

**Preliminary Land Use Service (PLUS)
Comprehensive Plan Amendments and Municipal Ordinances**

Delaware State Planning Coordination
122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-6958

Name of Municipality:	
Address:	Contact Person:
	Phone Number:
	Fax Number:
	E-mail Address:

Date of Most Recently Certified Comprehensive Plan: _____

Application Type:

Comprehensive Plan Amendment: _____

Ordinance: _____

Other: _____

Comprehensive Plan Amendment or Municipal Ordinance prepared by:	
Address:	Contact Person:
	Phone Number:
	Fax Number:
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Maps Prepared by:	
Address:	Contact Person:
	Phone Number:
	Fax Number:
	E-mail Address:

Preliminary Land Use Service (PLUS)
Comprehensive Plan Amendments and Municipal Ordinances

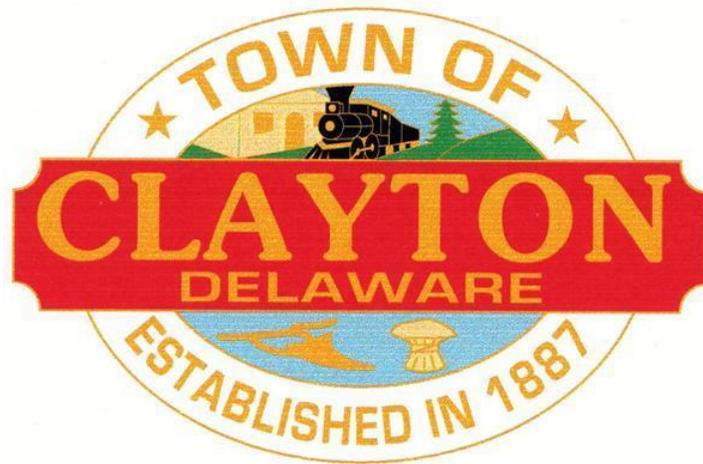
Delaware State Planning Coordination

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Please describe the submission:

TOWN OF CLAYTON

*2014 Amendment
to the
2008 Comprehensive Plan*



Adopted

[INSERT DATE]

PLUS REVIEW DRAFT — 06/08/2015

PLACEHOLDER FOR

ORDINANCE ADOPTING PLAN AMENDMENT

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TOWN OFFICIALS AND STAFF

Elected and Appointed Officials

Town Council

William Carrow II
Mary Ellen DeBenedictis
Alex Dias
Brian Fletcher
David Letterman

Planning & Zoning Committee

Tom Watts, Chairperson
Bill Brockenbrough
Tom Ruppert
Eddy Seger
Wayne Stover

Town Attorney

Scott E. Chambers, Esq.

Town Staff

Administration

Sue Muncey, Office Manager
Tiffany Adams, Municipal Clerk
Melissa Knight, Municipal Clerk

Public Safety

Brian Hill, Chief of Police
Chris Letterman, Administrative Assistant

Public Works

Jeffrey A. Hurlock, Town Foreman
Gary Faulkner, Manager
David Ross, Lead Technician
Gary Everage, Technician
Roland Timmons, Mechanic/Technician

COUNTY AND STATE OFFICIALS

Kent County

Levy Court

P. Brooks Banta, President, 1st District
Bradley S. Eaby, 2nd District
Allan F. Angel, Vice President, 3rd District
Eric L. Buckson, 4th District
G. Jody Sweeney, 5th District
Glen M. Howell, 6th District
Terry L. Pepper, At-Large

County Administrator

Michael J. Petit de Mange

Planning Services Department

Sarah E. Keifer, AICP, Director

New Castle County

County Executive

Thomas P. Gordon

County Council

Chris Bullock, Council President
Joseph Reda, 1st District
Robert S. Weiner, 2nd District
Janet Kilpatrick, 3rd District
Penrose Hollins, 4th District
Lisa Diller, 5th District
William E. Powers, 6th District
George Smiley, 7th District
John J. Cartier, 8th District
Timothy P. Sheldon, 9th District
Jea P. Street, 10th District
David L. Tackett, 11th District
Bill Bell, 12th District

Chief Administrative Officer

David Grimaldi

Land Use Department

Eileen P. Fogerty, General Manager
George O. Haggerty, Jr., Assistant General Manager
James Smith, Assistant General Manager

State of Delaware

Governor

Jack A. Markell

Senate

Bruce C. Ennis,, Senator, District 14
David G. Lawson, District 15

House of Representatives

Jeffrey N. Spiegelman, District 11
William J. Carson, Jr., Representative, District 28
W. Charles Paradee, District 29

Office of State Planning Coordination

Constance C. Holland, AICP, Director

INSTITUTE FOR PUBLIC ADMINISTRATION

This Plan Amendment was prepared by the Town of Clayton Planning and Zoning Committee with assistance from the Institute for Public Administration (IPA), a unit within the University of Delaware's School of Public Policy & Administration. IPA links the research and resources of the University of Delaware with the management and information needs of local, state, and regional governments in the Delaware Valley. IPA provides assistance to agencies and local governments through direct staff assistance and research projects as well as training programs and policy forums.

Institute Director

Jerome R. Lewis, Ph.D.

Clayton Plan Amendment Team

Linda Raab, AICP, Project Manager

Nicole Minni, GISP, Mapping and GIS Support

Martin Wollaston, Planning Services Manager

INTRODUCTION

Title 22, Section 702(e) of the *Delaware Code* requires that:

At least every 5 years a municipality shall review its adopted comprehensive plan to determine if its provisions are still relevant given changing conditions in the municipality or in the surrounding areas. The adopted comprehensive plan shall be revised, updated and amended as necessary, and re-adopted at least every 10 years ...

On December 8, 2008 the Town of Clayton adopted a complete update to its comprehensive plan which was certified by the governor on January 7, 2009. Accordingly, Clayton is required at this time to determine whether the 2008 Plan is relevant and sufficient to guide the Town for the next five years. In 2018, the Town must undertake a complete assessment of the plan that would include reviewing visions and goals, data analysis (especially the population projection) based on current statistics, updating the existing land use map and the status of development activity, re-examining future land use within town and in areas identified for annexation.

The Town of Clayton has determined that, for the most part, the 2008 Plan is relevant and sufficient to guide the Town until 2018. The Town has also decided that the 2008 Plan be amended to reflect:

1. Deletions and revisions to future land use and areas recommended for annexation.
2. Adoption of source-water areas protection regulations.
3. Adoption of official town boundaries.
4. Designation of a Downtown Development District.

The *Town of Clayton Comprehensive Plan*, adopted December 8, 2008 and certified by the governor on January 7, 2009 continues as Clayton's official comprehensive plan except where additions, deletions, and revisions are adopted in this Plan Amendment. It is intended that the two documents be read together, with the revisions in this Plan Amendment superseding the maps and text in the 2008 Plan.

PLAN-AMENDMENT PROCESS

This section describes the Plan Amendment adoption process. It includes plan preparation by the Planning & Zoning Committee as required by state law, state review under the Preliminary Land Use Service (PLUS), local public outreach, and Town Council adoption.

Planning & Zoning Committee Review and Recommendation

Title 22, Section 702(a) of the *Delaware Code* assigns responsibility for the preparation of comprehensive plans to planning commissions. Section 6.2-3.1 of the *Clayton Zoning Ordinance*, charges the planning and zoning committee with this responsibility.

On February 26, 2014, the Planning and Zoning Committee met to kick-off preparation of this Plan Amendment. The meeting began with a review of the process for preparation of, recommendation to the Town Council on, state review of, and adoption of this Plan Amendment and the subsequent rezoning required by state law. Committee members then discussed the issues tied to plan review including boundary review and adoption of a source water protection ordinance map.

At the meeting of March 26, 2014, committee members reviewed the 2008 Plan. They concluded that the plan is still relevant and will guide growth and development in Clayton for the next five years. They recommended preparation of a plan amendment document that includes:

1. A source water areas protection map as required by Title 7, Chapter 60, Section 6082(b).
2. An updated Future Land Use Map (Map 7 in 2008 Plan) that:
 - a. Reflects Clayton's town boundary.
 - b. Depicts the Town's future land uses adopted in the 2008 Plan on a current parcel map.
 - c. Does not change the future land use for any parcel within the town boundaries.
3. Removes the Wright and People's tracts on the future land use map and references to annexation of these parcels from the text of the plan.

On April 22, 2015, the Planning & Zoning Committee held a meeting to review a draft of this Plan Amendment. The draft included the items recommended at the March 26, 2014 meeting. It also included a number of additional items that surfaced between the two meetings including the application for Downtown Development District designation. It further included a proposed zoning map showing the zoning districts that would be consistent with the land use map in this Plan Amendment.

The Committee met on May 27, 2015 to seek public input on and review this Plan Amendment prior to making a recommendation to the Town Council. Two members from the public and a Town Council member were at this meeting. Following a discussion, the committee reviewed and recommended a draft Plan Amendment document to the Town Council.

State Review

Title 29, Section 9203 of the *Delaware Code* requires that the state review and comment on county and municipal comprehensive plans, including amendments to plans. Known as the Preliminary Land Use Service (PLUS), the process involves review and comment from state departments and agencies. The Office of State Planning Coordination (OSPC) organizes the review and comment process.

On [INSERT DATE], OSPC and the state agencies involved in the PLUS process reviewed this Plan Amendment. In a letter dated [INSERT DATE], the OSPC provided comments.

Town Council Review and Adoption

[INSERT DESCRIPTION OF ADDITIONAL PUBLIC WORKSHOPS AND/OR HEARINGS]

On [INSERT DATE], the Town Council adopted this Plan Amendment.

SUMMARY OF PLAN CHANGES

This section summarizes the changes made in this Plan Amendment. The section titled “Plan Changes by Chapter” shows how these changes are incorporated into the 2008 Plan document.

Source Water

Title 7, Chapter 60, Subtitle VI, Section 6082 of the *Delaware Code* requires counties and municipalities with populations greater than 2,000, as determined by the most-recent census, to implement measures to protect sources of public drinking water within its boundaries. Title 7 also requires that maps depicting wellhead protection and excellent ground water recharge potential areas be adopted in comprehensive plans.

Since the 2010 census indicated that Clayton’s population exceeds 2,000 persons, the Town is required to adopt source water areas protection legislation. The Town Council adopted a source-water protection ordinance on [INSERT DATE]. This ordinance includes not only appropriate amendments to the text of the zoning and subdivision ordinances, but also a map depicting wellhead protection areas and excellent groundwater recharge potential areas. In accordance with Title 7, this Plan Amendment includes the map depicting source water protection areas adopted on [INSERT DATE].

Floodplain Management

On May 5, 2014, Clayton adopted a floodplain management ordinance to replace the 1998 floodplain regulations. Appropriate sections of the 2008 Plan are revised to reflect these changes

Boundary Recordation

For the past several years, the Office of State Planning Coordination has encouraged municipalities to record their official boundaries with the Recorder of Deeds in their respective counties. The purpose for this is to clear up confusion and provide official repositories for official municipal boundaries.

On August 11, 2014, the Clayton Town Council adopted an ordinance establishing an official map depicting the town boundaries. The ordinance and map was recorded on September 2, 2014 with the Kent County Recorder of Deeds and on August 25, 2014 with the New Castle County Recorder of Deeds. This boundary is reflected on each map included in this Plan Amendment.

Downtown Development District

On November 1, 2014, Clayton submitted an application for designation as a Downtown Development District. Established on June 5, 2014, when Governor Markell signed Senate Bill 191, the Downtown Development Districts Act authorizes the creation of a small number of districts throughout the state that will qualify for development grants and other state incentives. Although Clayton was not named a District, its application will remain on file until 2018. This Plan Amendment incorporates the district boundaries, goals, and priority projects into Clayton’s comprehensive plan and makes recommendations for consideration that could strengthen Clayton’s chances for winning District designation.

Land Use

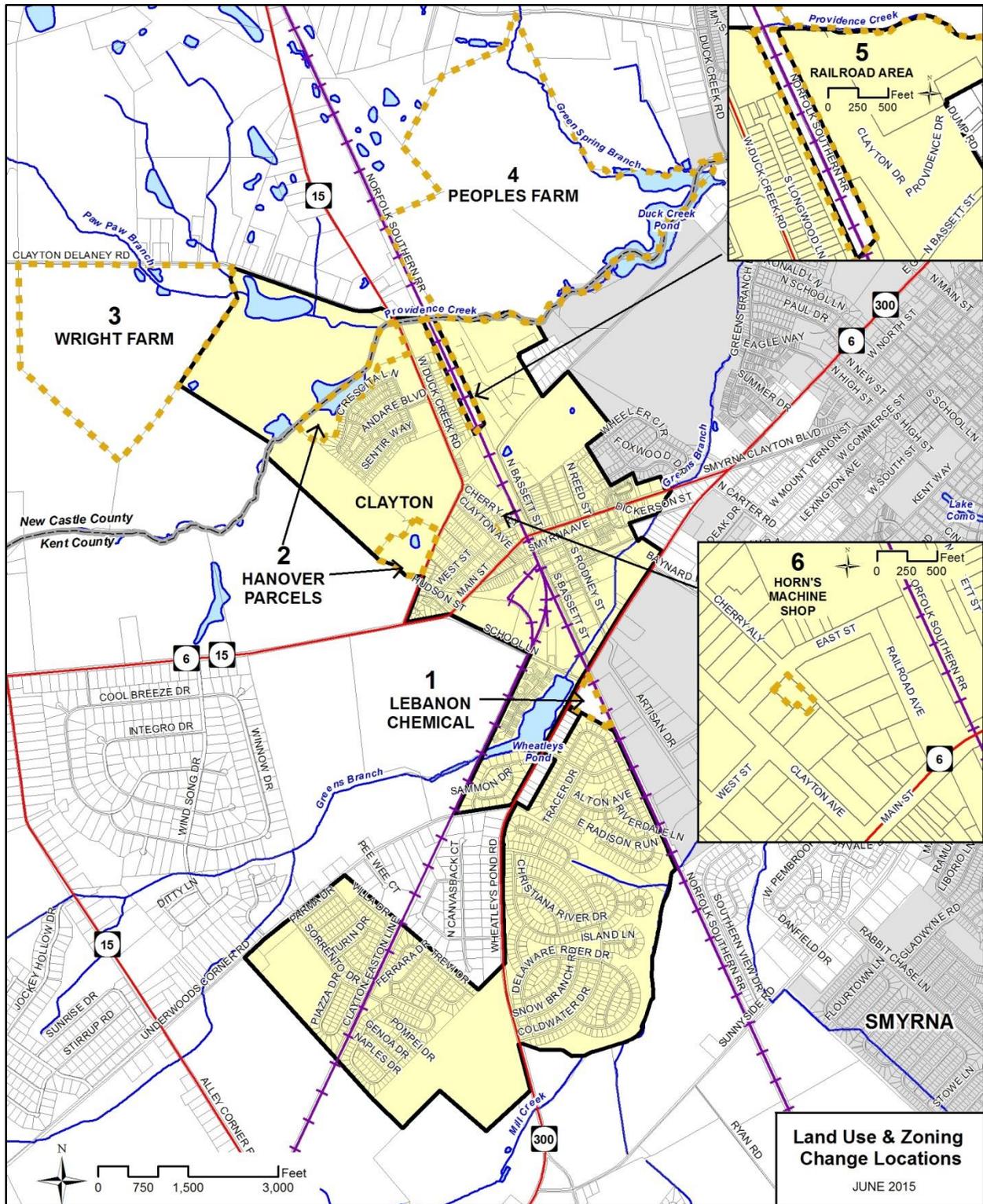
Current Land Use. In conjunction with the application for Downtown Development District designation, a land use survey was conducted in Clayton’s town center. Building on this survey, a new current land use map is included in this Plan Amendment.

Future Land Use. This Plan Amendment also includes a thorough review of the future land uses within Clayton’s town boundary and proposed annexation areas depicted on Map 7 of the 2008 Plan. Table 1 lists each parcel whose land use is changed in this Plan Amendment and documents the basis for each change. The map on the following page depicts their locations.

