

August 19, 2010
September 30, 2010

Mrs. Constance C. Holland, AICP
Office of State Planning & Coordination
122 William Penn Street, Third Floor
Dover, Delaware 19901

RE: PLUS Comments – 2010-07-03; Workman’s country Village – RESPONSE TO COMMENTS (in Red)

Mr. Mark Davidson
DC Group, LLC
18072 Davidson Drive
Milton, DE 19968

RE: PLUS review – 2010-07-03; Workman’s Country Village

Dear Mr. Davidson:

Thank you for meeting with State agency planners on July 28, 2010 to discuss the proposed plans for the Workman’s Country Village project to be located on the north side of Delaware Route 20, approximately 1200 feet west of Shortly Road.

According to the information received, you are seeking a rezoning from AR-1 to B-1 for retail shopping center with a restaurant, offices, retail shopping and the continuation of your existing agricultural business.

Mr. Dennis Schrader’s introduction outlined that the Workman’s are seeking a rezoning to B-1, Neighborhood Business for Agricultural-Business uses that would support not only their continued agricultural business but other agricultural businesses throughout Sussex County. Uses such as; farm retail from clothing, feed to farm equipment as well as a farmers market with availability for a country restaurant.

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 is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

The only change to plan as presented to the State Planning Office is the addition of a proposed silo that would be converted into a water storage facility for Workman's Country Village.

Strategies for State Policies and Spending

This proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*, and is within the Low Density area according to the Sussex County certified comprehensive plan. **The comments in this letter are technical, and are not intended to suggest that the State supports this development proposal. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to construct the development you indicate or any subdivision thereof on these lands.**

According to the Sussex County Comprehensive Plan Update, June 2008, Future Land Use Element, Table 8 Recommended Densities and Uses; An "Applicable Zoning District" for the Low Density Areas within Sussex County would be a Neighborhood Business District (B-1) and Agriculturally Related Industries.

This project represents a major land development that will result in 33,612 sq. ft. of commercial space in an Investment Level 4 area according to the *2004 Strategies for State Policies and Spending*. 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.

There are no environmentally sensitive wetlands and wildlife habitats within the project area. It should be noted that Workman Family owns all the farm land around the proposed area being rezoned.

From a fiscal responsibility perspective, development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. Because the development is inconsistent with the *Strategies for State Policies and Spending*, the State is opposed to this proposed subdivision.

In the PLUS meeting it was stated that the intent of the retail shops is to sell projects used by the agricultural community and that farmers at times need to supplement the income generated by their farms; however you offered no specific details as to how you would guarantee that the retail and office section would be agricultural related.

It is not permissible for Sussex County to restrict uses within a B-1 Zoning District. The Workman's could offer up "Voluntary Deed Restrictions" and have recorded outlining the uses they intend, but this could be left up to interpretation defining what is actually agricultural related uses.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There seems to be one known cultural or historic resources, and it is a mid to late 19th-century historic agricultural complex (S-4566). According to the Pomeroy and Beers Atlas of 1868, which is a 19th-century historical map, it seems that there was structure existing on this parcel associated with R. Mears, approximately in the same location of the mid to late 19th-century historic agricultural complex (S-4566). In addition, the USGS Topo Map of 1917 (15 minute series) also indicated and show that there was an existing structure there as well. With this in mind, it is also important that the developer should be aware of the Delaware Unmarked Human Remains Act of 1987, outlined in Chapter 54 of Title 7 of the Delaware Code, which pertains to the discovery and disposition of such remains. **Based on the mapping, the structure mentioned falls within the location of the existing farming operations as they are constructed today, review current aerial maps. According to the 1937 aerial maps the structure in question above does not appear in the area that is planned for this development.**

The unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out. Therefore, prior to any demolition or ground-disturbing activities, the developer may want to consider hiring an archaeological consultant to examine the parcel for archaeological sites, including a cemetery or unmarked human remains. **Will comply with State of Delaware Code regarding this concern if unmarked human remains were to surface during the construction of this project.**

- If there is any federal involvement with the project, 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 or in reference to historic or cultural resources. **No Federal involvement is anticipated with this project.**

