



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

June 21, 2018

Stephen Gorski
Duffield Associates, Inc.
5400 Limestone Road
Wilmington, DE 19808

RE: PLUS review 2018-05-14; Overbrook Meadows West

Dear Mr. Gorski:

Thank you for meeting with State agency planners on May 23, 2018 to discuss the proposed plans for the Overbrook Meadows West project. According to the information received you are seeking review of a 105 unit subdivision on 50.4 acres mostly in Level 4 along Rt. 1 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 predominately located in Investment 4 according to the *Strategies for State Policies and Spending*. This project represents land development that will result in 105 residential units in an Investment Level 4 area according to the *2015 Strategies for State Policies and Spending*. It is also in an Environmentally Sensitive Developing Area according to the most recently certified Sussex County 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 areas.

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.

The State recognizes that this project is by right and the applicant will be required to go through The Sussex County process for properties within the Environmentally Sensitive Developing District Overlay Zone which means any development on this property will need to meet the requirements of the Sussex County Code 115-194.3 regarding the ESDDOZ zone.

Because this parcel is inconsistent with the 2015 *Strategies for State Policies and Spending*, however, State investments will not support growth in this area.

Code Requirements/Agency Permitting Requirements

Department of Transportation – Contact Bill Brockenbrough 760-2109

- Because the subject property fronts on Delaware Route 1 between Dover Air Force Base and the Nassau Bridge, it is subject to the Department's Corridor Capacity Preservation Program. The main goal of the Program is to maintain the capacity of certain existing highways by minimizing and consolidating the number of direct high-volume, driveway access points along them. Delaware Route 1 is a controlled-access highway. The Program was established in accordance with the provisions of Title 17, Section 145 of the Delaware Code. According to the Office of State Planning, *Strategies for State Policies and Spending* document, the property is located within a Level 4 Investment Area. In a Level 4 Investment Area, State policies encourage the preservation of a rural lifestyle and discourage new development.

Per Program policy, the Department would only permit access to the site on Delaware Route 1 for a proposed land uses that generate 200 vehicle trips per day according to the Institute of Transportation Engineers' (ITE) Trip Generation Manual. However, larger parcels can be developed if the necessary roadway improvements are constructed. In this case, construction of a grade-separated interchange at Cave Neck Road and Delaware Route 1 would be required for development beyond the first 200 vehicle trips per day. Site access would be granted to Delaware Route 1 via the grade-separated intersection and ramps and service roads associated therewith.

There are four possible courses of actions to develop access. 1) The Department has identified the Cave Neck Road and Delaware Route 1 intersection as a potential interchange location and intends to start conceptual plan development in July 2018. An anticipated timeframe for the State to construct the interchange has not been determined. Once the interchange is complete, the site can gain access to the interchange. 2) The Developer can design and build the interchange to State standards. 3) The Department and the developer could potentially pursue approval from State Budget Commission for a public/private partnership to build the interchange. The terms of such a partnership have yet to be determined. 4) The Developer can phase the subdivision and get a temporary access, such as

the proposed Chappell Road, for 20 houses; the temporary access for the first 20 houses would be removed upon completion of the interchange.

- The Corridor Capacity Preservation Program policy and the proposed grade-separated interchange project can be viewed on the Department's website at <http://www.deldot.gov>
- The site access on Delaware Route 1 must be designed in accordance with DelDOT's Development Coordination Manual, which is available at <http://www.deldot.gov/Business/subdivisions/index.shtml?dc=changes>.
- Pursuant to Section P.3 of the Manual, a Pre-Submittal Meeting is required before plans are submitted for review.
- Section P.5 of the Manual addresses fees that are assessed for the review of development proposals. DelDOT anticipates collecting the Initial Stage Fee when the record plan is submitted for review and the Construction Stage Fee when construction plans are submitted for review.
- 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 PLUS application states that the proposed development would generate 960 vehicle trip ends per day. DelDOT calculates that the development would generate 1,088 vehicle trip ends per day on weekdays. Regardless, the 500 vehicle trip ends per day would be exceeded, so a TIS is warranted.