Table 1. Summary of Proposed Land Use, Zoning, and Annexation Area Changes

Map Ref	AREA NAME Parcel ID(s) Property Location Area, State Strategies Level	Proposed Changes, Additions, Deletions	Basis for Changes, Additions, Deletions
1	LEBANON CHEMICAL 3-00-01800-01-1300-00001 4474 Wheatley's Pond Rd 5.8 Acres, Level 2	Current Land Use — Industrial Future Land Use Change from Residential to Commercial Zoning if Annexed C-1 (Neighborhood Commercial) or C-2 (General Commercial)	<ul style="list-style-type: none"> Fertilizer production plant whose operations ceased Legal, nonconforming status lost Not permitted in Kent County IL (Light Industrial) Zone Identifies additional land for commercial to serve communities west of railroad
2	HANOVER PARCELS 3-04-00918-03-1300, 3-04-01806-01-6503 St. Joseph tract 21.7 & 12.7 Acres, Level 2	Current Land Use — Vacant Future Land Use Change from Residential to Open Space Zoning Change from RS (Residential Suburban) to OS (Open Space)	Limited development options because of environmental concerns including floodplain, wetlands, water bodies, and source water protection areas
3	WRIGHT (NEWBERG) FARM 1502600026 890 Clayton-Delaney Rd 200 acres, Level 3	Delete from Plan	Parcel in Agricultural Preservation District until 2024
4	PEOPLES FARM 1502700005, 1502700038 East side of railroad north of the Paw Paw Branch 343 acres, Level 4	Delete from Plan	Preservation of Peoples Farm no longer tied to development of Wright (Newberg) Farm
5	RAILROAD AREA 1-00-00900-01-1700, 3-00-00900-01-0200 Both sides of railroad between Longwood Lane and Clayton Courts Mobile 20 acres, Levels 1 & 2	Reconfirms Inclusion in annexation area Future Land Use Railroad Zoning if Annexed RR (Railroad)	Reconfiguration of both parcels during boundary review by Kent County mapping staff
6	HORN'S MACHINE SHOP 3-04-01806-02-4700 404 East St 5,227 square feet, Level 1	Current Land Use — Industrial Future Land Use Change from Residential to Town Center Zoning Change from R (1-Family & Townhouse) to TC (Town Center)	<ul style="list-style-type: none"> Structure on property vacant Current use nonconforming More opportunities for legal re-use in TC Zone that would be more compatible with surrounding area than would industrial uses

Town of Clayton 2014 Amendment to the 2008 Comprehensive Plan



PLAN CHANGES BY CHAPTER

This section of the Plan Amendment documents the amendments to the Clayton's 2008 Plan. As pointed out earlier, these amendments are to be read in conjunction with the 2008 Plan, and the changes, additions, deletions, and revisions in this section supersede the 2008 Plan.

Chapter 1. Introduction

NO CHANGES.

Chapter 2. Background

NO CHANGES.

Chapter 3. Planning Environment

NO TEXT CHANGES. SEE UPDATED STATE STRATEGIES MAP IN APPENDIX.

Chapter 4. Environmental Resources

4-1d. Source-Water Protection Areas

DELETE FROM CHAPTER 4; RE-WRITTEN AND RELOCATED TO CHAPTER 8; SOURCE WATER PROTECTION AREAS DELETED FROM "MAP 3 ENVIRONMENTAL FEATURES" AND PLACED IN A SEPARATE SOURCE WATER PROTECTION AREAS" MAP.

4-1e. Floodplains

REPLACE WITH THE FOLLOWING ON PAGE 22.

4-1d. Flood-Prone Areas

The "Environmental Resources 2014" map displays the boundaries of the flood hazard areas associated with the rivers and streams in the Clayton vicinity. As the map shows, the most extensive flood-prone areas in and around Clayton are along Providence Creek, which forms the border between Kent and New Castle Counties. There are also flood-prone areas along Greens Branch and Mill Creek.

4-1f. Wetlands

RENUMBER TO 4-1E; NO FURTHER TEXT CHANGES

Chapter 5. Historic Resources

NO CHANGES.

Chapter 6. Economic and Community Development

6-1f. Clayton Employment Base

Agri-Businesses

DELETE ROYSTER-CLARK FROM THE LIST OF AGRI-BUSINESS AT THE BOTTOM OF PAGE 28.

ADD THE FOLLOWING NEW SUBSECTION AT THE BOTTOM OF PAGE 31.

6-2c. Downtown Development District

On June 5, 2014, Governor Markell signed Senate Bill 191, the Downtown Development Districts Act. This Act authorizes the creation of a small number of districts throughout the state that will qualify for development grants and other state incentives. As outlined in Section 2.0 of the authorizing legislation, the purposes of the Downtown Development District Act are:

- To spur private capital investment in commercial business districts and surrounding neighborhoods;
- To stimulate job growth and improve the commercial vitality of such districts and neighborhoods;
- To help build a stable community of long-term residents in such districts and neighborhoods by improving housing opportunities for persons of all incomes and backgrounds; increasing homeownership rates; building a diverse array of successful businesses; and reducing the number of vacant houses; and
- To help strengthen neighborhoods, while harnessing the attraction that vibrant downtowns hold for talented young people, innovative small businesses, and residents from all walks of life.

In January 2015, Downtown Development Districts were designated in Wilmington, Dover, and Seaford. Additional districts could be named as funding becomes available.

Application Details

Clayton's application for designation as a Downtown Development District was filed on November 1, 2014 and can be seen at <http://stateplanning.delaware.gov/ddd/applications/clayton-combined-master-application.pdf>. The map on the following page shows the boundaries of Clayton's proposed District and the location of two priority projects. The District consists of 24 acres and 96 properties centered on the Town's central business area and adjacent residential properties. Situated on both sides of Main Street between Bassett Street and Highland Avenue, the District is anchored on the east by Clayton's historic railroad station, and on the west by the Town offices and police station.

Clayton's priority projects are:

1. *305 Main Street (former Clements Supply)*. The initial phase of rehabilitation calls for converting the lower level of the building to a restaurant and small food market and improvements to the exterior of at least the first floor along Main Street. The subsequent phase will focus on conversion of the second level to either apartments or additional commercial and offices.
2. *300 Smyrna Avenue*. This project involves rehabilitation of a 1,000-square foot single-family home that has fallen into disrepair.

The redevelopment strategy outlined in the application includes the following goals:

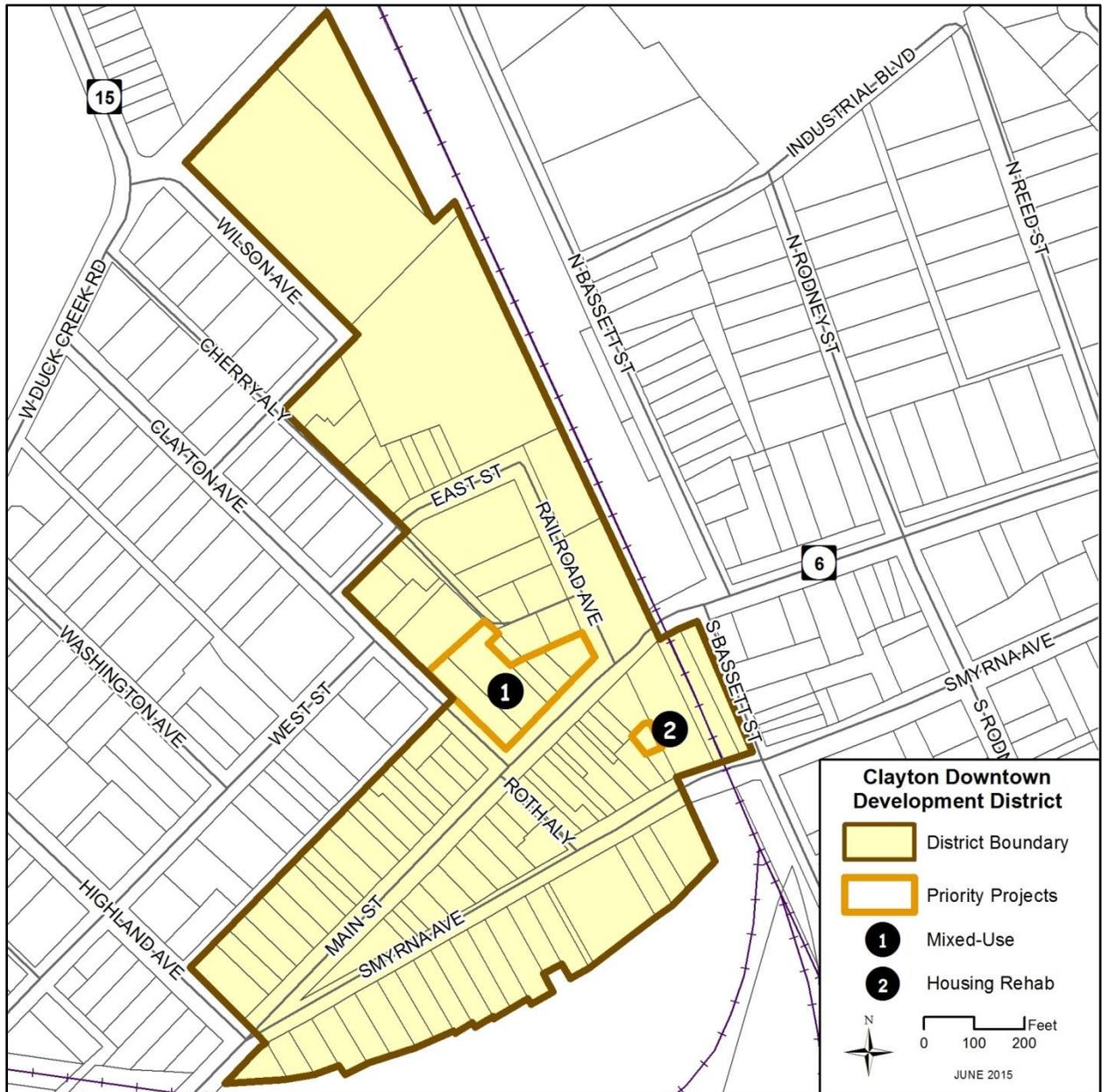
1. Achieve the comprehensive plan's vision of maintaining a small town center.
2. Promote a mix of uses in the proposed District.
3. Maintain existing housing stock.
4. Encourage property owners to undertake improvements that may have been postponed.
5. Encourage new business to come to Clayton's town center.
6. Keep existing business in Clayton.

Clayton’s application underscores the Town Center Zone as the most significant existing incentive for redevelopment in the proposed District. The regulations governing this zone provide for a wide variety of uses suitable for the downtown area of a small town. In this zone, property owners are not subject to minimum lot sizes and setbacks, maximum building coverages, or to provide off-street parking spaces.

Although Clayton was not designated as a Downtown Development District in the initial round of designations, the application will remain on file until 2018.

District Established

This Plan establishes the area shown on the map below as Clayton’s Downtown Development District



Accomplishments to Date

Since filing the application for District designation

- In March 2015, the Town Council established an Economic Development Committee whose members include two council members and three business owners in the town center.
- A building permit has been issued for 305 Main Street (former Clements Supply).
- Two housing projects have commenced as shown in the photos below.

300 & 301 Smyrna Avenue—October 30, 2014



300 & 301 Smyrna Avenue—May 27, 2015



Path Forward

This Plan Amendment recommends consideration of the following:

- Further documentation of the District’s issues and opportunities including crime statistics, housing conditions, structures with significant code violations, etc.
- Exploring mechanisms for providing additional local incentives that encourage business owners and residents in the Downtown Development District to make investments in their properties.
- Working with the Office of State Planning Coordination for additional input on strengthening Clayton’s Downtown Development District application.
- Complete analysis of the Town Center Zone, including review of permitted uses, conditions governing permitted uses, and processing times.

Chapter 7. Housing

NO CHANGES.

Chapter 8. Community Facilities and Services

ADD THE FOLLOWING NEW SUBSECTION AT BOTTOM OF PAGE 42.

8-3h. Source-Water Protection Areas

Source-water protection areas are wellhead-protection areas and excellent ground water recharge potential areas.

Wellhead-Protection Areas

A wellhead-protection area is the surface and subsurface area surrounding a water well that supplies a public water system through which contaminants are likely to reach the well. As the “Source Water Protection Areas 2014” map shows, there are three wellhead-protection areas in Clayton that provide the Town’s drinking water supply. In addition, there are two wellhead-protection areas located outside of Clayton whose boundaries extend to properties within Clayton’s corporate limits.

Excellent Ground Water Recharge Potential Areas

A recharge area is land on top of an aquifer. Precipitation falling on the land surface provides water that recharges aquifers. Ground water recharge potential areas are classified as excellent, good, fair, and poor according to how rapidly rain water filters through the ground to the underlying aquifer. Aquifers are layers of gravel and sand within which water is stored and moves underground. Maintaining good water quality in local aquifers is especially important because Clayton obtains drinking water from wells drilled into aquifers. Care must be taken when developing in recharge areas to ensure that precipitation does not carry contaminants downward to aquifers and that sufficient open area is preserved so that precipitation can recharge the aquifers beneath it.

As shown on the “Source Water Protection Areas 2014” map, there are three excellent-groundwater recharge potential areas within the town limits. Excellent groundwater recharge potential areas consist of predominantly sandy soils that allow precipitation to most rapidly infiltrate to the underlying aquifer. Good-, fair-, and-poor recharge areas have respectively slower infiltration rates.

Chapter 9. Transportation

NO CHANGES.

Chapter 10. Land Use Plan

REPLACE PAGES 58—60 AND THE FIRST THREE LINES OF PAGE 61 WITH THE FOLLOWING.

MOVE “RAILROAD AT PROVIDENCE CREEK” AT TOP OF PAGE 66.

SEE ALSO UPDATED MAPS DEPICTING CURRENT ZONING AND FUTURE LAND USE.

Chapter 10. Land Use Plan

This chapter consists of three sections. Section 10-1 describes Clayton’s existing land uses. Using the visions, goals, and recommendations formulated in this plan, Section 10-2 portrays Clayton’s desired

development pattern within its current boundaries. Section 10-3 presents Clayton’s growth and annexation program.

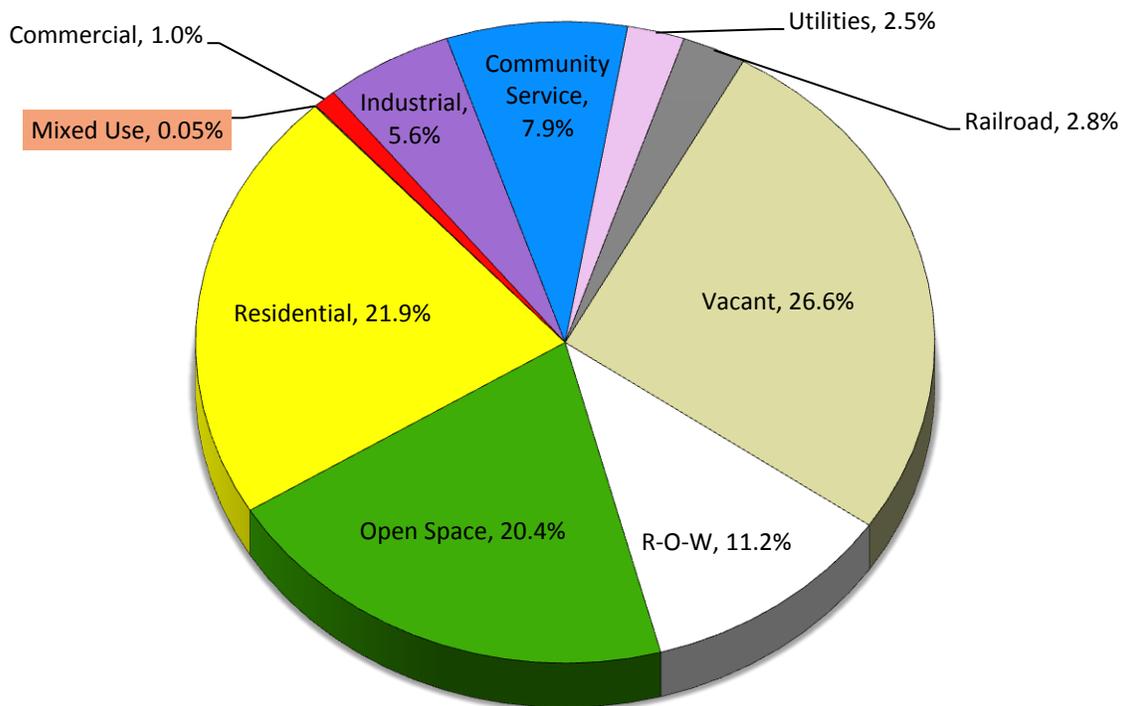
10-1. Current Land Use

This section describes Clayton’s existing land use distribution and summarizes the status of undeveloped and redeveloping land within the town boundary. The “Existing Land Use 2014” map in the Appendix depicts the Town’s existing development pattern by identifying the current land use for each parcel.

