

Constance C. Holland, AICP, Director
Executive Department
Office of State Planning Coordination
122 William Penn Street
Dover, DE 19901

August 4, 2009

Re: PLUS Review - PLUS 2007-07-01; Dekowsky Project

Dear Ms. Holland:

Below, you will find our point-by-point response to your comment letter dated August 9, 2007 regarding the above referenced project (responses in **bold**).

State Strategies/Project Location

The Office of State Planning and Coordination recognizes the proposed project is partially in Level 3 and Level 4 and within the Environmentally Sensitive District of Sussex County. In addition this office recognizes the site is currently experiencing development pressures from the adjacent approved project of Bayside Americana. Also, this office recognizes the right of the property owner and the developer to develop the site with 13 town-home units; however, the environmental features found on this site greatly restrict the development potential and may harm the environmental resources within this site and the watershed. This office would encourage the landowner and the developer work to explore other options to allow for preservation of this site while allowing for the appreciation of equity of the land.

If, however, the site is developed, we would encourage the developer to explore Best Management Practices to preserve and lessen impacts to the natural resources on the site. Also, I would encourage the development of a partnership with Bayside Americana to address access concerns and to ensure that land uses such as residential units are not in conflict with maintenance operations of the larger project. If you have any questions, please contact our office.

In order to lessen the impact of the project on the existing natural resources of the site, the Applicant has decreased the proposed number of multi-family units from 13 to 12. This results in an accompanying decrease in impervious area (buildings, parking) and allows more area to be set aside as open space. Discussions are ongoing with respect to placing the majority of the project site (approx. 87%) within a conservation easement to be administered by the Sussex County Land Trust or otherwise restricting development within the forested and wetland areas by a restriction on the record plan.

Discussions are also ongoing with Americana Bayside regarding access concerns. Since the initial submission of our preliminary site plan, we have learned that a 50' access easement exists along the project site's western property line which provides access from Mastif Way to East Sand Cove Road, a State maintained R.O.W.

Street Design and Transportation

Mastif Way, where the proposed townhouses would have access, is owned and maintained by developers of Bayside, so the proposed entrances onto it are outside DelDOT's jurisdiction. However, Mastif Way connects to Sound Church Road (Sussex Road 394A), which DelDOT does maintain. Presently Mastif Way serves only the house on the subject property, a golf course maintenance building and another utility building, both associated with Bayside. Accordingly, Mastif Way and its intersection with Sound Church Road may need to be improved to handle the additional traffic.

A "Letter of No Objection" is currently being sought from DELDOT. During a conversation with John Fiori of DELDOT on October 19, 2007 (which was confirmed on July 30, 2009), we were informed that, since the site ADT of the project is so small, no improvements to the Mastif Way/East Sand Cove Road intersection would be required by DELDOT. Also, since Mastif Way is considered a private road, entrance plans for the driveways from the project site to Mastif Way would not be required.

Natural and Cultural Resources

If the current pond is filled and built upon, the Drainage Program requests that that fact be disclosed to the buyer as well as noted on the deed.

Filling of the current ornamental pond located on Parcel 35.04 will be disclosed to the buyer as requested and noted within the condominium documents.

These tax parcels are comprised largely of wetlands and if developed, the wetlands should be protected from degradation. Wetlands (tidal and non-tidal) and the upland buffers that surround these wetlands provide habitat for a variety of plant and animal species. The current upland wetland buffers are not adequate as there are clearly lot lines, structures and infrastructure within 100 feet. In addition, wetland buffers (some species require more than 100 feet) serve as critical habitat for wetland dependent species which utilize upland buffers during a portion of their life cycle. Some aquatic species are especially sensitive to water quality changes and adequate filtration of sediments, run-off from parking lots, run-off of lawn fertilizer and chemicals, etc. are very important. Buffers along water courses are also used as a travel corridor by numerous wildlife species. DNREC recommends that you omit, downsize or relocate those parking spaces and buildings which will degrade wetlands because they are within 100 feet of existing wetlands.

As shown on the enclosed plan entitled "100' Buffer Impacts", maintaining a 100' buffer from all wetlands would preclude ANY development of the existing uplands, including the existing dwelling unit. However, a 50' buffer from tidal wetlands and subaqueous lands will be maintained as required by Sussex County. In addition, it should not be lost that approximately 87% of the

total property will be open space.

Forested areas on-site set aside for conservation purposes should be placed into a permanent conservation easement or other binding protection. These areas should be clearly marked and delineated so that residents understand their importance and so that homeowner activities do not infringe upon these areas.