Per Section 2.2.2.2 of the Manual, developments generating fewer than 2,000 vehicle trip ends per day and fewer than 200 vehicle trip ends per hour in any hour of the day may be eligible to pay a fee, the Area Wide Study Fee, in lieu of doing a TIS. The fee is calculated as \$10 times the Average Daily Traffic volume shown on the site plan and is payable with the Initial Stage submission. Payment of the fee does not exempt the developer from responsibility to make off-site improvements or from preparing a Traffic Operational Analysis (TOA) if DelDOT identifies a need for a TOA in the plan review process.

Presently, DelDOT anticipates limiting its requirements for off-site improvements to participation in the grade-separated interchange discussed above. If the developer chooses to wait for DelDOT to build the interchange, DelDOT may revisit its requirements.

- Section 3.2.4.2 of the Manual addresses the placement of right-of-way monuments (markers) along the roads on which a property fronts, in this case Delaware Route 1. Monuments sufficient to re-establish the permanent rights-of-way after the dedication discussed below should be shown on the plan and provided in the field in accordance with this section.
- As necessary, in accordance with Section 3.2.5 and Figure 3.2.5-a of the Manual, DelDOT will require dedication of right-of-way along the site's frontage on Delaware Route 1. By

this regulation, this dedication is to provide a minimum of 30 feet of right-of-way from the outside edge of the northbound travel lanes. The following right-of-way dedication note is required, **“An X-foot wide right-of-way is hereby dedicated to the State of Delaware, as per this plat.”**

- In accordance with Section 3.2.5.1.1 of the Manual, if this development is proposing a neighborhood sign/structure, then a permanent easement shall be established at the site entrance. The easement shall be located outside of any existing and/or proposed right-of-way. It will also need to be verified that the sign/structure does not pose a sight distance and/or safety hazard.
- In accordance with Section 3.2.5.1.2 of the Manual, DelDOT will require the establishment of a 15-foot wide permanent easement across the property frontage on Delaware Route 1. The location of the easement shall be outside the limits of the ultimate right-of-way. The easement area can be used as part of the open space calculation for the site. The following note is required, **“A 15-foot wide permanent easement is hereby established for the State of Delaware, as per this plat.”**
- In accordance with Section 3.4 of the Manual, a record plan shall be prepared prior to issuing “Letter of No Objection”. The record plan submittal shall include the items listed on the Critical Items for Acceptance: Record Plan document available on the DelDOT website at <https://www.deldot.gov/Business/subdivisions/pdfs/Critical-Items-Record-Subdivision.pdf?09222017>.
- Referring to Section 3.4.2.1 of the Manual, the following items, among other things, are required on the Record Plan:
 - A Traffic Generation Diagram. See Figure 3.4.2-a for the required format and content.
 - Depiction of all existing entrances within 600 feet of the proposed entrance on both roads.
 - Notes identifying the type of any off-site improvements, agreements (signal, letter) contributions and when the off-site improvements are warranted.
- Section 3.5 of the Manual provides DelDOT’s requirements with regard to connectivity. The requirements in Sections 3.5.1 through 3.5.3 shall be followed for all development projects having access to state roads or proposing DelDOT-maintained public streets for subdivisions. Private or municipal streets should follow the County’s requirements for connectivity.
- Section 3.5.4.2 of the Manual addresses requirements for shared-use paths and sidewalks. Referring to Section 3.5.4.2.A of the Manual, developments in Level 3 and 4 Areas are required to install a sidewalk or Shared Use Path if the project abuts to an existing facility; otherwise it is at DelDOT’s discretion. Because this part of the County appears to be

developing rapidly, DelDOT anticipates requiring a Shared Use Path along the development frontage.