10-1a. Land Use Distribution

The chart below summarizes the distribution of land uses within the Town. As the chart shows, more than 25 percent of Clayton is vacant. This is the result of a series of annexations occurring between 2003 and 2005 totaling about 500 acres. The second most prevalent land use is residential, accounting for more than 20 percent of Clayton’s developed land, but this percentage could top 50 percent when undeveloped areas reach buildout. Although open space is the third most prevalent use, most open space is located on the New Castle County portion of the Hanover Foods property. The fourth most prevalent land use is community services which include Clayton Elementary School, Providence Creek Academy, First State Military Academy, the Clayton town offices and police station, and the Clayton Fire Department.

Clayton Land Use Distribution, December 2014



Compiled by IPA, December 2014.

10-1b. Current Land Use Highlights

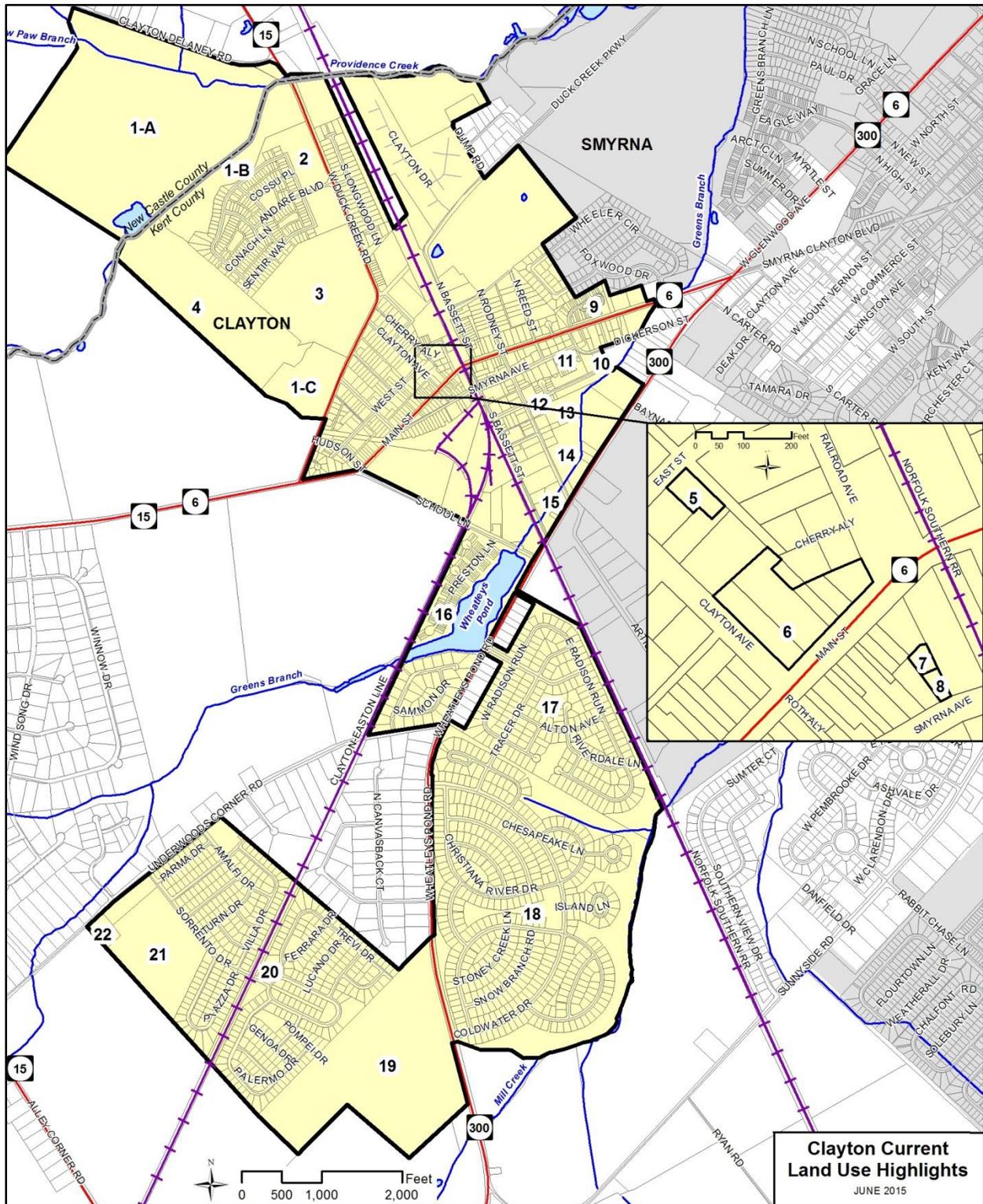
Table 2 below shows the status of developing, redeveloping, and undeveloped land within Clayton’s town boundary, and the map below depicts their locations.

Table 2. Developing, Redeveloping, and Undeveloped Land, May 2015

Map Ref	Name	Current Zoning	Status
1-A	Hanover Foods—New Castle	OS	Zoned OS (open space), development not permitted
1-B	Hanover Foods—Kent	RS	Limited development options because of flood hazard area and wetlands Proposed for change to OS Zone
1-C	Hanover Foods—Kent	RS	Limited development options because of small pond and is in an excellent groundwater recharge potential area which is partially overlain by a wellhead protection area Proposed for change to OS Zone
2	The Ovations	RS	Recorded for 200 semi-detached homes and townhomes, construction not started
3	First State Military Academy	RS	Scheduled opening, August 2015 for grades 9 and 10; will occupy old St. Joseph School structures
4	Providence Creek Academy	RS	Relocated from old St. Joseph School structures, now servings 688 students in kindergarten-eighth grade
5	Horn’s Machine Shop	R	Abandoned nonconforming use under new ownership Proposed for change to TC Zone
6	Clements Supply	TC	Downtown Development District priority redevelopment project, building permit issued
7	300 Smyrna Ave	TC	Downtown Development District priority project undergoing rehabilitation
8	301 Smyrna Ave	TC	Structure demolished by Habitat for Humanity; new home to be constructed
9	Grain Mill Station	R	34 townhomes approved; construction not started
10	Johnson	R	No known plans
11	Liberty Knoll	R	Buildout completed
12	Liberty Knoll Phase II	R	Recorded for 21 townhomes
13	Budd	R	No known plans
14	Railroad Square	R-1	Rezoned from R to R-1 on 10/08/2007; development plans unknown
15	Catts	C-2	No known plans
16	Wheatley’s Pond Townhouses	R	90 townhomes approved, 84 completed
17	Huntington Mills	RS	172 single-family homes built, 27 undeveloped
18	Providence Crossing	RS	260 single-family homes built or under construction, 157 undeveloped
19	Green Gable Farm	R	No known plans
20	Old Country Farm	R	412 single-family homes approved; 15 completed
21	Clayton Middle School	R	Opened September 2012
22	Water Tower	R	Completed

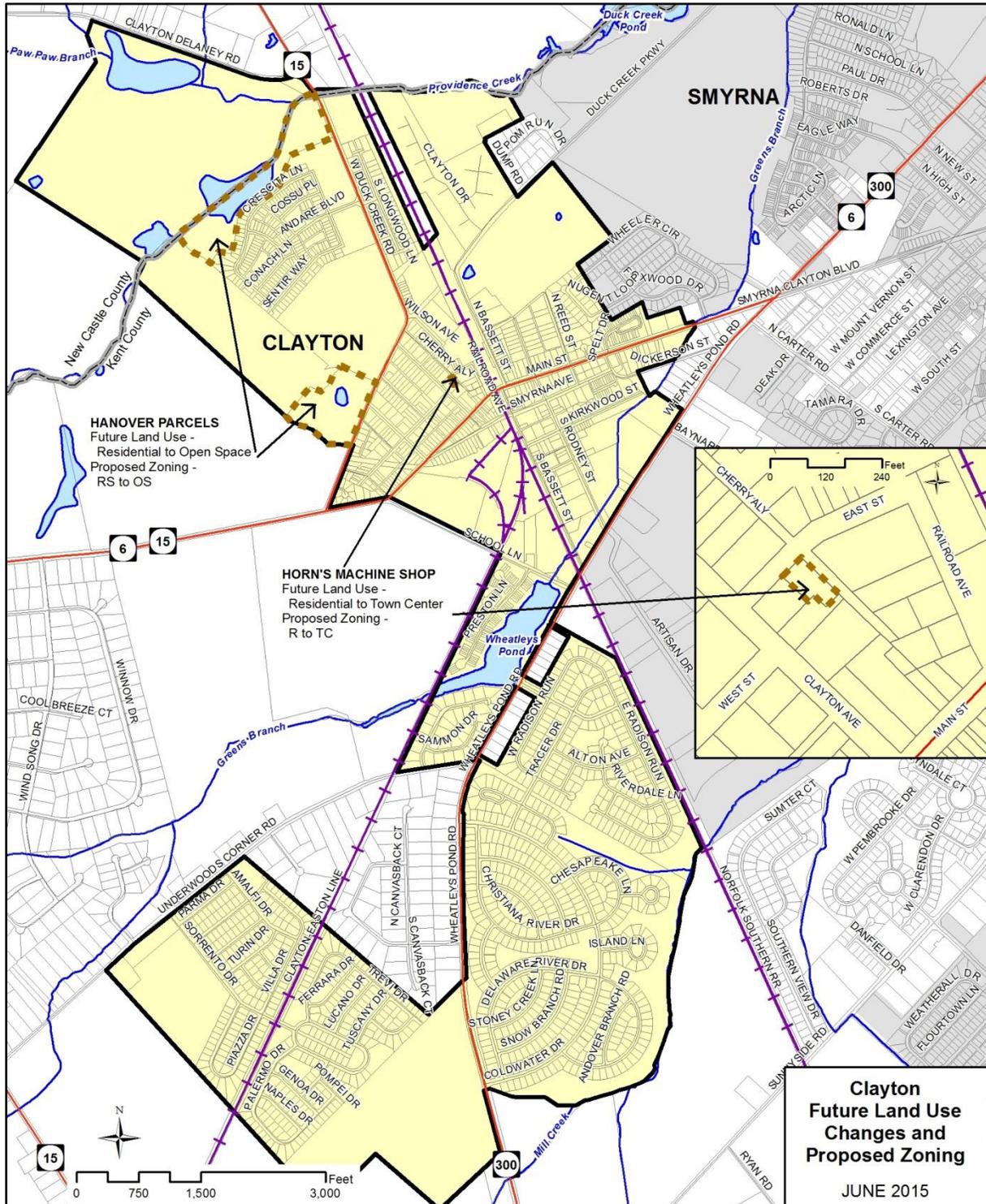
Sources: Town of Clayton sewer connection and occupancy certificate data; Delaware Environmental Monitoring and Analysis Center (DEMAC) Web Service, 2013 aerial map; land use survey in town center by IPA and Town of Clayton 10/03/2014.

Town of Clayton 2014 Amendment to the 2008 Comprehensive Plan



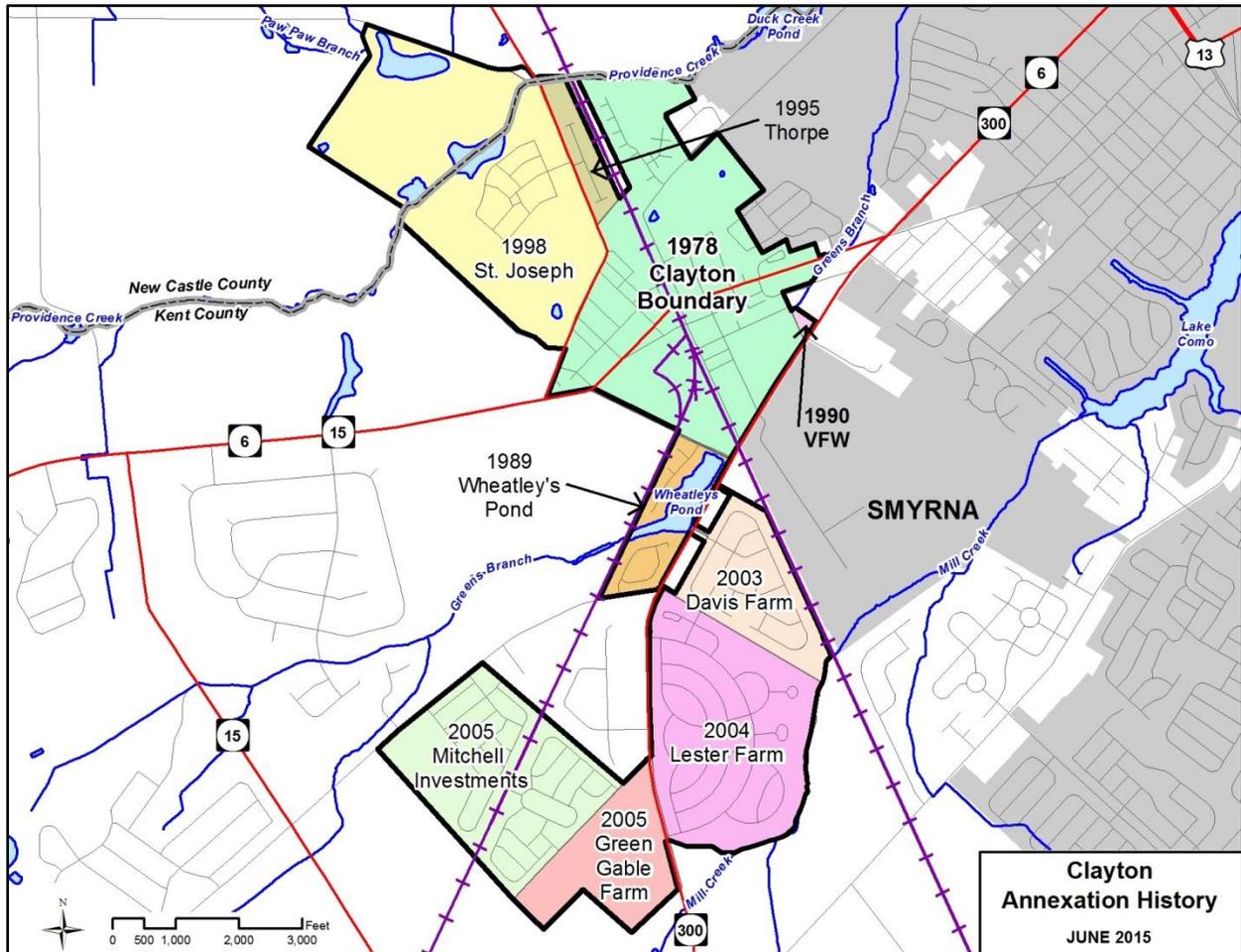
10-2. Future Land Use in Town

The map titled “Future Land Use 2014” in the Appendix depicts the land use pattern that will guide the Town’s development decisions and form the basis for the comprehensive rezoning that must follow the adoption of this Plan Amendment. The map below shows the parcels whose future land use is changed and the zoning districts that would reflect the land use changes. Except for the changes depicted in the map below, the Town’s future land uses are the same as those in the 2008 Plan update.



10-3. Growth and Annexation

The map below charts Clayton’s annexation history from 1978 to the Town’s most recent annexation in 2005. As the map shows, the directions in which Clayton can annex are somewhat limited. A number of small parcels, “sandwiched” between Clayton and Smyrna in Kent County, constrain eastward growth. SR 300 and the railroad limit growth to the southeast, because the land on the south side of SR 300 is either part of the Town of Smyrna, or would constitute more logical extensions of Smyrna’s town limits than Clayton’s boundaries.



The most feasible area for Clayton’s growth is west of its current boundaries, along SR 6 and Wheatley’s Pond Road (SR 300) west of the railroad. Annexation of Wheatley’s Pond, Huntington Mills (Davis Farm), Providence Crossing (Lester Farm), Old Country Farm (Mitchell Investments), and the Green Gable Farm indicates that Clayton has already charted expansion in this direction. Growth in a westerly direction not only would unite “Clayton West” with the heart of Clayton, but also would create a logical area for the provision of public services.

10-3a. Annexation Criteria

An important factor to consider when identifying properties for annexation is the economic feasibility of providing public services. Clayton should give top priority to areas where the Town currently provides services and high priority to areas where public services can be extended easily and economically.