Department of Transportation – Contact Bill Brockenbrough 760-2109

- Because the subject land is located in a Level 4 area, much of the proposed development appears to be inconsistent with the *Strategies for State Policies and Spending*. As part of our commitment to support the *Strategies*, DelDOT refrains from participating in the cost of any road improvements needed to support this development and is opposed to any road improvements that will substantially increase the transportation system capacity in this area. DelDOT will only support taking the steps necessary to preserve the existing

transportation infrastructure and make whatever safety and drainage related improvements are deemed appropriate and necessary. The proposed farmer's market would be consistent with the *Strategies*. Also, DelDOT understands that the concept for the other retail shops is to sell products used by the agricultural community and that farmers at times need to supplement the income generated by their farms to maintain their financial viability. However, absent a more definite and direct connection to agriculture, the remainder of the proposed development would be inconsistent with the *Strategies*.

- The site access and subdivision streets must be designed in accordance with DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access. This manual is available on-line at http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf. **Noted.**
- As proposed, the subject development would meet DelDOT's volume warrants for a traffic impact study (TIS), as contained in Section 2.3.1 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access. Such a study was performed by Davis, Bowen & Friedel in December 2008 and on February 20, 2009, DelDOT provided comments on it to Sussex County. A copy of those comments is attached. Two points are especially noteworthy. First, because a plan for the site had not been prepared yet, the TIS evaluated the development of a 75,000 square foot shopping center as opposed to the 33,612 square feet now proposed.

Second, the TIS found only one location that might potentially require improvement, the intersection of Delaware Route 20, Shortly Road and Conway Road (both Sussex Road 431). Specifically, the TIS found that on 2015, with the development of a 75,000 square foot shopping center on the subject land, the Shortly Road and Conway Road approaches could operate at Level of Service D during the weekday evening peak hour. As specified in Section 2.9.12 of the Standards and Regulations, such operation is not acceptable in rural areas. Installation of a traffic signal is the only mitigation available for this situation and we anticipate requiring the applicant to enter a signal agreement, whereby they would wholly or partially fund that installation when it is warranted. DelDOT seeks to avoid the installation of signals in isolated rural locations such as this one and it may be well beyond 2015 before traffic volumes are sufficient to warrant the signal installation. Therefore, although execution of a signal agreement may be required as a condition for plan approvals, it will likely be many years before DelDOT seeks to collect on that agreement.

- Delaware Route 20 is classified as a Major Collector, which per Section 3.6.5 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access requires an 80-foot right-of-way (40 feet from centerline of right-of-way). Therefore, in accordance with the section just cited, additional right-of-way should be dedicated to public use in order to obtain the required rights-of-way along the entire property frontage. The right-of-way dedication notes should read as follows, "A 40' strip of right-of-way

from the road centerline of Delaware Route 20 is hereby dedicated to public use as per this plat.” **Will comply.**

- In accordance with Section 5.2 of DelDOT’s Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT anticipates requiring improvements along the site frontage similar to those shown on the Sketch Plat.
- DelDOT also anticipates that Sussex County will require a “Letter of No Objection” from the Department for this project. Per Section 3.4 of DelDOT’s Standards and Regulations for Subdivision Streets and State Highway Access, the developer must submit **three (3) signed and sealed paper copies and one electronic (pdf) copy** of the **record plan**, with an Initial Stage Fee Calculation Form and the Initial Stage Fee. Please make all submissions to Mr. Derek Sapp, Subdivision Manager. The entrance plan will not be reviewed until after the “Letter of No Objection” has been issued. **Sussex County does not require a Letter of No Objection for this application but an application will be prepared as part of the Construction Plan approval process with Del DOT.**
- As specified in Section 4.1 of DelDOT’s Standards and Regulations for Subdivision Streets and State Highway Access, when the entrance construction plans are submitted for review, the developer must submit **two (2) paper copies and one electronic (pdf) copy** of the construction plans, one copy of the record plan, an Initial Stage Fee Calculation Form, a Construction Stage Fee Calculation Form, a Construction Stage Review Fee, an application for highway entrance permit and a signed and sealed commercial entrance design checklist for review and approval. Be advised that the Department will not review the entrance plan until it has signed off on the record plan. Please make all submissions to Mr. Derek Sapp, Subdivision Manager.