In order to lessen the impact of the project on the existing natural resources of the site, the Applicant has decreased the proposed number of multi-family units from 13 to 12. This results in an accompanying decrease in impervious area (buildings, parking) and allows more area to be set aside as open space. Discussions are ongoing with respect to placing the majority of the project site (approx. 87%) within conservation easements to be administered by the Sussex County Land Trust or otherwise protected from development by a restriction on the record plan.

The following are a complete list of comments received by State agencies:

Office of State Planning Coordination – Contact: Bryan Hall 739-3090

The Office of State Planning and Coordination recognizes the proposed project is partially in Level 3 and Level 4 and within the Environmentally Sensitive District of Sussex County. In addition this office recognizes the site is currently experiencing development pressures from the adjacent approved project of Bayside Americana. Also, this office recognizes the right of the property owner and the developer to develop the site with 13 town-home units; however, the environmental features found on this site greatly restrict the development potential and may harm the environmental resources within this site and the watershed. This office would encourage the landowner and the developer work to explore other options to allow for preservation of this site while allowing for the appreciation of equity of the land. If however, the site is developed, we would encourage the developer to explore Best Management Practices to preserve and lessen impacts to the natural resources on the site. Also, I would encourage the development of a partnership with Bayside Americana to address access concerns and to ensure that land uses such as residential units are not in conflict with maintenance operations of the larger project.

In order to lessen the impact of the project on the existing natural resources of the site, the Applicant has decreased the proposed number of multi-family units from 13 to 12. This results in an accompanying decrease in impervious area (buildings, parking) and allows more area to be set aside as open space. Discussions are ongoing with respect to placing the majority of the project site (approx. 87%) within conservation easements to be administered by the Sussex County Land Trust or otherwise restricting development within the forested and wetland areas by a restriction on the record plan.

Discussions are also ongoing with Americana Bayside regarding access concerns. Since the initial submission of our preliminary site plan, we have learned that a 50' access easement exists along the project site's western property line which provides access from Mastif Way to East Sand Cove Road, a State maintained R.O.W.

Division of Historical and Cultural Affairs – Contact: Alice Guerrant 739-5685

According to the historic resources and documents at the State Historic Preservation Office in reference

to this particular property or project area, it indicates that there were a few archaeological sites in the area, but none is on this property.

One of the archaeological sites near this property is the Holloway Cemetery-Cemetery Hill Site (refer to CRS site S-11501, Archaeological Site 7S-K-144). A small rural cemetery (or family cemetery) of this type are often found or discovered in relation to historic area, such as the one here, usually are a good distance behind or to the side of a dwelling of some type. The developer should be aware of Delaware's Unmarked Human Remains Act of 1987, which governs the discovery and disposition of such remains. The unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out, and the developer may want to hire an archaeological consultant to check for the possibility of a cemetery here if this development or project is approved.

The State Historic Preservation Office of the Division of Historical & Cultural Affairs would have to have a copy of any archaeological report done for this purpose. Also, the developer should be aware that this property is in an historic area, and it is possible that archaeological sites, which may not have been found or discovered at this time could still be remaining somewhere on this property. These archaeological sites can be prehistoric or historic. If this development is approved or proceeds, the State Historic Preservation Office of the Division of Historical & Cultural Affairs would like the opportunity to examine the area prior to any ground-disturbing activities, to see if there are in fact any archaeological sites on the property, and to learn something about their location, nature, and extent.

If you (the developer) would like to discuss this information or other issues further, contact the State Historic Preservation Office Division of Historical & Cultural Affairs at (302) 744-7400 ext.25, and we will be glad to assist you.

The developer and contractor will, to the best of their ability, abide by the recommendations of Division of Historical and Cultural Affairs as outlined in the PLUS comment letter.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

David J. and Erin E. Dekowsky seek to develop about 13 townhouses on an approximately 15.16-acre assemblage of parcels (Tax Parcels 5-33-19.00-35.00 and 35.04) presently occupied by one single-family detached house. The subject land is located west of Fenwick Island and south of Delaware Route 54, and more specifically on the east side of Mastif Way, a private street in the Americana Bayside (a.k.a. Bayside) development. The land is zoned AR-1 in Sussex County and a conditional use approval would be needed to permit the development of townhouses.

Mastif Way, where the proposed townhouses would have access, is owned and maintained by developers of Bayside, so the proposed entrances onto it are outside DelDOT's jurisdiction. However, Mastif Way connects to Sound Church Road (Sussex Road 394A), which DelDOT does maintain. Presently Mastif Way serves only the house on the subject property, a golf course maintenance building and another utility building, both associated with Bayside. Accordingly, Mastif Way and its intersection with Sound Church Road may need to be improved to handle the additional traffic.

