



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION

January 19, 2011

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

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

RE: PLUS review – 2010-12-01; Seashore Highway Associates

**Response to Comments (in RED) PENNONI ASSOCIATES INC. –  
January 31, 2011;**

Dear Mr. Davidson:

Thank you for meeting with State agency planners on December 22, 2010 to discuss the proposed plans for the Seashore Highway Associates to be located on the north side of Route 9, approximately 1000 feet east of Joseph's Road.

According to the information received, you are seeking a rezoning from C-1 & AR-1 to C-1 and CR-1. **Accurately stated, we are asking for only a rezoning of the AR-1 to the CR-1.** Please note that this review is for the rezoning of the property only. Should the owner seek additional buildings in the future, this office should be contacted to determine if an additional PLUS review is required.

Changes to the plan, other than those suggested in this letter, could result in additional comments from the State. **There are no changes to the plans at this time.** 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 located in Investment Level 3 according to the Strategies for State Policies and Spending. Investment Level 3 reflects areas where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. **State investments will support growth in these areas**, but please be advised that the State may have other priorities in the near term future. We encourage you to design and additional buildings on this site with respect for the environmental features which are present.

While the State has no specific comments on the rezoning of this parcel, several agencies have supplied comments regarding additional structures on the site. If, in the future, it is determined that additional buildings are needed, we ask that you contact this office to determine if an additional PLUS review is required. Either way, we ask that you consider the following comments for any additional growth on this site:

### **Code Requirements/Agency Permitting Requirements**

State Historic Preservation Office – Contact Terrence Burns 736-7404

- **There are no known cultural or historic resources such as an archaeological site or listed National Register property on this parcel.** However, there are a couple of other known cultural or historic resources nearby, and they are as follows: a mid to late 19th-century house (S00858) towards the west side of the parcel; a late 19th or early 20th-century house (S00859) towards the east side parcel; and another mid to late 19th-century house (S00857) south of the parcel, just across the road, and the USGS Topographical Map of 1918 also indicated that these historic houses existed in locations as well. In addition, according to the Pomeroy and Beers Atlas of 1868 (a 19th-century historic map), it looks like there was a structure associated with a PJ Hopkins nearby, not too far away from the late 19th or early 20th-century house (S00859), which is toward the east side of the parcel. With this in mind, it is important that the developer 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. The reason for mentioning this is that the unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out. 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, such as a cemetery or unmarked human remains.
- 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 any known or potential historic or cultural resources. **No Federal funding will be needed for this property.**

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The site access 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](http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf).
- As DelDOT understands it, the applicant is seeking to acquire an adjoining parcel to the west and develop the combined 7.8 acres with as much as 65,000 square feet of retail and office space. If they are unsuccessful in that regard, their plans for the subject land are still somewhat tentative, but they may develop as much as 32,000 square feet of retail and office space there. **The applicant had expressed an interest in acquiring the adjacent property at some later date. Their immediate request is to rezone the portion of their current property to match the existing commercial zoning. If successful in the rezoning, the applicant may at that time pursue negotiations with the owner of the adjacent property. The TIS was completed in an effort to encompass both properties as commercial in order to help save time and money in this ever changing environment that we are faced with today.** Either development would likely meet DelDOT's volume warrants for a Traffic Impact Study (TIS), as contained in Section 2.3.1 of the Standards and Regulations. Accordingly, the applicant's engineer met with us in September to set a scope for a TIS. They have now submitted the TIS and DelDOT has it under review. DelDOT anticipates requiring participation in off-site improvements as a condition for plan approvals. **The Final TIS has been submitted to DelDOT.**
- In accordance with Section 5.2 of the Standards and Regulations, DelDOT anticipates requiring improvements along the site frontage. Preliminarily, those improvements would include separate left and right turn lanes at the site entrance. Those improvements could, in turn, require the dedication of rights-of-way to public use. DelDOT recommends that the developer's site engineer contact the DelDOT Subdivision Manager for eastern Sussex County, Mr. John Fiori, to discuss these requirements further. Mr. Fiori may be reached at (302) 760-2260. **Will Comply.**
- DelDOT 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. John Fiori, Subdivision Manager. The entrance plan will not be reviewed until after the "Letter of No Objection" has been issued. **As part of any entrance**

upgrades that may take place, an Initial Stage Fee Form along with plans will be submitted to Del DOT for approval of a Letter of No Objection.