The economic feasibility of service extension is especially important with regard to water and sewer service. Clayton's Subdivision Ordinance requires that every property within the town limits be connected to public water and sewer. To secure sewer service to Providence Crossing, Huntington Mills, and Old Country Farm, Clayton has joined forces with Kent County and the Town of Smyrna to direct sewage to a lift station near Lake Como. Regarding water service, the Town has partnered with Artesian Water Company to construct a well and a storage tower in the Old Country Farm subdivision. Artesian supplies water service to the Wind Song subdivision, located west of Clayton at the southeast quadrant of SR 6/15 and Alley Corner Road.

When considering annexation of a developed area, Clayton also must evaluate the condition of the area's existing infrastructure. In some cases, the costs of bringing roads, street lighting, and stormwater-management facilities into compliance with Clayton's standards may exceed the revenues and other benefits of annexation.

Another factor is plans and policies of other levels of government, relevant state and county agencies, and school districts. High priority must be given to the state investment strategies because they indicate where the state is most likely to allocate its resources. Serious consideration must also be given to Kent County's growth area which depicts the area where the county intends to provide utilities and services. Yet another consideration is Delaware's Farmland Preservation Program which identifies areas earmarked for agriculture.

Review of any annexation petition should include a fiscal-impact analysis of the proposed development plan. This analysis should include an estimate of the revenues that the proposed development would generate to the Town. It should also include an estimate of the costs of bringing existing infrastructure into compliance with town standards, as well as the costs of providing on-going town services to the area proposed for annexation.

10-3b. Areas Recommended for Annexation

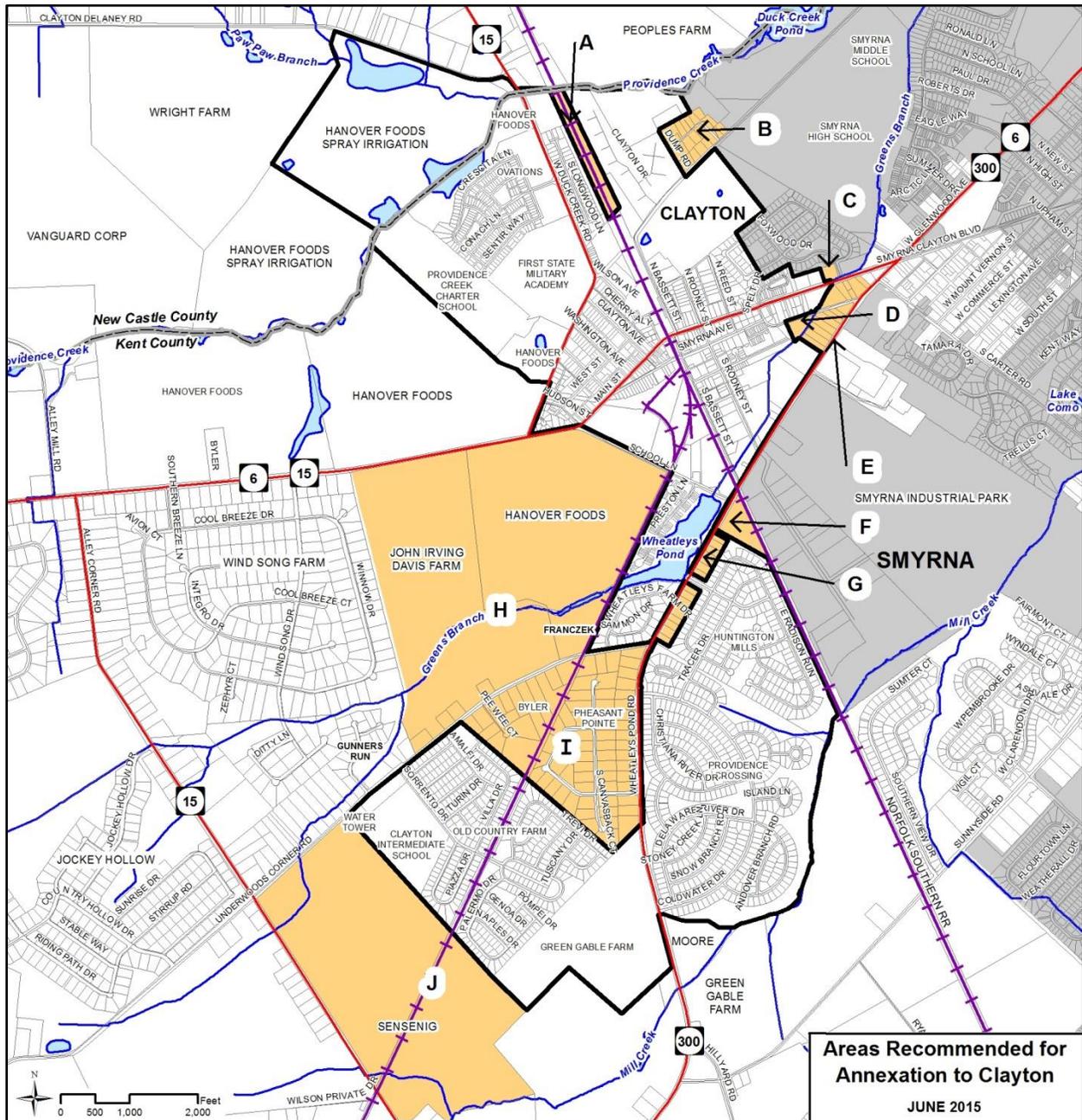
Section 1.3 of Clayton's charter states that:

"If and when two-thirds (2/3) of the property owners in unincorporated territory contiguous to the Town of Clayton shall sign a petition seeking to have the area in which said property owners reside annexed to the Town of Clayton and submit the petition together with a survey of the area proposed for annexation to the Town of Clayton"...

The charter goes on to outline the procedures for annexation. Title 22, Section 101(2) of the *Delaware Code* clarifies that "contiguous" means that some part of a parcel proposed for annexation must touch the boundaries of the annexing municipality and roads or rights-of-way cannot be used to create "corridor" annexations.

Drawing on the annexation criteria outlined above, this section identifies and discusses areas suitable for annexation. The map on the following page depicts the location of each area. As Clayton's charter states, Clayton may consider annexing only when property owners request annexation.

Recommendation for annexation in this plan does not mean that a property automatically becomes part of Clayton, nor does it authorize Clayton to take unilateral action to annex it.



Railroad at Providence Creek

Future Land Use Map Reference—A

Number of Parcels	1
Acreage	7.4
Current Land Use	Delmarva Secondary Rail Right-of-Way
State Investment Strategy Level	1, 2, and 3
In Kent County Growth Zone?	Partially
Kent County Plan Future Land Use	Industrial
Clayton Plan Future Land Use	Railroad

This parcel is recommended for annexation because it is surrounded on three sides by property in the Town of Clayton.

Lebanon Chemical Corporation Property

Future Land Use Map Reference—F

Number of Parcels	1
Acreage	6.0
Current Land Use	Abandoned Fertilizer Processing Plant
State Investment Strategy Level	2
In Kent County Growth Zone?	Yes
Kent County Plan Future Land Use	Industrial
Clayton Plan Future Land Use	Commercial

This property is zoned IL (Light Industrial), and was used as an agricultural fertilizer production plant which ceased operations several years ago. A review of the Kent County Zoning Ordinance indicates that a fertilizer processing plant is not allowed in the IL zone. Thus, this use has lost its legal, nonconforming status, and fertilizer production cannot resume.

It is logical to include this property within Clayton because of its location between the Huntington Mills subdivision and the railroad, which divides Clayton from Smyrna. Delmarva Power supplies electricity to the property, and Clayton can easily provide water and sewer if requested.

Commercial land use is recommended for this parcel because it provides another opportunity for neighborhood retail and/or offices to serve the residential communities west of the railroad. Review of any development plan for this parcel should consider the following:

- Soil contamination that might have resulted from chemical processing operations.
- Allowing one access point located a safe distance from the railroad crossing
- Ensuring compatibility with homes in adjacent Huntington Mills and residential properties fronting on Wheatley’s Pond Road. This could be accomplished by placing new structures close to the railroad away from homes. Another way to minimize adverse effects might be to work with a developer to install plantings and fencing along the border with Huntington Mills.

Chapter 11. Implementation

REPLACE SECTIONS 11-1 AND 11-2 ON PAGES 67 AND 68 WITH THE FOLLOWING.

Chapter 11 Implementation

The Comprehensive Plan is the key component of the municipal planning process. The land use map depicts the general locations for, character of, and density of development in Clayton. It serves as a basis for the community's subsequent decisions concerning new development and redevelopment. This section describes many of the mechanisms referred to in the "Recommended Actions" throughout the plan.

11-1. Required Implementation Actions

Following adoption of a comprehensive plan, each jurisdiction must comply with the following provisions of the *Delaware Code*:

- **Comprehensive Rezoning.**
Title 22, Section 702(c) of the *Delaware Code*, requires that every municipality:
... within 18 months of the adoption of a comprehensive development plan or revision thereof, amend its official zoning map to rezone all lands within the municipality in accordance with the uses of land provided for in the comprehensive development plan.
- **Plan Update and Annual Reports.**
Section 702(e) of the *Delaware Code* also requires that municipalities fully update their comprehensive plans every 10 years. Since Clayton's last complete plan update was adopted on December 8, 2008 and certified by the governor on January 7, 2009, the next full plan update must be completed by December 8, 2018.
- **Annual Report.**
Section 702(f) requires the submission of annual reports to OSPC each July 1.

11-2. Land Use, Building, and Property Maintenance Codes

Land use (zoning and subdivision), building, and property-maintenance codes are perhaps the most important (and visible) plan-implementation strategies. The comprehensive plan recommends general locations, character, and density of development, but the codes and ordinances adopted to implement the plan are laws with penalties for violation. Land use codes (zoning and subdivision) legislate permitted uses in each zone and stipulate how undeveloped land can be made suitable for development. Building codes govern construction standards, and property-maintenance codes insure that, once built, premises are kept in good condition.

11-2a. Land Use (Zoning and Subdivision) Codes

The zoning ordinance consists of a written document and a map. It divides a municipality into districts or zones and establishes regulations governing the use of land in each district. The ordinance specifies what types of activities (uses) can occur in each district either as a matter of right (in all circumstances) or under certain conditions (conditional uses). It also regulates building height, lot sizes, setbacks, yards and green space, the number and sizes of signs, space for off-street parking, and environmental-protection standards.

Subdivision refers to the process of splitting up or assembling land for development. The regulations governing this process designate utility locations, street rights-of-way, open space, and common areas. They also outline the services, such as water, sewer, gas, and electricity, and amenities that a developer must supply prior to the sale of subdivided land.

Clayton’s first zoning and subdivision ordinances were adopted in 1979. Working closely with the Planning & Zoning Committee, the Clayton Town Council completely revised the Zoning Ordinance in 1998 and the Subdivision Ordinance in 1999. Since then, several amendments have been adopted to each ordinance. Over the last 15 years, a number of local governments have merged zoning and subdivision regulations into a single ordinance. Accordingly, it is recommended that Clayton also consider consolidating its zoning and subdivision regulations.

The “Existing Zoning 2014” map depicts Clayton’s zoning districts as of December 2011. As pointed out in Section 11-1, Clayton must adopt a new zoning map within 18 months of the adoption of this Plan Amendment. The zoning districts in the new zoning map must reflect future land uses. The table below shows how Clayton’s zoning districts might match up with the land uses depicted on the “Future Land Use 2014” map. These match ups are intended as guidance for the Town Council to consider during the rezoning process. They are not intended to preclude the development of new zoning districts or revisions to the zoning ordinance, the subdivision ordinance, or any other land use regulations.

Table 3. Land Use and Zoning Link

Land Use Designation	Zoning District(s)	
Open Space	OS	Open Space
Residential	RS	Residential Suburban
	R	One-Family and Townhouse
	R1	Multiple-Family
	RMH	Residential Manufactured Housing
Town Center	TC	Town Center
Commercial	C1	Neighborhood Commercial
	C2	General Commercial
Industrial	I	Industrial
Railroad	RR	Railroad

The map titled “Proposed Zoning 2015” shows the zoning district for each property that would be consistent with its land use designated in the map titled “Future Land Use 2014.” Adoption of a comprehensive plan does not include a rezoning of any property. A separate ordinance to rezone must be enacted following adoption of a comprehensive plan.

11-2b. Building Code

A building code establishes standards for the construction of new buildings and additions or substantial changes to existing buildings. A building code specifies the types of materials that may or may not be used and mandates standards for structural integrity, and general design. Clayton contracts with First State Inspection Agency, Inc. for the administration of building regulations. To ensure compliance with the provisions of the building code, permits are required, and inspectors make routine inspections at certain milestones in the construction process.

Clayton has adopted the International Code Council's International Building Code (IBC)/ International Residential Code (IRC), 2012 Edition as the Town's official building code.

11-2c. Property-Maintenance Code

A property-maintenance code establishes standards regarding how a structure is to be maintained once it is built. It is different from a building code, which specifies regulations for construction. Property-maintenance codes deal with occupancy (number of persons per room), plumbing and heating (e.g., minimum and maximum temperature), and fire safety. It also sets standards for getting into, getting out of, and moving around a residence by regulating such things as corridors, obstructions to exits and entrances, and access to bedrooms and bathrooms.

Clayton has adopted the International Code Council's International Property Maintenance Code, 2012 Edition.

11-2d. Code Enforcement

Code enforcement is important for Clayton. Town staff work with inspectors from First State Inspection for the enforcement of zoning, subdivision, building, and property maintenance codes.

11-3. Capital Improvements Programming

NO CHANGES

11-4. Environmental Protection

11-4b. Source Water Protection

REPLACE WITH THE FOLLOWING.

11-4b. Source Water Areas Protection

The Safe Drinking Water Act Amendments of 1996 mandated that each state develop a Source Water Assessment and Protection (SWAP) Program to protect public drinking water sources. The three basic components of all SWAP Programs include:

- Delineation of the boundaries of land areas most important to public water sources.
- Identification of the potential sources of contamination within those boundaries.
- Assessment of the susceptibility of the public water source to these contaminants.

Delaware's SWAP program standards are in Title 7, Chapter 60, Subtitle VI, Section 6082 of the *Delaware Code*. The program is coordinated by the Department of Natural Resources and Environmental Control (DNREC) and the State Division of Public Health. DNREC developed the source-water assessments for most public water systems in Delaware, including Clayton. Clayton's assessment was updated on May 22, 2013; the report can be found at <http://delawaresourcewater.org/assessments/>.

Title 7, Chapter 60, Subtitle VI, Section 6082 of the *Delaware Code* requires counties and municipalities with populations greater than 2,000, as determined by the most-recent census, to implement measures to protect sources of public drinking water within their boundaries. Since the 2010 Census determined Clayton's population to be 2,918 persons, the Town was required to adopt such measures.

On [INSERT DATE], Clayton adopted an ordinance amending the Town’s zoning and subdivision ordinances to protect the source water protection areas delineated on the “Source Water Protection Areas 2014” map. Development in these areas must adhere to the criteria established in Clayton’s source water areas protection ordinance. The State is responsible for updating and revising the source water protection areas maps. The Town is responsible for applying the provisions of the source water protection ordinance to the “Source Water Protection Areas 2014” map adopted in this Plan Amendment or hereafter amended. Source water protection datasets can be found at www.nav.dnrec.delaware.gov/DEN3/DataDownload.aspx.

11-4d. Floodplain Management

REPLACE WITH THE FOLLOWING.

11-4d. Flood Hazard Areas Management

Protecting flood-prone areas is important, not only as an integral component of a comprehensive environmental-protection program, but also for continued participation in the National Flood Insurance Program. On May 5, 2014, Clayton repealed the 1998 Floodplain Area Ordinance and adopted a floodplain management ordinance that is consistent with current federal regulations.

11-5. Healthy Communities Initiative

NO CHANGES

11-6. Intergovernmental Coordination

NO CHANGES

ADD THE FOLLOWING NEW SUBSECTION

11-7. Boundary Maintenance

For the past several years, the Office of State Planning Coordination has encouraged municipalities to record their official boundaries with the Recorder of Deeds in their respective counties. The purpose for this is to clear up confusion and provide official repositories for official municipal boundaries.

On August 11, 2014, the Clayton Town Council adopted an ordinance establishing an official map depicting the town boundaries. The ordinance and map was recorded on September 2, 2014 with the Kent County Recorder of Deeds and on August 25, 2014 with the New Castle County Recorder of Deeds.

It is recommended that:

- Subsequent annexations be adopted by ordinance and that a map be included with boundary descriptions and supporting documentation.
- Following Town Council adoption, each annexation ordinance be recorded with the Recorder of Deeds in both Kent and New Castle Counties.
- An updated boundary map be recorded with the Recorder of Deeds in both Kent and New Castle Counties.