- Referring to Section 3.5.5 of the Manual, existing and proposed transit stops and associated facilities as required by the Delaware Transit Corporation (DTC) or DelDOT shall be shown on the Record Plan.
- Because the proposed development is to be constructed in the proximity of a road with a functional classification of principal arterial, freeway or interstate, specifically Delaware Route 1, the developer will be required to perform a noise analysis in accordance with DelDOT's Noise Policy, found in Section 3.6 of the Manual and may be required to provide noise abatement for residents based on that analysis.
- In accordance with Section 3.8 of the Manual, storm water facilities, excluding filter strips and bioswales, shall be located a minimum of 20 feet from the ultimate State right-of-way along Delaware Route 1.
- Referring to Section 4.3 of the Manual, an entrance plan shall be prepared prior to issuing entrance approval. The entrance plan submittal shall include the items listed on the Critical Items for Acceptance: Entrance/Construction/Subdivision Set Plan document available on the DelDOT website at https://www.deldot.gov/Business/subdivisions/pdfs/Critical-Items_Entrance_Construction_Subdivision.pdf?09222017.
- In accordance with Section 5.2.5.6 of the Manual, a separate turning template plan shall be provided to verify vehicles can safely enter and exit the site entrance. As per Section 5.2.3 of the Manual, the entrance shall be designed for the largest vehicle using the entrance.
- In accordance with Section 5.2.9 of the Manual, the Auxiliary Lane Worksheet should be used to determine whether auxiliary lanes are warranted at the site entrances and how long those lanes should be. The worksheet can be found at <http://www.deldot.gov/Business/subdivisions/index.shtml>.
- In accordance with Section 5.4 of the Manual, sight distance triangles are required and shall be established in accordance with American Association of State Highway and Transportation Officials (AASHTO) standards. A spreadsheet has been developed to assist with this task. It can be found at <http://www.deldot.gov/Business/subdivisions/index.shtml>.
- In accordance with Section 5.14 of the Manual, all existing utilities must be shown on the plan and a utility relocation plan will be required for any utilities that need to be relocated.
- Because the proposed development would not have State-maintained streets, Section 6.4.3 of the Manual, which pertains to the inspection and acceptance of commercial entrances, applies. Construction inspection responsibilities shall be in accordance with Figure 6.4.3-a.

DelDOT's preliminary reading of this figure is that the project requires Level II inspection and that a construction inspection agreement will be needed.

- Section 7.7.2 of the Manual addresses the need to provide 20-foot wide drainage easements for all storm drainage systems, open or closed, that fall outside the existing right-of-way or the drainage/utility easement. In accordance with this section, metes and bounds and total areas need to be shown for any drainage easements. The easements should be shown and noted on the record plan.

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

- The Department of Natural Resources and Environmental Control did not submit comments regarding this application. If the development of this property requires permits from a DNREC section, please contact the DNREC regulatory agency directly.

State Historic Preservation Office – Contact Carlton Hall 736-7404

- There are no known historic or cultural resources, such as an archeological site or National Register-listed property, on this parcel. However, there are known agricultural complexes northeast of the parcel (S03071), southeast of the parcel (S03037), and east of the parcel (S03270). The Pomeroy and Beers Atlas of 1868 shows that these agricultural complexes were associated with C. Warrington (S03071), M. R. Fisher (S03270), and J. W. and B. H. Houston (S03037). The USGS Topographic Map of 1918 also indicated these farmsteads.
- There should be sufficient landscaping between the development and the existing agricultural complexes (S03037; S03270; S03071) to block adverse noise and visual effects

If any project or development proceeds, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law. 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 and 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.

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 (Cedar Tree Farms District, S-95-08-049), (Sussex County Parcel Number 235-22.00-56.00). 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.

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:

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."

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.

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.

- In addition, Sussex County Ordinance § 99-16 "Suitability of land; preservation of natural features" (D) applies to this development. This ordinance states:

“It is the intent of the County to stress the preservation of all agricultural lands which are feasible and worthwhile of such preservation in order to conserve such natural amenities. Where residential subdivisions are established adjacent to lands used for agricultural purposes, the subdivider shall ensure that there shall be no negative effect on the agricultural uses. The twenty- foot wide forested and/or landscaped buffer strip required by § 99-5 shall be provided along the outer perimeter of any boundary of a residential major subdivision or development of four or more lots that is adjacent to agricultural farmland. “Agricultural purposes” shall be defined as those uses identified in Chapter 115, Zoning, Article IV, § 115-20, Subsection B(1), (2), (3), (4) and (5).