DeLDOT recommends that the developers discuss their plans with the developer of Bayside. Further, either they or Bayside should contact our Subdivision Manager for eastern Sussex County, Mr. John Fiori, to determine what, if any, improvements will be needed at the intersection of Mastif Way and Sound Church Road. Mr. Fiori may be reached at (302) 760- 2260.

A "Letter of No Objection" is currently being sought from DELDOT. During a conversation with John Fiori of DELDOT on October 19, 2007 (which was confirmed on July 30, 2009), we were informed that, since the site ADT of the project is so small, no improvements to the Mastif Way/East Sand Cove Road intersection would be required by DELDOT. Also, since Mastif Way is considered a private road, entrance plans for the driveways from the project site to Mastif Way would not be required.

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

Wetlands

Statewide Wetland Mapping Project (SWMP) maps indicate the presence of estuarine wetlands on this parcel. These wetlands provide water quality benefits, attenuate flooding and provide important habitat for plants and wildlife. Vegetated buffers of no less than 100 feet should be employed from the edge of the wetland complex. The developer should note that both DNREC and the U.S. Army Corps of Engineers (USACE, or "the Corps") discourage allowing lot lines to contain wetlands to minimize potential cumulative impacts resulting from unauthorized and/or illegal activities and disturbances that can be caused by homeowners.

As shown on the enclosed plan entitled "100' Buffer Impacts", maintaining a 100' buffer from all wetlands would preclude ANY development of the existing uplands, including the existing dwelling. However, a 50' buffer from tidal wetlands and subaqueous lands will be maintained as required by Sussex County.

Wetland Permitting Information

PLUS application materials indicate that wetlands have been delineated. This delineation should be verified by the Corps through the Jurisdictional Determination process. Please note that impacts to palustrine wetlands are regulated by the Corps through Section 404 of the Clean Water Act. In addition, individual 404 permits and certain Nationwide Permits from the Corps also require 401 Water Quality Certification from the DNREC Wetland and Subaqueous Land Section and Coastal Zone Federal Consistency Certification from the DNREC Division of Soil and Water Conservation, Delaware Coastal Programs Section. Each of these certifications represents a separate permitting process.

To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawding at (302) 739-9943 to schedule a meeting.

Attached is a letter by Edward M. Launay of Environmental Resources Inc. dated July 30, 2009 discussing the methodology for delineating the wetlands, outlining discussions with Edward Bonner of

the Army Corps of Engineers regarding the extent of Corps regulated wetlands and obtaining a jurisdictional determination and outlining ERI's review and delineation of State tidal wetlands and subaqueous lands.

Water Supply

The project information sheets state that Tidewater Utilities will be used to provide water for the proposed project. Our records indicate that the project is located within the public water service area granted to Artesian Water Company under Certificate of Public Convenience and Necessity (CPCN) number 05-CPCN-16. It is recommended that the developer contact Artesian Water Company to determine the availability of public water. Any questions concerning CPCNs should be directed to the Public Service Commission at 302-739-4247. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any 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 typically 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.

Attached are letters from Tidewater Utilities Inc. and Artesian Water Company. While the project site is currently located in the Artesian Water Company Service Area, Tidewater has expressed a willingness and ability to serve the project site once Artesian relinquishes its CPCN and approval has been granted by the Public Service Commission.

Sediment and Erosion Control/Stormwater Management

Prior to land disturbing activity greater than 5,000 square feet, and as soon as possible prior to site plan development if possible, the applicant should contact the Sussex Conservation District at (302) 856 7219, to schedule a pre-application meeting to discuss stormwater management and erosion and sediment control plans. Use of green technology practices and low impact development practices are recommended where feasible.

The design of all sediment control measures will meet State and County standards.

Drainage

1. The Drainage Program requests that the engineer take precautions to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water. The Drainage Program requests that the engineer check existing downstream ditches and pipes for function and blockages prior to the construction. Notify downstream landowners of the change in volume of water released on them.

The engineer will, to the best of his ability, ensure that the design of drainage measures do not hinder any off-site drainage upstream of the project or create off-site drainage problems downstream.

2. Have all drainage easements recorded on deeds and place restrictions on obstructions within the easements to ensure access for periodic maintenance or future re-construction. Future property owners may not be aware of a drainage easement on their property if the easement is only on the record plan. However; by recording the drainage easement on the deed, the second owner, and any subsequent owner of the property, will be fully aware of the drainage easement on their property.

All drainage easements will be clearly shown on the record plat and on the plan views of the construction documents. The recordation of the drainage easements on deeds is more typical of a true residential subdivision where individual lots may be encumbered with easements. As this project is not intended to create individual residential lots, identification of all easements on the record plat and construction documents should be sufficient.