- 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. John Fiori, Subdivision Manager. **Once the Letter of No Objection is approved, a Construction Stage Fee Calculation Form along with the required plans will be submitted for approval.**

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 Broadkill 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 (such as BMPs) that enable realization of the water quality standards that support said use goals. **Will Comply.**

### **Water Supply**

- The project information sheets state that an individual on-site well(s) will be used to provide water for the proposed project. DNREC records indicate that the project is not located in an area where public water service is available. Should an on-site Public/Miscellaneous Public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area, furthermore, it must also be located at least 150 feet from the outermost boundaries of the project. 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 current Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing each and every 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. **The property is located in an area where Artesian Water Company may be servicing other projects now or in the future. If necessary, this property will enter into an agreement with Artesian Water Company and follow all the necessary steps to tie into a centralized water system that will service this property.**

#### **Sediment and Stormwater Program**

- The Drainage Program recognizes this application is for a rezoning only. However, with the change in use it is unclear how much area will be disturbed on this site therefore a detailed sediment and stormwater plan may be required prior to any land disturbing activity taking place on the site. Contact the Sussex Conservation District 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 Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees (Delaware Code, Title 7, Chapter 40; Delaware Regulations, Administrative Code, Title 7, 5101). **Will Comply.**

#### **Tank Management Branch.** Please be aware:

- 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 is one (1) UST facility directly adjacent to the project site:
  - Arthur S Han & Louise V Han, Facility: 5-000633, No LUST project
- There are no additional LUST projects located within a quarter mile of the project site.

**NOTED.**

- 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.”

**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 these suggestions can benefit the project.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- The developer should also consider providing sufficient landscaping along the borders of the parcel to block any adverse visual and noise effects on these historic properties as well.

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

**Additional information on TMDLs**

- A Pollution Control Strategy (PCS) is an implementation strategy that identifies the actions (i.e., regulatory and nonregulatory) necessary to systematically reduce the pollutant loading to a given water body; ultimately leading to the attainment of the obligatory TMDL pollutant load reduction requirements specified for that water body. **However, the PCS for the Broadkill watershed has not been formally completed to date.** In absence of a finalized PCS, the applicant is strongly urged to reduce nutrient and bacterial pollutants through voluntary commitment to the implementation of the following recommended BMPs: **NOTED.**
  - The applicant should establish native tree and native herbaceous plantings wherever possible. **NOTED.**
  - The applicant should calculate post-construction surface imperviousness with all forms of created (or constructed) surface imperviousness (e.g., rooftops, driveways,

parking lots, sidewalks, open-water storm water management structures, and roads) included in the calculation. It is strongly recommended that the applicant implement best management practices (BMPs) that reduce or mitigate some of its most likely adverse impacts. Reducing the amount of surface imperviousness via the application/use of pervious paving materials (“pervious pavers”) in lieu of asphalt or concrete in conjunction with an increase in forest cover preservation (or the reestablishment of forest cover acreage) – are examples of some practical BMPs that could easily be implemented to help reduce surface imperviousness. NOTED.

- Consider constructing a rain garden(s) and green-technology storm water management structure(s) (in lieu of open-water management structures) as additional BMPs to mitigate or reduce nutrient and bacterial pollutant runoff from impervious surfaces. NOTED.
- The applicant should voluntarily assess nutrient and bacterial pollutant loading at the preliminary project design phase. To this end, the Watershed Assessment Section has developed a methodology known as the “Nutrient Load Assessment protocol.” The protocol is a tool used to assess changes in nutrient loading (e.g., nitrogen and phosphorus) that result from the conversion of individual or combined land parcels to a different land use(s), while providing applicants with quantitative information about their project’s impact(s) on baseline water quality. We strongly encourage the applicant/developer use this protocol to help them design and implement the most effective BMPs. Please contact Lyle Jones at 302-739-9939 for more information on the protocol. NOTED.

**Additional information on tank management.**

- When contamination is encountered, PVC pipe materials should be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.
- If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the TMB. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMB.
- Should the municipality anticipate being more restrictive than Delaware’s Regulations Governing Underground Storage Tank Systems or Delaware’s Regulations Governing Aboveground Storage Tanks, please be aware that the municipality shall be responsible for enforcing the more restrictive rules. NOTED.

Sussex County Engineering – Contact: Rob Davis (302) 855-7820

- The project is within the boundary of the Cedar Neck Expansion Area and connection to the sewer system is mandatory. Sewer design capacity was based on residentially zoned

parcels. The proposed project will exceed sewer system design and planning study assumptions and sewer capacity cannot be assumed. More information is needed in order to make a capacity determination. The developer may be required to undertake or participate in downstream sewer upgrades in order to accommodate the proposed use. **This project is NOT within the boundary of the Cedar Neck Expansion Area. The property is located approximately 3,300-feet west of the West Rehoboth Expansion District boundary line. Onsite Wastewater Disposal System is currently being used for the existing site.**

Each parcel is served with a 6-inch lateral along the parcel's eastern boundary line. 6-inch laterals are not be adequate for the propose use and upgrades are required. A sewer concept plan must be submitted for review and approval prior to any sewer construction. **This note does not pertain to the subject property.**

**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

**Thank you for the opportunity to provide a response to your comments. If our application for rezoning is successful and the applicant decides to move forward with additional plans for the property, the comments provided from the PLUS meeting will certainly be used in the planning of the property.**

Sincerely,

**Pennoni Associates Inc.**



**Mark H. Davidson  
Principal Consultant**

Pc: Sussex County Planning & Zoning