Maps

REPLACE AND INSERT AS NOTED BELOW.

REPLACE Map 2. State and County Planning Environment
WITH State and County Planning Environment 2014

REPLACE Map 3. Environmental Features
WITH Environmental Resources 2014

INSERT
AFTER MAP 4 Source Water Protection Areas 2014

REPLACE Map 6. Current Land Use
WITH Current Land Use 2014

REPLACE Map 7. Future Land Use
WITH Future Land Use 2014

REPLACE Map 8. Existing Zoning
WITH Existing Zoning 2014

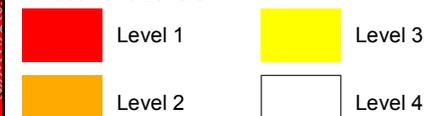
INSERT
AFTER MAP 8 Proposed Zoning 2014



TOWN OF CLAYTON

State and County Planning Environment 2014

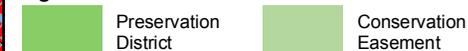
Strategies for State Policies & Spending Investment Levels



Out of Play



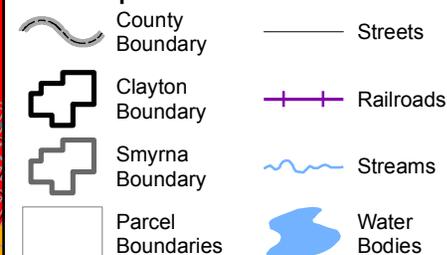
Agricultural Preservation Areas



Kent County Planning



Base Map Data



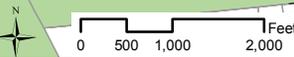
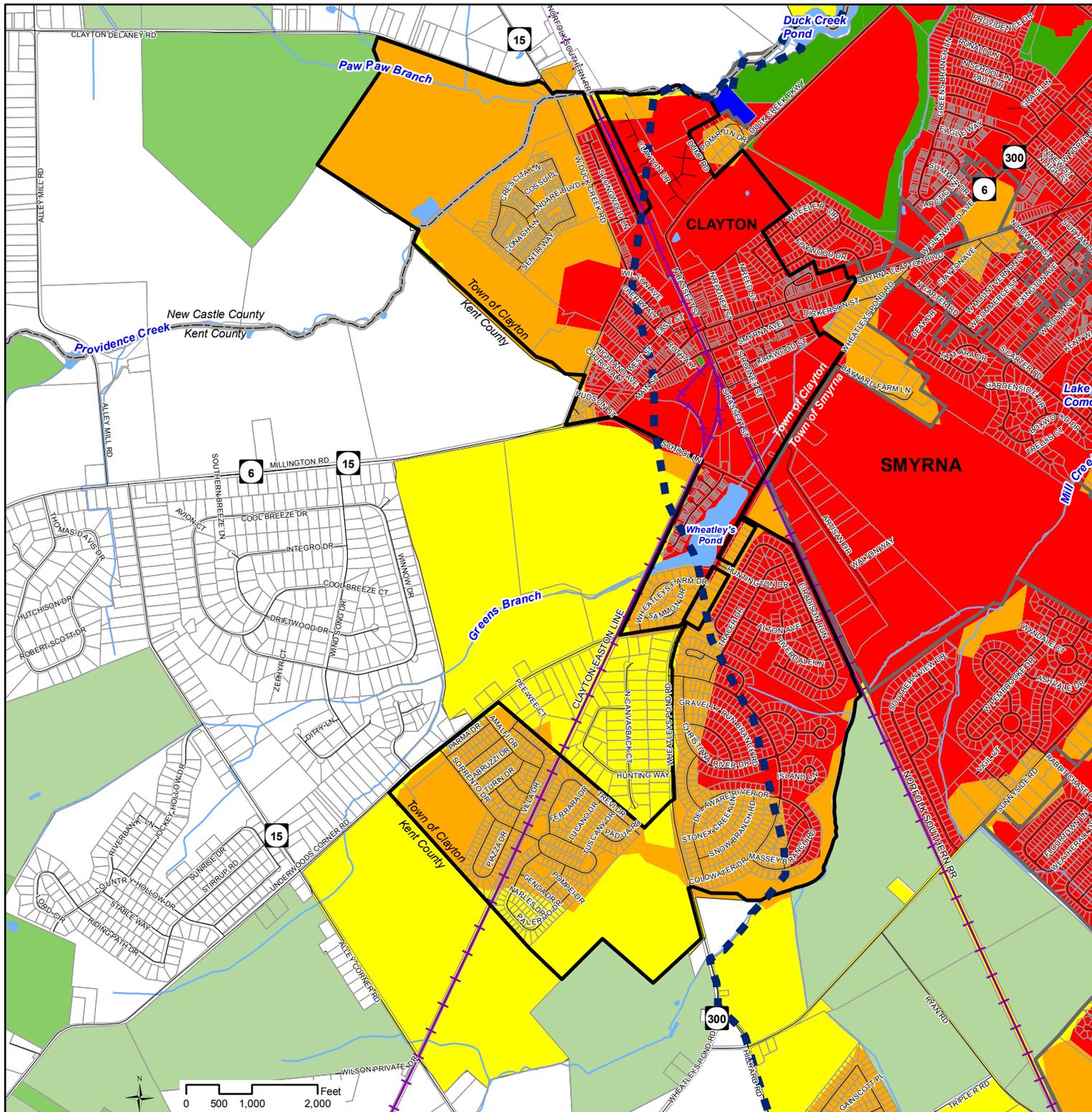
PLUS Review Draft
JUNE 2015

Sources

State Strategies - Office of State Planning Coordination, 2010.
Agricultural Preservation - Delaware Department of Agriculture, 04/15/2014.
Municipal Boundaries - Smyrna from Office of State Planning Coordination, 04/17/2014; Clayton boundary recorded in New Castle County on 08/25/2014, in Kent County on 09/02/2014.
Parcel Boundaries - Kent County from Department of Planning Services, County area as of 05/21/2014, Clayton town as of 10/03/2014; New Castle County from Information Services, 05/30/2014.
Streets - Kent County from Department of Planning Services, 05/21/2014; New Castle County from Information Services, 05/30/2014.
Railroads - Delaware Department of Transportation, Delaware Transit Corporation, May 2014.
Water Bodies & Streams - FirstMap, downloaded 01/29/2015.

Note

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TOWN OF CLAYTON

Environmental Features 2014

Flood Hazard Areas

- 0.2% Annual Chance
- 1.0% Annual Chance

Other Environmental Features

- Wetlands
- 5-Foot Contours

Base Map Data

- County Boundary
- Clayton Boundary
- Smyrna Boundary
- Parcel Boundaries
- Roads
- Railroads
- Streams
- Water Bodies

PLUS Review Draft
JUNE 2015

Sources

Flood Hazard Areas - Federal Emergency Management Agency (FEMA), National Flood Hazard Layer, downloaded from msc.fema.gov, 12/08/2014. Kent County as of 07/07/2014, New Castle County as of 11/13/2014.

Wetlands - FirstMap, downloaded 12/09/2014.

Topography - United States Geological Survey (USGS), 2007.

Municipal Boundaries - Smyrna from Office of State Planning Coordination, 04/17/2014; Clayton boundary recorded in New Castle County on 08/25/2014, in Kent County on 09/02/2014.

Parcel Boundaries - Kent County from Department of Planning Services, County area as of 05/21/2014, Clayton town as of 10/03/2014; New Castle County from Information Services, 05/30/2014.

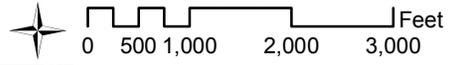
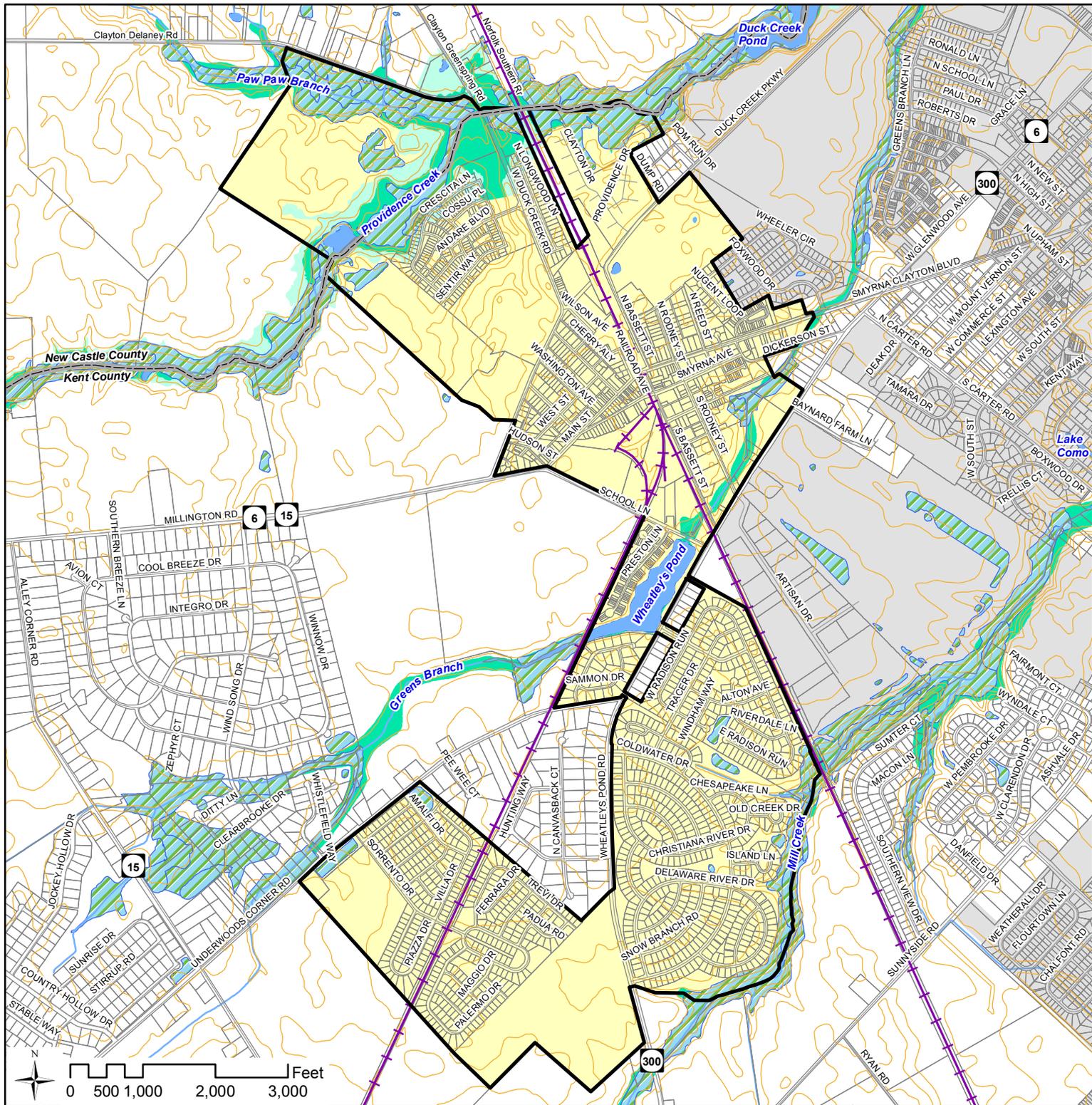
Streets - Kent County from Department of Planning Services, 05/21/2014; New Castle County from Information Services, 05/30/2014.

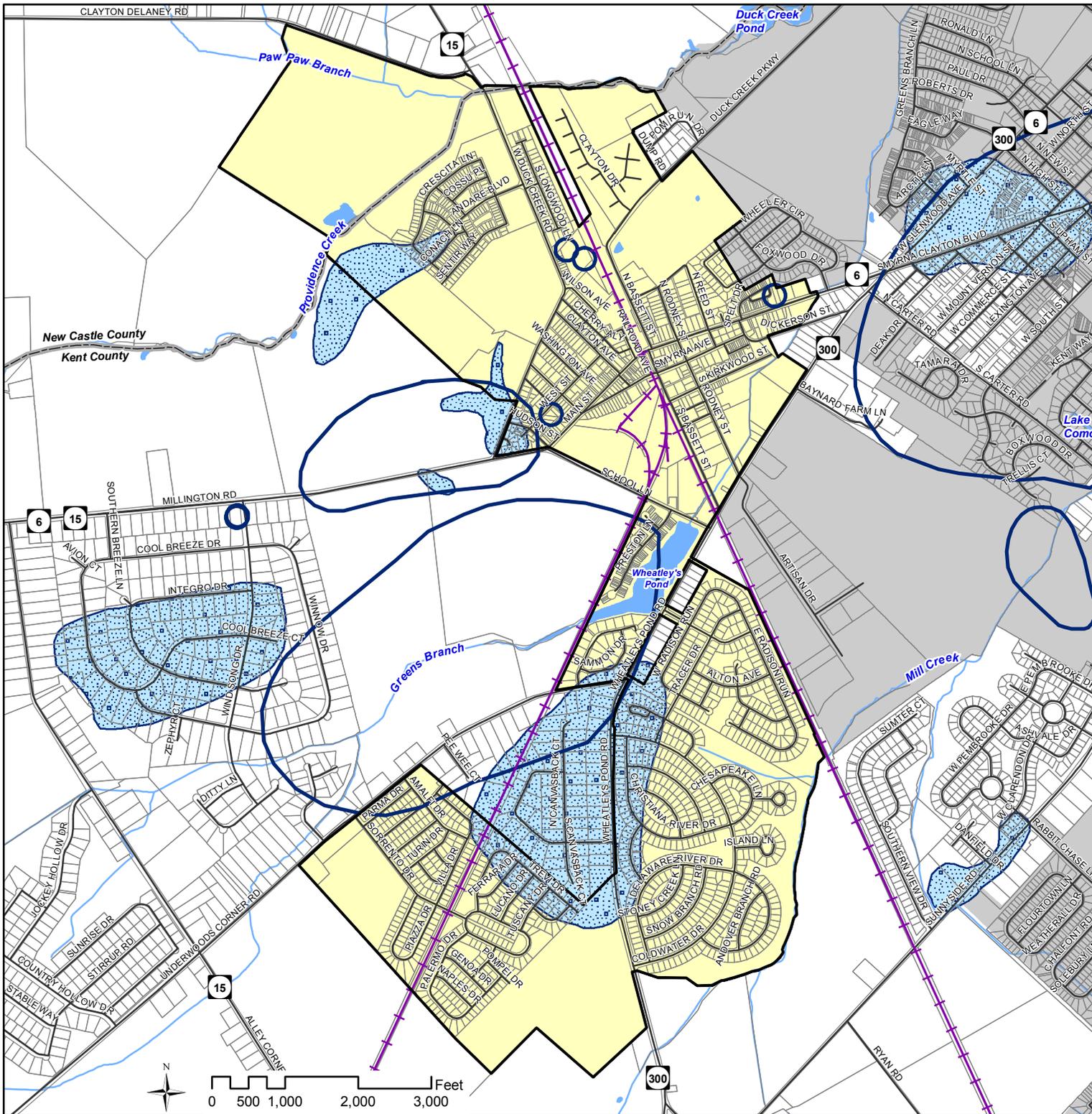
Railroads - Delaware Department of Transportation, Delaware Transit Corporation, May 2014.

Water Bodies & Streams - FirstMap, downloaded 01/29/2015.

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TOWN OF CLAYTON

Source Water Protection Areas 2014

Source Water Protection Areas

-  Wellhead Protection
-  Excellent Groundwater Recharge Potential

Base Map Data

-  County Boundary
-  Clayton Boundary
-  Smyrna Boundary
-  Parcel Boundaries
-  Streets
-  Railroads
-  Streams
-  Water Bodies

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JUNE 2015

Sources

Wellhead Protection - Delaware Department of Natural Resources & Environmental Control (DNREC), Division of Water, Source Water Assessment and Protection Program, 03/04/2014.

Excellent Recharge Areas - DNREC, downloaded from the Environmental Navigator, 07/23/2012.

Municipal Boundaries - Smyrna from Office of State Planning Coordination, 04/17/2014; Clayton boundary recorded in New Castle County on 08/25/2014, in Kent County on 09/02/2014.

Parcel Boundaries - Kent County from Department of Planning Services, County area as of 05/21/2014, Clayton town as of 10/03/2014; New Castle County from Information Services, 05/30/2014.