3. If the current pond is filled and built upon, the Drainage Program requests that that fact be disclosed to the buyer as well as noted on the deed.

Filling of the current ornamental pond located on Parcel 35.04 will be disclosed to the buyer and noted within the condominium documents.

4. Preserve existing riparian buffers on this site to aid in the reduction of nutrients, sediment, and other pollutants entering the watershed. Please explore methods to filter excess nutrients in stormwater runoff from this site before releasing the stormwater into the Drum Creek watershed.

The engineer will, to best of his ability, ensure that the reduction of nutrients, sediment and other pollutants to the Drum Creek watershed will be included in the design of all drainage and stormwater management structures and measures.

For questions or clarifications, please contact Jim Sullivan at (302) 739-9921.

Floodplains

The entire parcel is located within FEMA's Special Flood Hazard Area subject to inundation by the 1% annual chance flood. There is a 26% chance of a flood occurring during the life of a 30 year loan for a structure located in a Special Flood Hazard Area. Any new construction would have to comply with current floodplain regulations. Please contact Greg Williams at 302-739-9921 with any questions.

The Applicant will ensure that all new construction meets current Federal, State and County standards with regard to flood hazards.

Wetland/Wildlife Habitat

These tax parcels are comprised largely of wetlands and if developed, the wetlands should be protected from degradation. Wetlands (tidal and non-tidal) and the upland buffers that surround these wetlands provide habitat for a variety of plant and animal species. The current upland wetland buffers are not adequate as there are clearly lot lines, structures and infrastructure within 100 feet. Scientific research indicates buffers less than 100 feet are not adequate for protecting water quality. In addition, wetland buffers (some species require more than 100 feet) serve as critical habitat for wetland dependent species which utilize upland buffers during a portion of their life cycle. Some aquatic species are especially sensitive to water quality changes and adequate filtration of sediments, run-off from parking lots, run-off of lawn fertilizer and chemicals, etc. are very important. Buffers along water courses are also used as a travel corridor by numerous wildlife species.

The Division of Fish and Wildlife is charged with conserving and managing the states wildlife (see www.fw.delaware.gov and the Delaware State Code, Title 7) and protection of wetland and forested habitat is of utmost concern.

DNREC recommends the following:

1. Omit, downsize or relocate those parking spaces and buildings which will degrade wetlands because they are within 100 feet of existing wetlands.

As shown on the enclosed plan entitled "100' Buffer Impacts", maintaining a 100' buffer from all wetlands would preclude ANY development of the existing uplands, including the existing dwelling. However, a 50' buffer from tidal wetlands and subaqueous lands will be maintained as required by Sussex County.

Forest Preservation

Forested areas on-site set aside for conservation purposes should be placed into a permanent conservation easement or other binding protection. These areas should be clearly marked and delineated so that residents understand their importance and so that homeowner activities do not infringe upon these areas.

Approximately 85% of the existing wooded areas will be set aside in a permanent conservation easement or otherwise protected by a restriction on the record plan.

Air Quality

Once complete, vehicle emissions associated with this project are estimated to be 1.0 tons (1,995.4 pounds) per year of VOC (volatile organic compounds), 0.8 tons (1,652.0 pounds) per year of NOx (nitrogen oxides), 0.6 tons (1,218.9 pounds) per year of SO2 (sulfur dioxide), 0.1 ton (108.5 pounds) per year of fine particulates and 83.5 tons (166,909.7 pounds) per year of CO2 (carbon dioxide).

Emissions from area sources associated with this project are estimated to be 0.4 tons (804.8 pounds)

per year of VOC (volatile organic compounds), 0.0 ton (88.6 pounds) per year of NOx (nitrogen oxides), 0.0 ton (73.5 pounds) per year of SO2 (sulfur dioxide), 0.0 ton (94.8 pounds) per year of fine particulates and 1.6 tons (3,262.6 pounds) per year of CO2 (carbon dioxide).

Emissions from electrical power generation associated with this project are estimated to be 0.2 tons (319.0 pounds) per year of NOx (nitrogen oxides), 0.6 tons (1,109.5 pounds) per year of SO2 (sulfur dioxide) and 81.8 tons (163,647.1 pounds) per year of CO2 (carbon dioxide).

	VOC	NOx	SO ₂	PM _{2.5}	CO ₂
Mobile	1.0	0.8	0.6	0.1	83.5
Residential	0.4	0	0	0	1.6
Electrical Power		0.2	0.6		81.8
TOTAL	1.4	1	1.2	0.1	166.9

For this project the electrical usage via electric power plant generation alone totaled to produce an additional 0.2 tons of nitrogen oxides per year and 0.6 tons of sulfur dioxide per year.