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

- The plan presented is incompatible with the concept plan presented to PLUS in September 2017 for the back portion of the parcel. That plan did not include a connection to the extension of Cave Neck Road shown on the present plan. DelDOT recommends that the developer design a single, unified plan for the entire parcel.
- Section 3.2.4.1 of the Manual addresses the placement of right-of-way monuments (markers) along subdivision streets. DelDOT recommends that monuments be furnished and placed along the proposed streets in accordance with this section.
- The applicant should expect a requirement that any substation and/or wastewater facilities will be required to have access from an internal street or driveway with no direct access to Delaware Route 1.
- The applicant should expect a requirement that all PLUS and Technical Advisory Committee (TAC) comments be addressed prior to submitting plans for review.
- Please be advised that as of August 1, 2015, all new plan submittals and re-submittals, including major, minor and commercial plans, shall now be uploaded via the PDCA (Planning Development Coordination Application) with any review fee paid online via credit card or electronic check. Guidance on how to do this is available on our website at <http://www.deldot.gov/Business/subdivisions/index.shtml>.

- Please be advised that the Standard General Notes have been updated and posted to the DelDOT website. Please begin using the new versions and look for the revision date of December 8, 2017. The notes can be found at <http://www.deldot.gov/Business/subdivisions/index.shtml>.

Department of Agriculture – Contact: Scott Blaier 698-4532

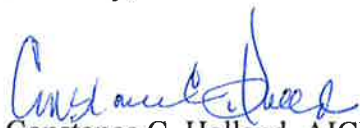
- The Department of Agriculture strongly encourages the developer to work with the department's Forestry Section during the design and implementation of the forested buffer. It is important that suitable tree species be selected and planted to create an effective mitigation barrier between this new development and the existing agricultural operation enrolled in the Agricultural Lands Preservation Program. This farm generates dust, noise and odors that new residents may not be familiar with.

In addition to the comments above our office has received a letter from Brandy Nauman, Sussex County Housing Coordinator & Fair Housing Compliance Officer. A copy of that letter is enclosed with this letter.

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
Enclosure

BRANDY BENNETT NAUMAN
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Sussex County

DELAWARE
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June 7, 2018

Mr. Stephen Gorski
Duffield Associates, Inc.
5400 Limestone Road
Wilmington, DE 19808

RE: PLUS Review (PLUS 2018-05-14)

Dear Mr. Gorski,

Sussex County endeavors to promote non-discrimination and affordable housing whenever possible throughout the County. In this regard, the developer and associated financial institutions are encouraged to provide and finance affordable housing opportunities to Sussex County residents in all new developments, and affirmatively market those affordable housing units to diverse populations.

For questions about opportunities available for affordable housing projects within Sussex County, please consult Sussex County's "Affordable Housing Support Policy". The policy along with other resources are available on the County's Affordable & Fair Housing Resource Center website: www.sussexcountyde.gov/affordable-and-fair-housing-resource-center. The County's Community Development & Housing Department can advise about existing affordable housing opportunities in Sussex County and the appropriate County Department to contact regarding specific development issues concerning future affordable housing projects within Sussex County.

The Community Development & Housing Department can also explain and assist with any financial support or incentives that may be available to a project from federal, state and county sources, as well as private funding sources that also promote affordable housing in Sussex County.

Please understand that all residential projects, including Affordable Housing Projects are subject to the applicable provisions of the Sussex County Subdivision and Zoning Codes, and the approval processes set forth in those Codes.

On behalf of Sussex County, we look forward to cooperating with you and your project as it moves forward.

Thank you,

Brandy B. Nauman
*Housing Coordinator &
Fair Housing Compliance Officer*



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