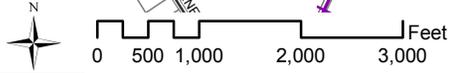
Streets - Kent County from Department of Planning Services, 05/21/2014; New Castle County from Information Services, 05/30/2014.

Railroads - Delaware Department of Transportation, Delaware Transit Corporation, May 2014.

Water Bodies & Streams - FirstMap, Downloaded 01/29/2015, downloaded from nhd.usgs.gov/data, 12/09/2014.

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TOWN OF CLAYTON

Current Land Use 2014

Land Use

- Open Space
- Residential
- Mixed
- Commercial
- Industrial
- Railroad
- Community Service
- Utilities
- Vacant

Downtown Development District

- District Boundary

Base Map Data

- County Boundary
- Streets
- Clayton Boundary
- Railroads
- Smyrna Boundary
- Streams
- Parcel Boundaries
- Water Bodies

PLUS Review Draft
JUNE 2015

Sources

Land Use Designations - Clayton sewer connection and occupancy certificate data; land use survey by IPA and Town of Clayton, 10/03/2014; Delaware Environmental Monitoring & Analysis Center (DEMAC) 2013 aerial orthophotography, Kent County PRIDE, & 2008 Comprehensive Plan.

Municipal Boundaries - Smyrna from Office of State Planning Coordination, 04/17/2014; Clayton boundary recorded in New Castle County on 08/25/2014, in Kent County on 09/02/2014.

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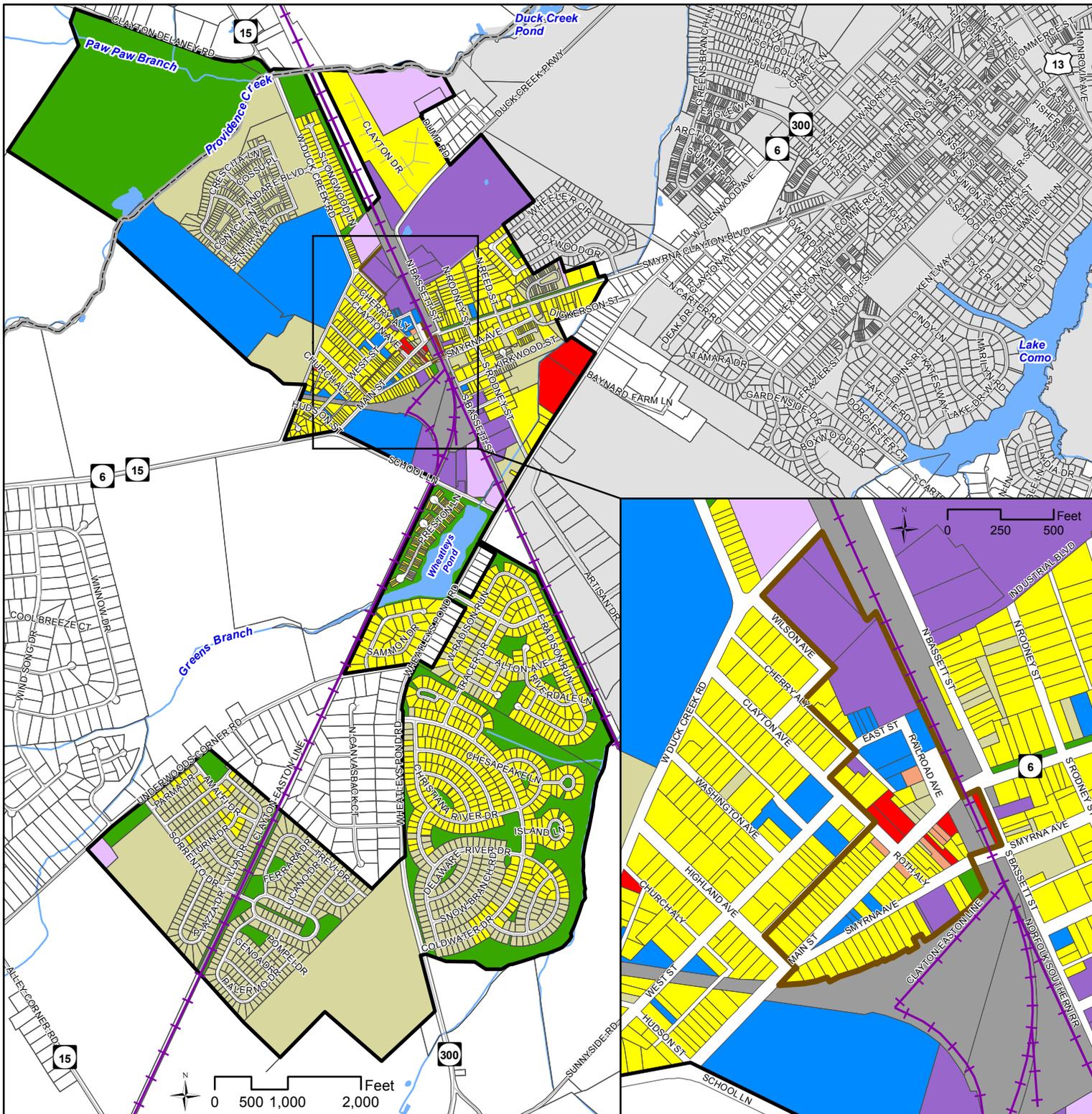
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Railroads - Delaware Department of Transportation, Delaware Transit Corporation, May 2014.

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TOWN OF CLAYTON

Future Land Use 2014

Within Town Boundary

- Open Space
- Residential
- Town Center
- Commercial
- Industrial
- Railroad

Downtown Development District

- District Boundary

Proposed Annexations

- Residential
- Commercial
- Railroad

Base Map Data

- County Boundary
- Clayton Boundary
- Smyrna Boundary
- Parcel Boundaries
- Streets
- Railroads
- Streams
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Town Council Review Draft
JUNE 2015

Sources

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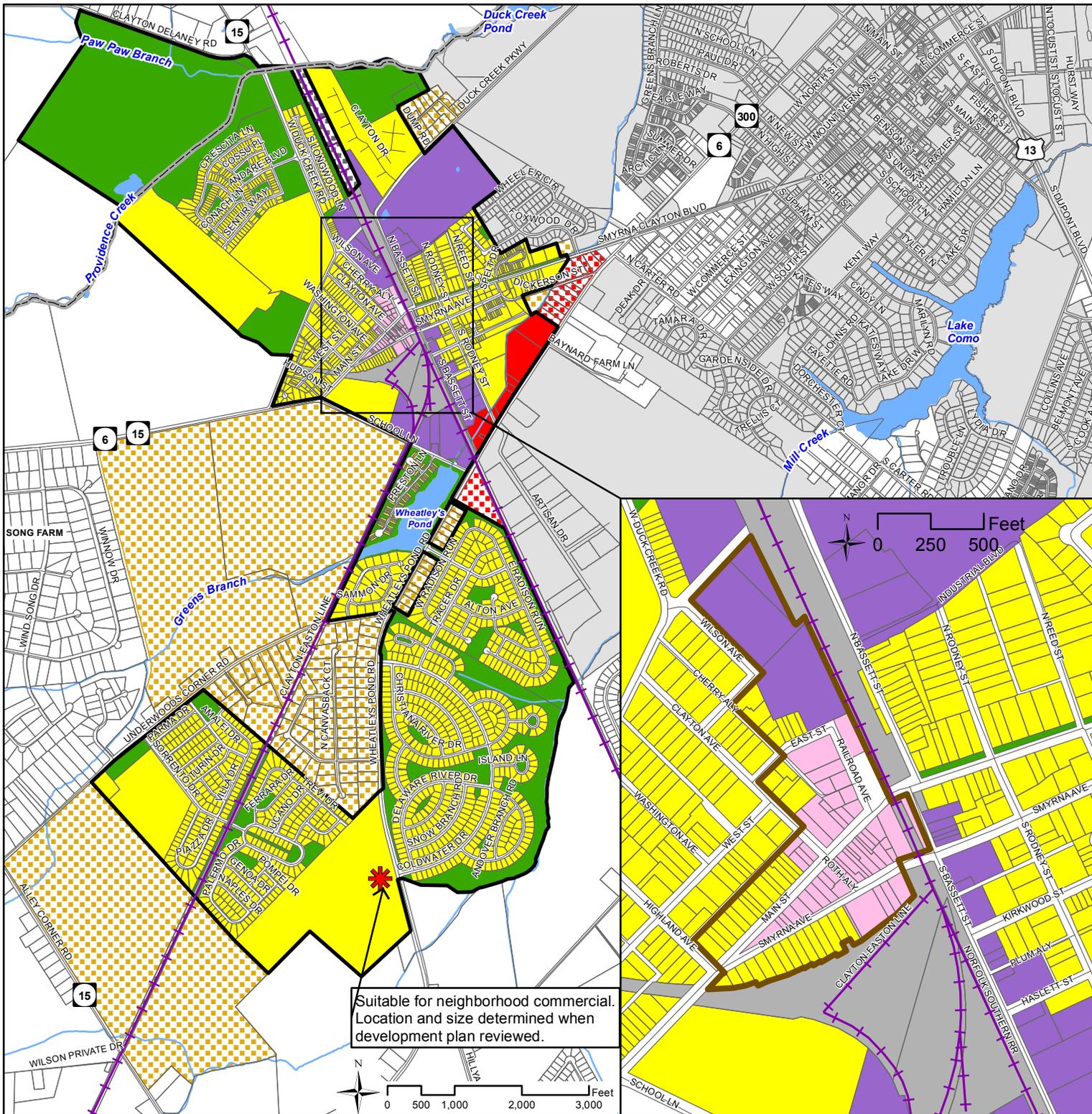
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Suitable for neighborhood commercial.
Location and size determined when
development plan reviewed.



TOWN OF CLAYTON

Existing Zoning 2014

Zoning Districts

- OS, Open Space
- RS, Residential Suburban
- R, One-Family & Townhouse
- R1, Multiple-Family
- RMH, Manufactured Housing
- TC, Town Center
- C2, General Commercial
- I, Industrial
- RR, Railroad

Base Map Data

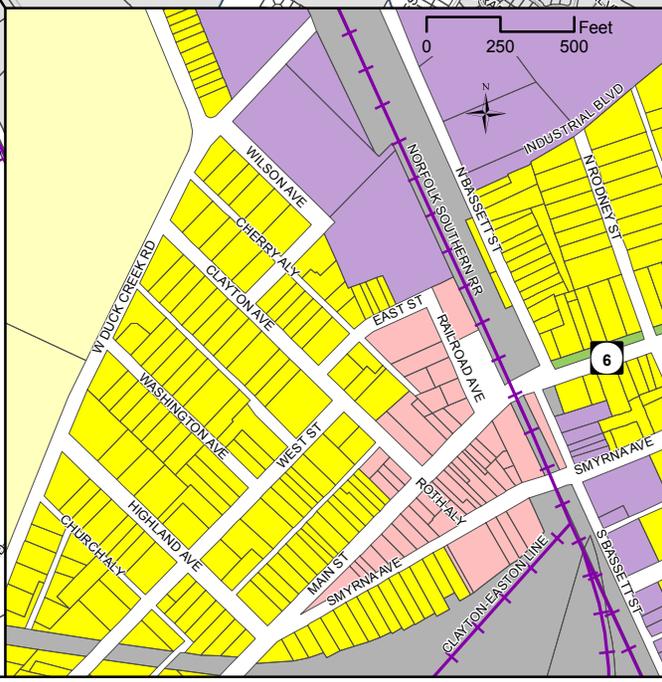
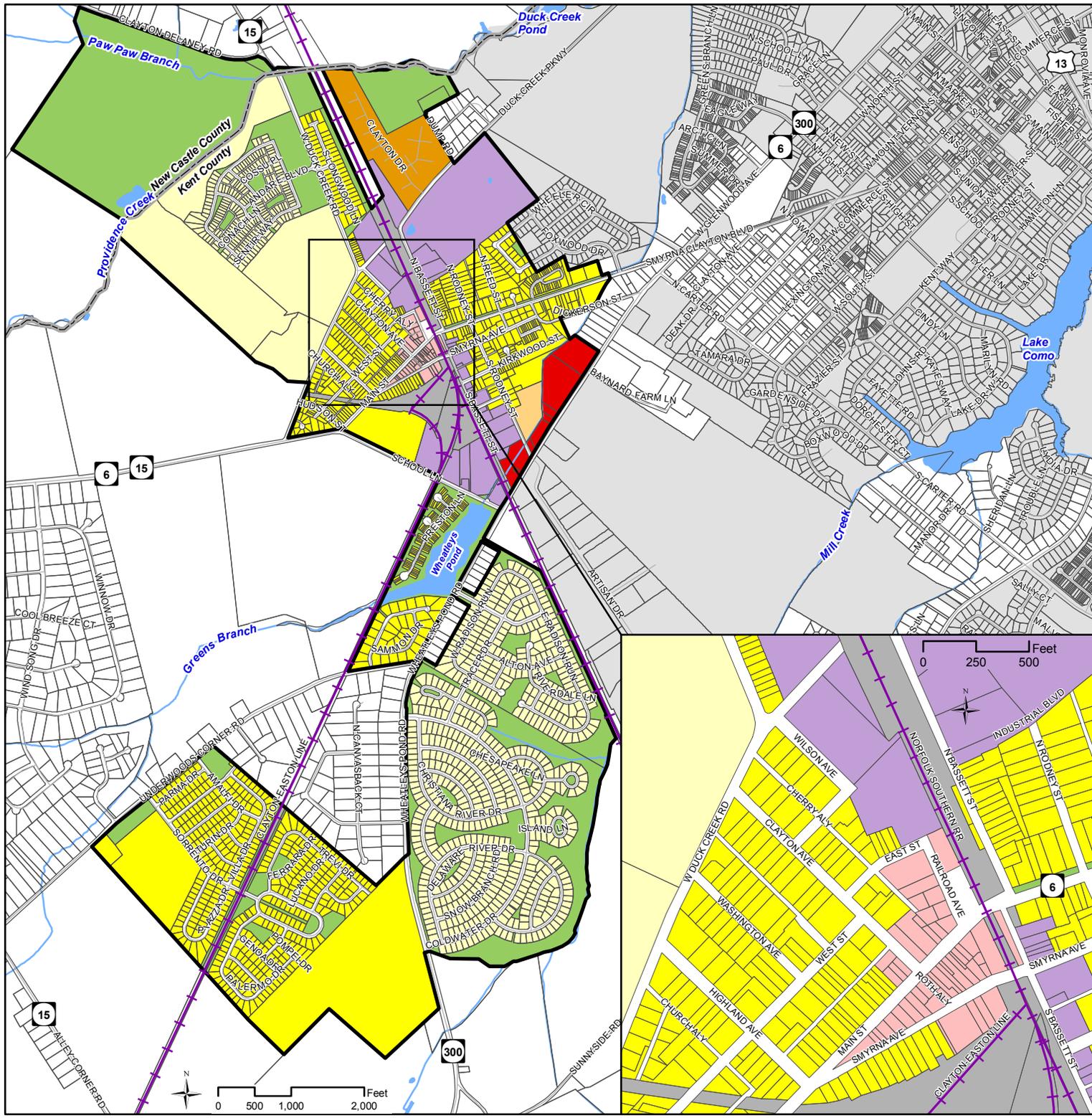
- County Boundary
- Clayton Boundary
- Smyrna Boundary
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- Railroads
- Streams
- Water Bodies

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Sources

Zoning Districts - Clayton Zoning Map, adopted 12/12/2011.
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TOWN OF CLAYTON

Proposed Zoning 2014

Zoning Districts

- OS, Open Space
- RS, Residential Suburban
- R, One-Family & Townhouse
- R1, Multiple-Family
- RMH, Manufactured Housing
- TC, Town Center
- C2, General Commercial
- I, Industrial
- RR, Railroad