A significant method to mitigate this impact would be to require the builder to construct Energy Star qualified homes. Every percentage of increased energy efficiency translates into a percent reduction in pollution. Quoting from their webpage, <http://www.energystar.gov/>:

“ENERGY STAR qualified homes are independently verified to be at least 30% more energy efficient than homes built to the 1993 national Model Energy Code or 15% more efficient than state energy code, whichever is more rigorous. These savings are based on heating, cooling, and hot water energy use and are typically achieved through a combination of:

building envelope upgrades,
 high performance windows,
 controlled air infiltration,
 upgraded heating and air conditioning systems,
 tight duct systems and
 upgraded water-heating equipment.”

The Energy Office in DNREC is in the process of training builders in making their structures more energy efficient. The Energy Star Program is excellent way to save on energy costs and reduce air pollution. They highly recommend this project development and other residential proposals increase the energy efficiency of their homes.

They also recommend that the home builders offer geothermal and photo voltaic energy options. Applicable vehicles should use retrofitted diesel engines during construction. The development should provide tie-ins to the nearest bike paths, links to mass transit, and fund a lawnmower exchange program for their new occupants.

In order to minimize the impact of this project on air quality, the developer and contractor will, to the best of their ability, construct Energy Star qualified homes as requested.

State Fire Marshal's Office – Contact: Duane Fox 856-5298

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

- ◆ **The State Fire Marshal's Office has no objection to the re-zoning request. The information provided below shall be considered when plans are being designed.**

a. Fire Protection Features:

- For townhouse buildings, provide a section / detail and the UL design number of the 2-hour fire rated separation wall on the Site plan

b. Accessibility:

- All premises, which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from the main thoroughfare must be constructed so fire department apparatus may negotiate it.
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.

c. Gas Piping and System Information:

- Provide type of fuel proposed, and show locations of bulk containers on plan.

d. Required Notes:

- Provide a note on the final plans submitted for review to read "All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations"
- Proposed Use
- Square footage of each structure (Total of all Floors)

- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Townhouse 2-hr separation wall details shall be shown on site plans
- Provide Road Names, even for County Roads

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: www.delawarestatefiremarshal.com, technical services link, plan review, applications or brochures.

All requirements of the State Fire Marshal will be complied with as outlined in the PLUS comments when formal application is made to the State Fire Marshal for approval. Currently, the site has been redesigned to add a 38' diameter turn-around area for fire department equipment on Parcel 34.00 as requested.

Department of Agriculture - Contact: Scott Blaier 698-4500

The Delaware Department of Agriculture has no objections to the proposed project. The *Strategies for State Policies and Spending* encourage environmentally responsible development in Investment Level 3 areas.

Right Tree for the Right Place

The Delaware Department of Agriculture Forest Service encourages the developer to use the "Right Tree for the Right Place" for any design considerations. This concept allows for the proper placement of trees to increase property values in upwards of 25% of appraised value and will reduce heating and cooling costs on average by 20 to 35 dollars per month. In addition, a landscape design that encompasses this approach will avoid future maintenance cost to the property owner and ensure a lasting forest resource.

Native Landscapes

The Delaware Department of Agriculture and the Delaware Forest Service encourages the developer to use native trees and shrubs to buffer the property from the adjacent land use activities near this site. A properly designed forested buffer can create wildlife habitat corridors and improve air quality to the area by removing six to eight tons of carbon dioxide annually and will clean our rivers and creeks of storm-water run-off pollutants. To learn more about acceptable native trees and how to avoid plants considered invasive to our local landscapes, please contact the Delaware Department of Agriculture Plant Industry Section at (302) 698-4500.

The developer will, to the best of his ability, meet the recommendations of the Department of Agricultural as outlined in the PLUS comments and these measures will be reflected on a landscape plan which will be submitted to Sussex County for approval.

Public Service Commission - Contact: Andrea Maucher 739-4247

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety

guidelines. Contact: Malak Michael at (302) 739-4247.

The design of any natural gas or propane infrastructure will meet all Pipeline Safety Guidelines.

Delaware State Housing Authority – Contact Vicki Walsh 739-4263

This proposal is for a site plan review for 13 multi-family units on 15.16 acres located on Mastif Way, 770' north of the intersection with South Church Road near Selbyville. According to the State Strategies Map, the proposal is located in an Investment Level 3 area and Environmentally-Sensitive Developing Area. However, the proposal does not include units for first time homebuyers.

