these recommendations through ordinance review and development. With a focus on water quality, we would recommend developing an impervious surface mitigation plan, avoiding development on hydric soils, and the use of “green-technology” storm water management in lieu of “open-water” storm water management ponds whenever practicable.

- Municipal Separate Storm Sewer Systems (MS4): The Comprehensive Plan should also address the Phase I MS4 Permit which Delaware City is currently subject to. The plan includes TMDLs but does not factor in any projects from the Phase I Permit, including the Water Quality Improvement Plan. The City should also address any permit obligations which they will be planning for, in the future.

Soils Assessment.

- We suggest that the Delaware City Comprehensive Plan reference the soils information in the NRCS soil survey update rather than the 1971 *USDA Soil Survey of Kent County, Delaware*, in the updated Comprehensive Plan. The updated soils information can be retrieved from the web soil survey found here:
<http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

Fish and Wildlife.

- The Delaware Wildlife Action Plan (DEWAP) is critical to helping Delaware fulfill its responsibility to conserve its abundant fish and wildlife and natural habitats for future generations. The conservation of all wildlife species and the habitats they rely on is a great way to protect the unique environmental features surrounding Delaware City. Significant areas of wildlife habitat can also be promoted in strategies for ecotourism. The City is encouraged to utilize the contents of the DEWAP to inform its comprehensive plan and strategies for land use patterns, conservation, and eco-tourism.
<http://www.dnrec.delaware.gov/fw/dwap/Pages/default.aspx>

Parks and Recreation.

- Delaware’s Statewide Comprehensive Outdoor Recreation Plan (SCORP) is a planning and policy document that identifies needs in outdoor recreation throughout the state of Delaware. States develop a SCORP every five years and can be used by communities to help guide recreational development.
<http://www.dnrec.delaware.gov/parks/Information/Pages/2013Scorp.aspx>

Since this was a Pre-update meeting for your plan update, we will need to see the completed document at a regular PLUS meeting once your Planning Commission has approved the draft

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plan for public review. Thank you for the opportunity to review this update. If you have any questions, please contact me at 302-739-3090.

Sincerely,



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