Base Map Data

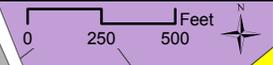
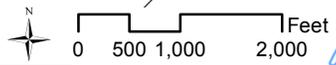
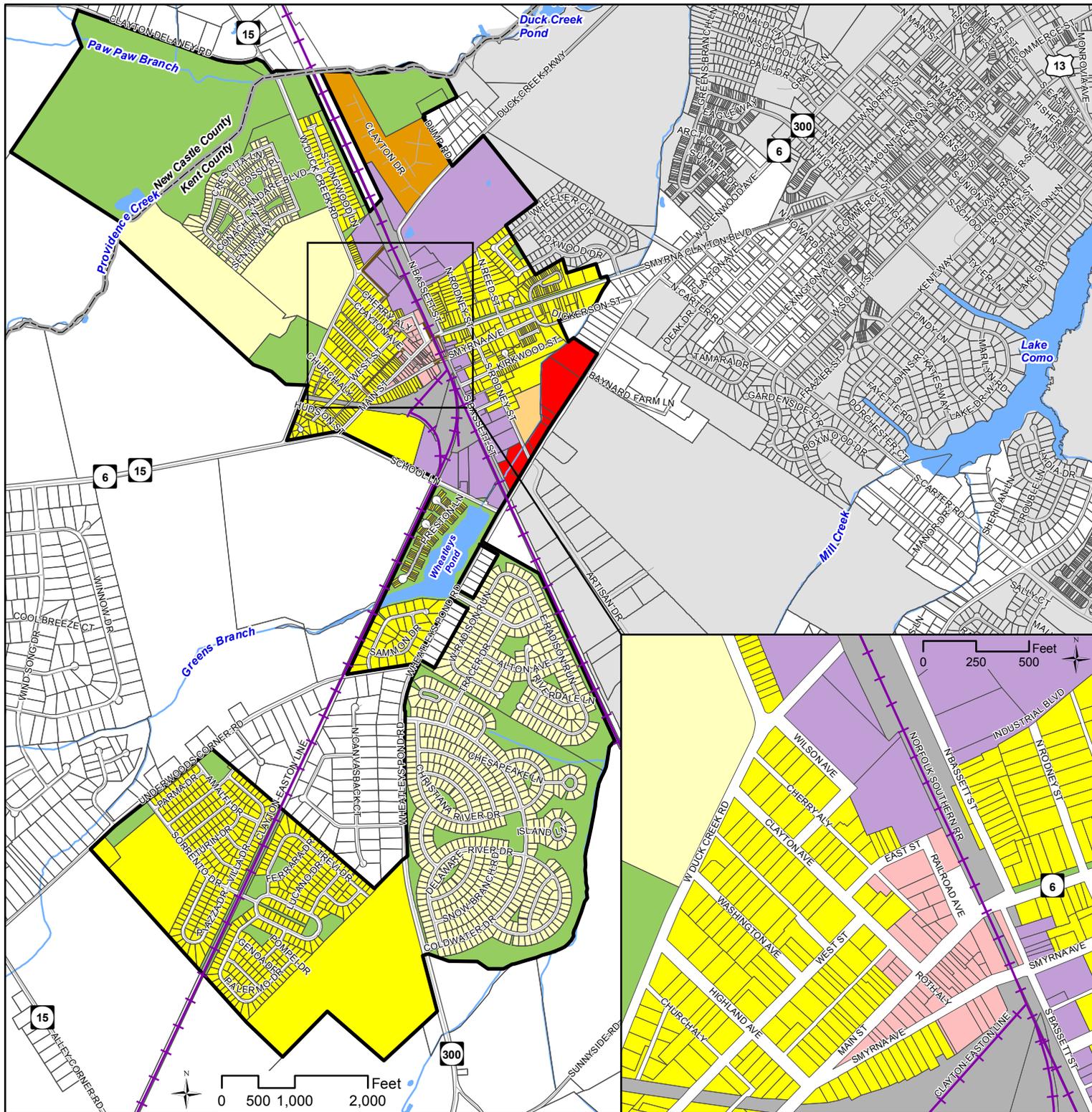
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Town Council Review Draft
JUNE 2015

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APPENDIX A: Boundary Recordation Documentation

AN ORDINANCE BY THE CLAYTON TOWN COUNCIL ESTABLISHING AN OFFICIAL MAP DEPICTING THE BOUNDARIES OF THE TOWN OF CLAYTON

WHEREAS, Section 1.2(b) of the Town Charter of Clayton, Delaware, authorizes the Town Council to record the official town boundaries with the Recorder of Deeds; and,

WHEREAS, the Town Council desires to record Clayton's official municipal boundaries with the Recorders of Deeds in Kent County and New Castle County; and,

WHEREAS, a map depicting the municipal boundaries of the town of Clayton has been prepared and is attached to and made a part of this ordinance; and,

WHEREAS, pursuant to Section 4.3.1 of the Town Charter, this Ordinance was introduced in writing and read in its entirety prior to adoption; and,

NOW, THEREFORE THE TOWN OF CLAYTON HEREBY ORDAINS that the map shall be signed by the mayor; and,

THE TOWN OF CLAYTON FURTHER ORDAINS that the town seal shall be affixed to the map; and,

THE TOWN OF CLAYTON FURTHER ORDAINS that this Ordinance shall be recorded at the Office of the Kent County Recorder of Deeds and the Office of the New Castle County Recorder of Deeds; and,

THE TOWN OF CLAYTON FURTHER ORDAINS that, pursuant to Title 10, Section 8126 of the *Delaware Code*, notice of the action taken by this Ordinance shall be published in a newspaper of general circulation in the Town.

THE TOWN OF CLAYTON FURTHER ORDAINS that this Ordinance shall take effect upon adoption.

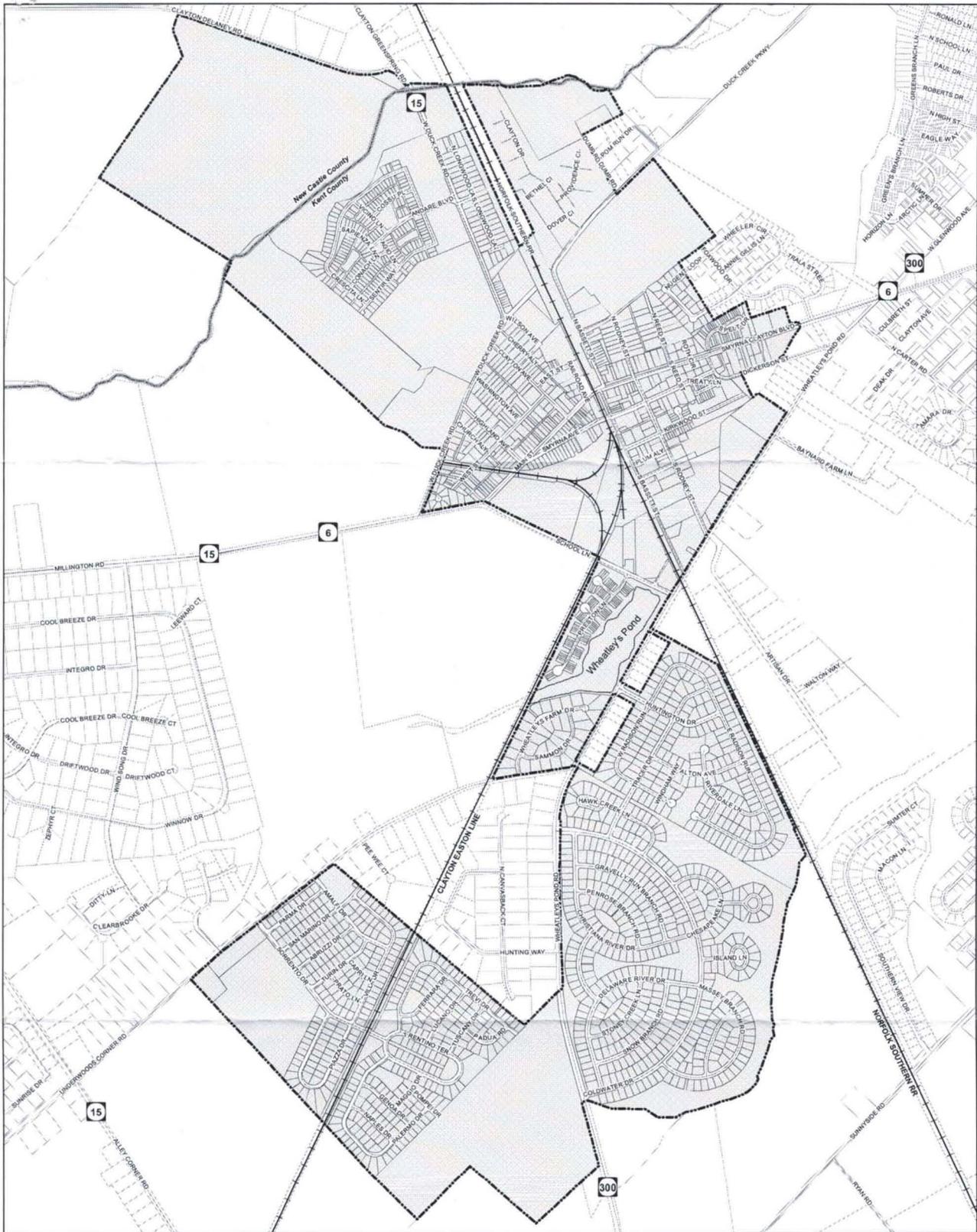
ADOPTED this 11th day of August 2014.

By



Thomas E. Horn, Jr.
Mayor and Council President
Town of Clayton
Kent County & New Castle County, Delaware





- Legend**
-  Clayton Boundary
 -  Clayton Parcels
 -  Kent County & New Castle County Parcels
 -  County Boundary
 -  Railroads
 -  Streets & Roads



Town of Clayton
Kent County & New Castle County

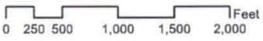
Official Boundary Map

ADOPTED AS THE OFFICIAL BOUNDARY MAP
TOWN OF CLAYTON
Kent County & New Castle County, Delaware

Thomas E. Horn, Jr.
Thomas E. Horn, Jr.
Mayor & Council President

08/11/2014

Date

Sources
 Kent County Parcel Boundaries & Streets -
 Department of Planning Services, 05/21/2014.
 New Castle County Parcel Boundaries & Streets -
 Information Services, 05/30/2014.

Note
 This map is provided by Institute for Public Administration (IPA) solely for display and reference and is subject to change without notice. IPA makes no claims, either real or assumed, as to the absolute accuracy or precision of any data contained herein for purposes other than for which the data was intended.



www.ipa.udel.edu
Institute for Public Administration

Prepared By:

Town of Clayton

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Clayton, DE 19938

Return to:

Schmittinger & Rodriguez

414 S. State Street

Dover, DE 19901



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Pages: 3 F: \$64.00

08/25/14 11:56:55 AM

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Michael E. Kozikowski

New Castle Recorder MISC

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\$101.

Prepared By:

Town of Clayton

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Clayton, DE 19938

Accepted for Filing in:
Kent County
Doc# 261170
On: Sep 02, 2014 at 01:34P

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APPENDIX B: Source Water Areas Protection Ordinance

AN ORDINANCE BY THE CLAYTON TOWN COUNCIL

to Adopt Source Water Protection Regulations

by Enacting Several Changes to the Zoning Ordinance and Subdivision Ordinance

WHEREAS, Section 4.2(e)(15) of the *Town Charter of Clayton, Delaware*, authorizes the Town Council “to exercise all powers and authorities vested in the Town by virtue of Chapter 3, Title 22 of the Delaware Code regarding the zoning and subdivision of lands as the same may, from time to time hereafter be amended;” and,

WHEREAS, Section 6.7-6.1 of the *Clayton Zoning Ordinance* authorizes the Town Council to “amend, supplement, change, or modify ... the text of the regulations ...” of the Zoning Ordinance; and,

WHEREAS, Section 5-1-3.1 of the *Clayton Subdivision Ordinance* authorizes the Town Council to “amend, supplement, change, or modify the provisions ...” of the Subdivision Ordinance;” and,

WHEREAS, the Town Council desires to:

1. Adopt regulations to protect public drinking water supplies from contamination pursuant to Title 7, Chapter 60, Subchapter VI, Section 6082(b) which mandates that municipalities whose population is 2,000 persons or more, adopt regulations governing the use of land in source water protection areas and adopt, as part of comprehensive plan updates, a map delineating source water protection areas;
2. Implement a recommendation in the 2008 comprehensive plan to adopt such regulations; and,

WHEREAS, the 2010 Census reported that Clayton’s population is 2,918 persons; and,

WHEREAS pursuant to Sections 6.2-3.3 and 6.7-6.6 of the *Clayton Zoning Ordinance*, and Section 5.1-3.4 of the *Clayton Subdivision Ordinance*, the Planning & Zoning Committee reviewed, and made a recommendation to the Town Council on, the proposed amendment at its regular meeting of February 18, 2015 and forwarded it to the Town Council; and,

WHEREAS, the Town Council:

1. Held a public hearing on April 13, 2015 which is more than 15 days from the newspaper publication pursuant to Section 6.7-6.5C of the *Clayton Zoning Ordinance* and Section 5.1-3.6A of the *Clayton Subdivision Ordinance*;
2. Received the Planning & Zoning Committee’s recommendation pursuant to Section 6.7-6.5D1 of the *Clayton Zoning Ordinance* and Section 5.1-3.5B of the *Clayton Subdivision Ordinance* and made it a part of the hearing record;
3. Gave all interested citizens and parties an opportunity to be heard pursuant to Section 6.7-6.5D2 of the *Clayton Zoning Ordinance* and Section 5.1-3.5B of the *Clayton Subdivision Ordinance*; and,

WHEREAS, notice of the public hearing was given as follows:

1. Pursuant to Section 6.7-6.6A1 of the *Clayton Zoning Ordinance* and Section 5.1-3.6A of the *Clayton Subdivision Ordinance*, notice appeared in the *Smyrna-Clayton SunTimes*, a newspaper of general circulation in the Clayton area, on February 24, 2015;
2. Pursuant to Section 6.7-6.6A2 of the *Clayton Zoning Ordinance* and Section 5.1-3.6B of the *Clayton Subdivision Ordinance*, notice was posted at the Clayton Town Hall on March 25, 2015; and,

WHEREAS, this Ordinance was introduced and read for the first time at the Town Council’s regular meeting of May 11, 2015; and,

WHEREAS, this Ordinance was read for the second time at the Town Council’s regular meeting of June 8, 2015; and,

WHEREAS, the Town Council finds that the provisions of this Ordinance are consistent with the *Clayton Comprehensive Plan*, which includes on pages 70 and 71, a recommendation for the adoption of source water protection legislation; and,

NOW, THEREFORE THE TOWN OF CLAYTON HEREBY ORDAINS that the following changes shall be made to the Zoning Ordinance and to the Subdivision Ordinance.

AN ORDINANCE BY THE CLAYTON TOWN COUNCIL
to Adopt Source Water Protection Regulations
by Enacting Several Changes to the Zoning Ordinance and Subdivision Ordinance

CHANGES TO THE CLAYTON ZONING ORDINANCE

Delete the ~~stricken language~~ from and add the underlined language to Section 6.1-2.2 Definitions.

~~Commission-Committee.~~ The Clayton Planning and Zoning Committee Commission.

~~County.~~ Kent County or New Castle County, Delaware.

~~DNREC.~~ The Delaware Department of Natural Resources and Environmental Control.

~~Recorder of Deeds.~~ The Recorder of Deeds for Kent County or New Castle County, Delaware.

Add the following to Section 6.4-1.1 Establishment of Zoning Districts

Town Center District (TC)

Source Water Protection Overlay District (Wellhead Protection and Excellent Groundwater Recharge Potential Areas)

Add new Subsection 6.4-2.10 to Section 6.4-2. Zoning Districts

6.4-2.11. Source Water Protection Area Overlay District

A. Intent. *See also Section 6.6-4.1.*

1. Safeguard public drinking water supply from contamination.
2. Comply with requirements of the Delaware Source Water Protection Law 2001 as codified in the *Delaware Code*, Title 7, Chapter 60, Subchapter VI Source Water Protection, Section 6082 (b) and (f).

B. Permitted Uses and Structures. Uses and structures shall be the same as allowed in the underlying zoning district set forth in Table 1, as further modified, restricted, or prohibited in Section 6.6-4.

Add the following section to Chapter 6.6 Regulations Applying to All Districts

Section 6.6-4. Source Water Protection Overlay Zoning District Regulations

6.6-4.1. Purposes.

- A. Ensure that land use activities are conducted in such a way as to minimize the impact on and reduce the risk of contamination to, excellent groundwater recharge potential areas and wellhead protection areas which are the sources for public drinking water in the Town of Clayton.
- B. Satisfy the requirements of the Delaware Source Water Protection Law 2001 as codified in the *Delaware Code*, Title 7, Chapter 60, Subchapter VI Source Water Protection, Section 6082 (b) and (f).
- C. Establish land-use and development standards in environmentally sensitive areas that are in addition to other standards and regulations in this Zoning Ordinance, the Clayton Subdivision Ordinance and other applicable local, state, and federal standards and regulations.