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

- **TMDLs.** Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Shellpot Creek watershed. A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited water body” can assimilate and still meet State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; *State of Delaware Surface Water Quality Standards, as amended July 11, 2004*) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting.

TMDLs are required by federal law (Section 303(d) of the 1972 Clean Water Act), and the states are charged with developing and implementing standards to support these desired use goals. The project is located in the greater Piedmont drainage, specifically within the Shellpot Creek watershed. In the Shellpot Creek watershed, post-development nitrogen and phosphorus loading must be capped at the pre-development rate (or a 0% post-construction increase in N & P) to meet the required TMDL for each nutrient. The TMDL requirement for bacteria requires a 74% reduction. The specific required nutrient

and bacterial reductions can also be reviewed and retrieved from the following web link (in TMDLs under Services): <http://www.dnrec.delaware.gov/Pages/default.aspx>.

This project is located in the Inland Bays drainage area and not the Shellpot Creek watershed which is located in New Castle County. The TMDL in this portion of the Inland Bays Watershed calls for an 85 and 65 percent reduction in nitrogen and phosphorus from baseline conditions. During the design of sediment and stormwater plans for this project, BMP's and BAT's necessary to systematically reduce the pollutant loading to meet the TMDL reduction requirements as implemented in the Pollution Control Strategy will be identified.

- **Water Supply.** 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. **Will comply.**

- **Sediment and Stormwater Program.** A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a project application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. The site topography, soils mapping, pre- and post- development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the New Castle County Department of Land Use Engineering Section. Contact the Department of Land Use at (302) 395-5470 for details regarding submittal requirements and fees (Delaware Code, Title 7, Chapter 40; Delaware Regulations, Administrative Code, Title 7, 5101). *James Sullivan, (302) 739-9921, James.Sullivan@state.de.us*

This project is located in Sussex County and therefore is subject to pre-application requirements and submittal to the Sussex Conservation District located in Georgetown. A detailed sediment and stormwater plan outlining the current regulation will be prepared prior to any land disturbing activities taking place as a part of this rezoning.

- **Tank Management Branch.** If a release of a Regulated Substance occurs at the proposed project site, compliance of 7 Del.C. Chapter 60, 7 Del.C., Chapter 74 and DE Admin. Code 1351, State of Delaware *Regulations Governing Underground Storage Tank Systems* (the UST Regulations) is required.

- There are two LUST projects located within a quarter mile of the project site:
 - Springer School (3-001017), Project: N9407165 (Inactive)
2220 Shipley Road, Wilmington, DE 19803
Parcel: 0606500287
 - Paul Property (3-001676), Project: N9602030 (Inactive)
8 Quail Court, Shipley Farms, Wilmington, DE, 19810
Parcel: 0605200282

Per the **UST Regulations: Part E, § 1. Reporting Requirements:**

- “Any indication of a Release of a Regulated Substance that is discovered by any Person, including but not limited to environmental consultants, contractors, utility companies, financial institutions, real estate transfer companies, UST Owners or Operators, or Responsible Parties shall be reported within 24 hours to:
 - The Department’s 24-hour Release Hot Line by calling 800-662-8802; and
 - The DNREC, Tank Management Branch by calling 302-395-2500.”

The two sites listed above appear to be located in Wilmington Delaware which is further than a quarter mile from this project site. According to our data, there are NO LUST sites located within a quarter mile of this project.

- **Air Quality.** The applicant shall comply with all applicable Delaware air quality regulations. These regulations include:

Regulation 1106 - Particulate Emissions from Construction and Materials Handling

- Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads.
- Use covers on trucks that transport material to and from site to prevent visible emissions.

Regulation 1113 - Open Burning

- Prohibits open burns statewide during the Ozone Season from May 1-Sept. 30 each year.
- Prohibits the burning of land clearing debris, trash or building materials/debris.

Regulation 1141 – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products

- Restricts the use of certain coatings and consumer products in typical architectural applications.

Regulation 1145 - Excessive Idling of Heavy Duty Vehicles

- Restricts idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.

Will Comply.

Thank you for the opportunity to submit our response to the States Comments. Should you have any questions please do not hesitate to call.

Respectfully Submitted,

Design Consultants Group, L.L.C.



Mark H. Davidson
Project Consultant

cc: Mr. Dennis Schrader, Esquire
Mark & Chuck Workman