The 2003 Statewide Housing Needs Assessment indicates that much of the housing in the Selbyville/Frankford CCD is outside of the affordability level of low- and moderate income households. For example, real estate data collected by DSHA for the first quarter of 2007 indicated that the median home price was \$385,000, which is outside the affordability level of low- and moderate income households. Conversely, the affordability price for low- and moderate-income households earning 100% of area median income is estimated to be \$164,791. Households that cannot afford to live in the coastal resort area have been displaced to western Sussex County. The provision of moderately-priced units for first time homebuyers would help support the housing needs of low- and moderate-income families employed by the local retail, service, and tourism economy.

Prices for the housing units proposed will be as affordable as possible, however, the high development costs for this project (wastewater pumping stations, sewer lines) will add to the cost of each unit.

Department of Education – Contact: John Marinucci 735-4055

This proposed development is in the Indian River School District. DOE offers the following comments on behalf of the Indian River School District.

1. Using the DOE standard formula, this development will generate an estimated 7 students.
2. DOE records indicate that the Indian River School Districts' *elementary schools are at or beyond 100% of current capacity* based on September 30, 2006 elementary enrollment.
3. DOE records indicate that the Indian River School Districts' *secondary schools are not at or beyond 100% of current capacity* based on September 30, 2006 secondary enrollment. In multiple correspondences from the Indian River School District administration, the district asserts that while the Indian River High School has capacity, the Indian River Middle Schools' student population exceeds student capacity.
4. This development will create additional elementary school and middle school student population growth which will further compound the existing shortage of space.
5. The developer is strongly encouraged to contact the Indian River School District Administration to address the issue of elementary school over-crowding that this development will exacerbate.

The Applicant will contact the Indian River School District to determine what, if anything, is the appropriate response for the addition of seven students into the entire school district.

Sussex County – Contact: Richard Kautz 855-7878

The State Wetlands map tidal wetland boundaries indicates the possibility of wetlands impacting the location of proposed lots and roads. Therefore those boundaries should be shown on the plat. Furthermore, the jurisdictional determination letter should be provided to support the proposed design for that area and that the lot layout does not contain any wetlands. This letter should be obtained prior to the request for approval of any final plan.

Per page 15 of the Comprehensive Plan, "any increased density by rezoning should only be permitted with proper environmental safeguards." Because this project is situated in an Environmentally Sensitive Development Area, the required report should include how this requirement and the PLUS comments have been addressed and how the plan has been revised accordingly.

As requested, wetlands have been indicated on the plans with bearings and distances and a jurisdictional determination is in the process of being obtained as referenced earlier in this letter.

The Sussex County Engineer Comments:

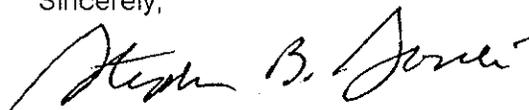
The project is within the boundary of the Fenwick Island Sanitary Sewer District and connection to the sewer system is mandatory. The project is within planning study and design assumptions for sewer service. The project is located between drainage areas of the Americans Bayside project, but is not part of the American Bayside project. Sewer service is available in the area, but has not been extended to the parcel at this time. Sussex County does not have a schedule to extend sewer service to the parcel. The developer, at the developer's expense, will be required to extend sewer service to the project from an approved connection point.

Sussex County requires design and construction of the collection and transmission system to meet Sussex County Engineering Department's requirements and procedures. The Sussex County Engineer must approve the connection point. A sewer concept plan must be submitted for review and approval prior to any sewer construction. A checklist for preparing sewer concept plans was handed out at the meeting. All costs associated with extending sewer service will be the sole responsibility of the developer. One time system connection charges will apply. Please contact Ms. Janna Wilcoxson at 302 855-7817 for additional information on charges.

The Sussex County Engineer has approved the conceptual sewer plan for this project as indicated on the attached letter.

Thank you again for your review of this project. We believe we have addressed your comments to-date. If you have any questions, please contact us at 410-742-7797.

Sincerely,



Stephen B. Soulé, P.E.
Soulé & Associates, P.C.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

BEN T. CASTLE
SHELDON N. SANDLER
RICHARD A. LEVINE
RICHARD A. ZAPPA
FREDERICK W. JOBST
RICHARD H. MORSE
DAVID C. MCBRIDE
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July 31, 2009

VIA EMAIL TRANSMISSION ONLY

Ms. Wendy Baker, President and CEO
Sussex County Land Trust
P.O. Box 763
Rehoboth Beach, DE 19971
wobaker@sclandtrust.org

Re: Dekowsky Property

Dear Ms. Baker:

Thank you very much for speaking with me yesterday regarding the Dekowsky Property ("Property"). As I mentioned, the Property is surrounded on three sides by Americana Bayside and is known as Sussex County tax parcel numbers: 5-33-19-35.00 and 5-33-19-35.04. The owner of the Property is pursuing a conditional use application through Sussex County for the development of the Property for 12 townhouses to be managed under a condominium regime.

As the Property contains significant forested area, the Office of State Planning Coordination has requested that the owner consider placing the forested area under a conservation easement. I understand from our conversation that the Sussex County Land Trust currently holds the conservation easement on the adjacent Americana Bayside property and would be interested in having further conversations with the owner of the Property to, perhaps, become the holder of a conservation easement on the Dekowsky property should the conditional use request be granted.

Again, thank you for speaking with me and I will contact you once the development disposition of the Property is known.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Ms. Wendy Baker, President and CEO

July 31, 2009

Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie L. Hansen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephanie L. Hansen

SLH:s

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December 8, 2008

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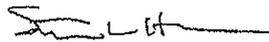
Re: Development of the Dekowsky Property
Near Americana Bayside

Dear Billy:

Some time ago, we talked about a proposed development nearly surrounded by Americana Bayside called the Dekowsky Property (Sussex County tax parcel numbers 5-33-19-35 and 5-33-19-35.04). We represent the owners, Dave and Erin Dekowsky. The Dekowskys have filed a conditional use application with Sussex County to develop the property for 12 multi-family homes on 15.16 acres. The homes would be townhomes but managed under a condominium regime. Attached please find the preliminary site plan for the Dekowsky Property. As you will see, we are proposing access onto Mastif Way. We understand that this is a private road owned by Americana Bayside to which the Dekowsky's have a right of access.

We would like the opportunity to meet with representatives of Americana Bayside to discuss the Dekowsky's proposed plan and any required future maintenance agreement of the roadway. Please contact me at your earliest convenience.

Very truly yours,



Stephanie L. Hansen, Esq.

SLH:clg

cc: Mr. David Dekowsky (w/o enc.)
Mr. Steve Soule, Soule & Associates (via email w/o enc.)

ERI 0231#0157

July 30, 2009

Mr. Steve Soulé
Soulé & Associates, Inc.
122 Arlington Road
Salisbury, MD 21801

Re: Determination of State and Federally Regulated Waters and Wetlands
Dekowsky Property, Parcels 35.00 and 35.04, Tax Map 5-33-19
Sussex County, Delaware

Dear Mr. Soulé:

Environmental Resources, Inc. (ERI), is writing you in order to provide the status of our efforts to obtain an approved jurisdictional determination from the Philadelphia District, Corps of Engineers regarding the extent of waters of the United States including wetlands on the Dekowsky property.

ERI sometime ago completed field delineation and flagging of federally-regulated wetlands on the Dekowsky property. This included an evaluation of soils, vegetation and hydrology in accordance with the 1987 *Corps of Engineers Manual (Manual)* and the recently implemented *Atlantic and Gulf Coast Regional Supplement*. We also delineated the ±50-foot-wide parcel of property which lies between Dekowsky and the existing golf maintenance building access road on the Americana Bayside property.

As part of our work, we also conducted a groundwater study and compared it to other local reference sites to determine where groundwater was sufficiently near the soil surface to meet the hydrology parameter of the *Manual*.

Following completion of our initial investigations and data collection, a meeting was scheduled with Mr. Edward Bonner, a biologist representing the Philadelphia District, Corps of Engineers. On June 25, 2009, Mr. Bonner and I inspected the site and reviewed the flagged wetland boundary on the site and reviewed information ERI collected in regard to hydrology. Following the meeting, Mr. Bonner indicated that he is in agreement with our wetland delineation. He advised me that I should complete a wetland delineation report and submit a formal application for an approved

Mr. Steve Soulé
Soulé & Associates, Inc.
July 30, 2009
Page 2

ERI 0231#0157

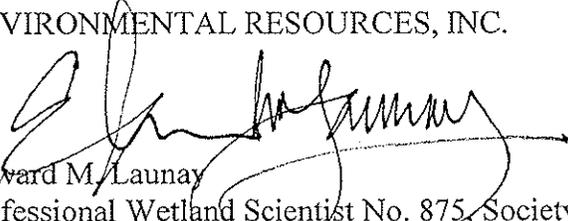
jurisdictional determination to the Philadelphia District for approval. As of the date of this letter, ERI has made the submission to Mr. Bonner. We expect to have a written, approved jurisdictional determination from the District within the next several weeks.

In regard to the extent of State-regulated wetlands on the property, ERI has reviewed the DNREC State Tidal Wetland Map Sheet Sussex-046. The boundary of State tidal wetlands as shown on our current wetland delineation plan accurately depicts the State tidal wetland boundary. In accordance with Sussex County Code, a 50-foot buffer shall be established from the State-regulated wetlands, along with a drainage ditch which bisects the property previously determined by DNREC to be State-regulated subaqueous lands.

Upon review of this information, if you have any questions in regard to the status of wetland boundary approvals, please let me know.

Sincerely,

ENVIRONMENTAL RESOURCES, INC.



Edward M. Launay
Professional Wetland Scientist No. 875, Society of Wetland Scientists
Corps of Engineers' Wetland Delineator Certification No. WDCP93MD0510036B
Principal

EML/lew

T:\Projects 200 to 299\0231#0157 Dekowsky\JD\Soule.231#157.wpd

TIDEWATER UTILITIES, INC.

"Southern Delaware's Premier Water Company Since 1964"

July 29, 2009

Ms. Stephanie Hansen, Esq.
Young Conway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391

RE: Willing and Able Letter – Dekowsky Property (5-33-19-35.00 & 35.04)

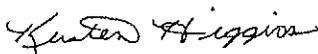
Dear Ms. Hansen,

Tidewater Utilities, Inc. (TUI) is willing and able to serve public water, including fire protection, to the Dekowsky Property, further identified as Tax Map & Parcel 5-33-19-35.00 and 35.04, based on the terms and conditions of a water service agreement between TUI and the legal owners of the land. Artesian Water Company currently holds the water Certificate of Public Convenience and Necessity (CPCN) for these parcels. Thus, in order for TUI to be the water service provider for these parcels, the Public Service Commission must approve the abandonment of the CPCN by Artesian Water Company and then grant TUI the CPCN. Once the CPCN is granted to TUI and the water service agreement is executed, TUI will be in a position to serve water to the development. TUI has a 10" water main adjacent to this property.

Enclosed please find a sheet entitled "Petition for Inclusion in Tidewater Utilities, Inc. Water Service Territory". Please have the current owner(s) of parcels 5-33-19-35.00 and 35.04 sign the petition and return the original to TUI, Attn: Kirsten Higgins. The signed petition from the landowner is an important and necessary first step in the CPCN application submittal process. In addition, please send a preliminary site plan and construction schedule to TUI for use in preparing the water service agreement.

Please feel free to contact me at 302-734-7500 ext. 1024 if you have any questions or concerns regarding this matter. TUI looks forward to meeting the water needs of this project.

Sincerely,



Kirsten Higgins
Director, Water Planning & Development

Hansen, Stephanie

From: Jack Schreppler [JSchreppler@artesianwater.com]
Sent: Friday, July 31, 2009 11:54 AM
To: Hansen, Stephanie
Cc: Alan Fleetwood; John Thaeber
Subject: Dekowski Parcels 5-33-19-35 and 35.04

Stephanie:

This will confirm that Artesian is willing to abandon its CPCN on these parcels in favor of Tidewater's application to serve them.

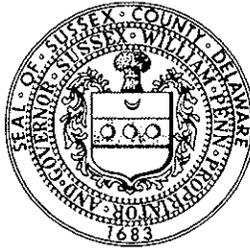
Regards, Jack

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Sussex County
Engineering Department

MICHAEL A. IZZO, P.E.
County Engineer

RUSSELL W. ARCHUT
Assistant County Engineer



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Fax: 302-855-7799

July 23, 2009

Mr. Matthew Bruce
Soule' Associates
122 Arlington Road
Salisbury, MD 21801

REF: **LANDS OF DAVID & ERIN DEKOWSKY
FENWICK ISLAND SANITARY SEWER DISTRICT
TAX MAP AND PARCEL NUMBER: 533-19.00-35.00 AND 35.04
CLASS-1
AGREEMENT NO. 960
FILE: OM-4.08**

Dear Mr. Bruce:

Attached please find six (6) copies of the approved concept plan that you submitted for the above-referenced project. Please note that these drawings are not to be used for construction.

Please submit a copy of this concept plan *within* each set of your detailed design drawing submissions, which will be submitted to Mr. I. Thomas Baker, Director of Public Works.

The purpose of the concept plan is to establish preliminary pipeline alignments, sizes and minimize changes during the construction drawing approval process. It is not meant to preempt the construction drawing review process and comments and changes can be expected.

If you should have any questions, please do not hesitate to contact me at (302) 855-1299.

Sincerely,

SUSSEX COUNTY ENGINEERING DEPARTMENT

Ms. Penny Massey
Planning Technician

Attachments

cc w/o attachment: Mr. Michael A. Izzo, P. E.
Mr. John J. Ashman
Mr. Gary Tonge
cc w/attachment: Mr. I. Thomas Baker
Mrs. Noell Warren