6.6-4.2. Definitions

The following definitions pertain to the Source Water Protection Overlay Zoning District.

Aboveground Storage Tank (AST). A single containment vessel greater than 250 gallons as defined in the *Delaware Regulations Governing Aboveground Storage Tanks*. ASTs with a storage capacity greater than 12,499 gallons containing petroleum or hazardous substances, and ASTs with a storage capacity greater than 39,999 gallons containing diesels, heating fuel or kerosene are subject to the design, construction, operations, and maintenance requirements of the Delaware AST regulations.

AN ORDINANCE BY THE CLAYTON TOWN COUNCIL
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by Enacting Several Changes to the Zoning Ordinance and Subdivision Ordinance

Best Management Practices. Structural, nonstructural and managerial techniques that are recognized to be the most effective and practical means to control nonpoint source pollutants yet are compatible with the productive use of the resource to which they are applied. These are used in both urban and agricultural areas.

Contamination. Any physical, chemical, biological, or radiological substance that enters the hydrologic cycle through human action and may cause a deleterious effect on ground water resources.

Excellent Groundwater Recharge Potential Areas. Those areas with high percentage of sand and gravel that have “excellent” potential for recharge as determined through a Stack Unit Mapping Analysis delineated by the Delaware Geological Survey and presented in the *Report of Investigations No. 66, Ground-water Recharge Potential Mapping in Kent and Sussex Counties, Delaware, Geological Survey, 2004.*

Green Technology Best Management Practices (BMP’s). Those practices that achieve stormwater management objectives by applying the principles of filtration, infiltration and storage most often associated with natural vegetation and undisturbed soils while minimizing a reliance on structural components. They may also be constructed using an imported soil medium and planted with vegetation designed to promote the natural hydrologic process. These practices include, but are not limited to, vegetative filtration, riparian buffer plantings, bio-retention areas, vegetative flow conveyance, as well as recharge and surface storage in undisturbed natural areas.

Ground Water. Water contained in interconnected pores located below the water table in an unconfined aquifer or located in a confined aquifer.

Hazardous Waste. A solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating irreversible, illness, or pose a substantial present or potential a hazard to human health or the environment when improperly treated, stored, transported, or disposed of, otherwise managed. Without limitation, included within this definition are those hazardous wastes described in Sections 261.31, 261.32, and 261.33 of the *Delaware Regulations Governing Hazardous Waste.*

Infiltration. The passage or movement of water through the soil profile.

Impervious Cover. The sum of parking lots, roads, buildings, sidewalks, or other created surfaces through which rainwater cannot pass or infiltrate the soil.

Land Disturbing Activity. A land change or construction activity for residential, commercial, industrial, and institutional land use.

Leadership in Energy and Environmental Design (LEED). A rating system developed and administered by the U.S. Green Building Council based in Washington D.C.. It is designed to promote design and construction practices that increase profitability while reducing the negative environmental impacts of buildings and improving occupant health and well-being. The LEED rating system offers four certification levels for new construction which includes Certified, Silver, Gold and Platinum, corresponds to the number of credits accrued in five green design categories: sustainable sites, water efficiency, energy and atmosphere, materials and resources and indoor environmental quality. LEED standards cover new commercial construction and major renovation projects, interiors projects and existing building operations.

Natural Condition. Open space that is essentially unimproved and set aside, dedicated, designed, or reserved for public or private use.

On-site Wastewater Treatment and Disposal System. Conventional or alternative, wastewater treatment and disposal systems installed or proposed to be installed on land of the owner or on other land to which the owner has the legal right to install the system.

AN ORDINANCE BY THE CLAYTON TOWN COUNCIL
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Public Water Supply Well. Any well from which the water is used to serve a community water system by section 22.146 (Public Water Systems) in the *Delaware State Regulations Governing Public Drinking Water Systems*.

Public Drinking Water System. A community, non-community, or non-transient non-community water system, which provides piped water to the public for human consumption. The system must have at least 15 service connections or regularly serve at least 25 individuals daily for at least 60 days.

Runoff. That portion of precipitation or snow melt that has not evaporated or infiltrated into the soil, but flows on land or impervious surfaces.

Sanitary Landfill. A land site at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal, except that it will not include any facility that has been approved for the disposal of hazardous waste under the Delaware Regulations Governing Hazardous Waste.

Source Water Protection Areas. Wellhead Protection Areas and Excellent Ground Water Recharge Potential Areas.

Stormwater. The runoff of water from the surface of the land resulting from precipitation or snow or ice melt.

Stormwater Management:

- A. **For water quantity control**, a system of vegetative, structural, and other measures that may control the volume and rate of stormwater runoff, which may be caused by land disturbing activities or activities upon the land; and
- B. **For water quality control**, a system of vegetative, structural, and other measures that control adverse effects on water quality that may be caused by land disturbing activities upon the land.

Underground Storage Tank (UST). One or a combination of Tanks including underground Pipes, the volume of which is 10% or more below ground, as defined in the Delaware Regulations Governing Underground Storage Tank Systems, dated March 12, 1995.

Note: The following USTs are not subject to the design, construction, operation, and maintenance requirements of the Delaware UST Regulations: (1) Residential Heating Fuel, Agricultural, and Residential Motor Fuel USTs less than 1,100 gallons; and, (2) any UST less than 110 gallons.

Water Quality. Those characteristics of stormwater runoff from an impervious surface or a land disturbing activity that relate to the chemical, physical, biological, or radiological integrity of water.

Water Quantity.

- A. Those characteristics of stormwater runoff that relate to the volume of stormwater runoff to downstream-gradient areas resulting from land disturbing activities.
- B. Those characteristics of stormwater that relate to the volume of stormwater that infiltrates the land surface and enters the underlying aquifer.

Wellhead Protection Area. Surface and subsurface area surrounding a water well or well field supplying a public water system through which contaminants are likely to reach such well, or well field.

6.6-4.3. Source Water Protection Area Boundaries.

- A. Official Boundaries. The official boundaries for Source Water Protection Areas are as follows.
 - 1. Wellheads. Prepared by DNREC, Division of Water Resources, Water Supply Section.
 - 2. Excellent Groundwater Recharge Potential Areas. Prepared by the Delaware Geological Survey, *Digital Ground-Water Recharge Potential Map for Kent and Sussex Counties, 2002* or as subsequently amended.

AN ORDINANCE BY THE CLAYTON TOWN COUNCIL
to Adopt Source Water Protection Regulations
by Enacting Several Changes to the Zoning Ordinance and Subdivision Ordinance

B. Map Updates.

1. DNREC periodically shall provide the Town of Clayton with updated excellent groundwater recharge potential and wellhead protection area maps which, upon approval by Town Council, are referenced by this Zoning Ordinance and shall be made available to the public upon request prior to any public hearing.
2. Map Updates—Responsible Parties.
 - a) DNREC Source Water Assessment and Protection Program (SWAPP) may, when based on sound science and information, revise and update the maps depicting the boundaries of wellhead protection areas.
 - b) The Delaware Geological Survey (DGS) may, when based on sound science and information, revise and update the maps depicting the boundaries of good or excellent ground-water recharge potential areas.

C. Challenges to Mapped Boundaries.

1. When there appears to be a conflict between official boundary maps and actual site conditions, the applicant may engage the services of a Professional Geologist to prepare a report intended to determine more accurately the precise boundary of the Source Water Protection Area. This Report shall include all of the following:
 - a) A detailed topographic layout of the subdivision and/or area to be developed prepared by a Delaware-registered professional land surveyor, professional engineer, or professional geologist.
 - b) Evidence derived from a site-specific investigation that may include aquifer testing, test borings, test pits, observation wells, groundwater elevations, and topography surveys as appropriate for the types of source water protections area that clearly demonstrate that the area in question does not meet the definition of a Source Water Protection Area as defined in this Section.
 - c) Any challenges to the delineation of the excellent groundwater recharge potential areas shall follow the methods used in the Delaware Geological Survey Publication: *Report of Investigations No. 66, Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware*. Challenges must be approved by DGS.
2. Identification on Development Plans Required. Development plans depicting development or land disturbance shall delineate the locations of Source Water Protection Areas. If a tract proposed for development contains no Source Water Protection Areas, the plan shall include a statement affirming this.

6.6-4.4. Applicability.

- A. All major subdivisions, conditional use site plans, site plans, and revised subdivision or site plans received for approval or reapproval by the Clayton Planning & Zoning Committee and/or Town Council shall meet the requirements set forth in this Section prior to approval, except as provided in Section 6.6-4.5 Exemptions.
- B. All public drinking water well systems constructed after the effective date of this ordinance are required to comply with this Zoning Ordinance as well as the provisions of the Clayton Subdivision Ordinance and other applicable local, state, and federal standards and regulations.
- C. For developments that are located partially in Zone 1, Zone 2, or Zone 3 of the Source Water Protection Overlay Zone area:
 1. Only those portions in the Source Water Protection Overlay Zone area are required to comply with applicable source water protection standards; and

AN ORDINANCE BY THE CLAYTON TOWN COUNCIL
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2. Existing, developed land, located in the Source Water Protection Overlay Zoning District, shall be treated as nonconforming uses with respect to the applicable provisions of this Zoning Ordinance.
- D. The uses and bulk standards which govern the underlying zoning designations attached to the properties within the Source Water Protection Overlay Zone shall apply in all instances except where uses are specifically prohibited by this Section and except pertaining to impervious cover. Where issues of impervious cover are concerned, the provisions of the Source Water Protection Overlay Zone are the governing provisions and override the existing zoning for the property.

6.6-4.5. Exemptions. The following are exempt from the requirements of this ordinance:

- A. Recorded subdivisions.
- B. Revisions to recorded subdivision plans that do not result in the creation of additional lots.
- C. Conditional use applications not requiring development-plan review.
- D. Improvements to existing residential lots, including additions to existing one-family dwellings, and the placement of sheds and fences.

6.6-4.6. Environmental Assessment Report.

- A. Definition. A report that documents that post-development recharge will be no less than predevelopment recharge for both water quality and quantity when computed on an annual basis.
- B. When Required. Whenever land proposed for development contains Source Water Protection Areas.
- C. Elements. The Environmental Assessment Report shall include at least the following elements:
 1. Site description of proposed development within the water resource protection area.
 2. Climatic water balance comparing pre-development and post-development recharge potential for both water quantity and quality.
 3. Subsurface exploration including borings, test pits, and infiltration tests.
 4. Design of ground-water recharge facilities that assure water quality as well as water quantity.
 5. Construction and maintenance considerations.
 6. Recommended ground-water monitoring plan.
 7. Water management agreement between the applicant and the county providing for monitoring and maintenance of the recharge system. The applicant will abide by the Ground Water Management Agreement as written in the *DNREC Supplement to the Source Water Protection Guidance Manual for the Local Governments of Delaware: Ground-Water Recharge Design Methodology* dated May 2005 or as later revised.

6.6-4.7. Source Water Protection (SWP) Area Standards.

- A. SWP Zone 1. Surface area extending 150-foot radius around a wellhead.
 1. Development Standards.
 - a) Impervious Cover. Impervious cover shall be prohibited on lands located in a Zone 1 area with the exception of buildings, pumps, water storage tanks, generators and related appurtenances, and access associated with the well and related treatment and distribution facilities.
 - b) Stormwater. Stormwater runoff shall be diverted away from wellheads.
 2. Prohibited Uses. The following uses are prohibited in SWP Zone 1 areas.
 - a) On-site community and private wastewater treatment and disposal systems.
 - b) Underground and aboveground storage tank systems subject to the registration requirements of DNREC.
 - c) Junk/scrap/salvage yard.
 - d) Mines/gravel pit.

AN ORDINANCE BY THE CLAYTON TOWN COUNCIL
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- e) Hazardous Waste Treatment, Storage and Disposal Facilities, as defined in 7 DE *Admin. Code 1302, Delaware Regulations Governing Hazardous Waste*.
 - f) Sanitary and Industrial Landfills, as defined in 7 DE Admin. Code 1201, *Delaware Regulations Governing Solid Waste*.
- B. SWP Zone 2. Remaining surface area of the wellhead protection area outside of SWP Zone 1 and excellent groundwater recharge potential areas.
- 1. Standards for New Construction and Development.
 - a) New development in SWP Zone 2 Source Water Protection Overlay SWP Zone areas may not exceed 20% gross impervious cover.
 - b) New development may exceed the 20% gross impervious cover threshold up to 50% gross impervious cover provided that the applicant demonstrates, through an environmental assessment report prepared by a registered professional geologist or registered professional engineer familiar with the hydro-geologic characteristics of Kent County using climatic water budget, that the post-development recharge quantity will meet or exceed the pre-development recharge quantity.
 - c) Roof Drains. For all new construction, all structures shall be required to discharge roof drains into recharge facilities designed per the *Delaware Sediment and Stormwater Regulations* dated January 1, 2014 or as later revised. For all new construction, including residential, all structures shall be required to discharge roof drains onto permeable surfaces.
 - d) Stormwater. Stormwater from new development shall be treated using water quality best management practices in accordance with current requirements of the *Delaware Sediment and Stormwater Regulations* dated January 1, 2014 or as later revised.
 - 2. Prohibited Uses. The following uses are prohibited in SWP Zone 2.
 - a) On-site community wastewater treatment and disposal systems.
 - b) Underground storage tank systems subject to the registration requirements of DNREC.
 - c) Chemical processing/storage facility.
 - d) Junk/scrap/salvage yard.
 - e) Mines/gravel pit.
 - f) Hazardous Waste Treatment, Storage and Disposal Facilities, as defined in 7 DE Admin. Code 1302, *Delaware Regulations Governing Hazardous Waste*.
 - g) Sanitary and Industrial Landfills, as defined in 7 DE Admin. Code 1201, *Delaware Regulations Governing Solid Waste*.
- C. SWP Zone 3. Where a SWP Zone 2 wellhead protection area overlays an excellent groundwater recharge potential area.
- 1. Wellhead Protection Areas in SWP Zone 3 shall be preserved in a natural condition.
 - 2. Impervious cover shall not be permitted.

AN ORDINANCE BY THE CLAYTON TOWN COUNCIL
to Adopt Source Water Protection Regulations
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Add the underlined language to Section 6.7-5 Site Plan Permits

6.7-5.4. Application Requirements

- B. A site plan, prepared by a competent professional, drawn to scale that includes at least the following information:
1. Location, dimensions, and first floor elevations of all buildings and structures.
 2. Existing and proposed parking areas.
 3. Existing and proposed access roads.
 4. Drives and walkways.
 5. Topography and major vegetative features.
 6. Existing and proposed grading
 7. Location of landscape screens.
 8. Recreation and open space areas.
 9. Location of flood hazard areas.
 10. Location of source water protection areas.
 11. Stormwater management plan.

Add the following language to Table 1 Permitted Uses and Structures.

Note: Permitted uses shall be modified in accordance with any applicable standards set forth in Section 6.6-4 Source Water Protection Overlay Zoning District Regulations.

CHANGES TO THE CLAYTON SUBDIVISION ORDINANCE

Add the underlined language to Section 5.4-4. Drainage and Storm Sewers

5.4-4.1. Design

- A. Every subdivision plan shall provide for storm or flood runoff channels or basins. The stormwater drainage system shall be separate from and independent of any sanitary sewer system. The system shall be designed according to the standards contained in the Kent County Drainage Code.
- B. Drainage systems in source water protection areas shall be designed in accordance with applicable State and Town standards. See Section 6.6-4.2.

Add the following language to Table 5. Required Documents and renumber table elements as needed.

30. Location of source water protection areas (wellhead protection and excellent groundwater recharge potential areas)

AN ORDINANCE BY THE CLAYTON TOWN COUNCIL
to Adopt Source Water Protection Regulations
by Enacting Several Changes to the Zoning Ordinance and Subdivision Ordinance

AND, FURTHER, THE TOWN OF CLAYTON HEREBY ORDAINS that, where warranted, the numbering system of the Zoning Ordinance and Subdivision Ordinance be amended so that they are in sequence after incorporating the provisions of this Ordinance.

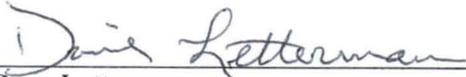
AND, FURTHER, THE TOWN OF CLAYTON HEREBY ORDAINS that the boundaries of source water protection areas shall be depicted on a map adopted with the next comprehensive plan update.

AND, FURTHER, THE TOWN OF CLAYTON HEREBY ORDAINS that, pursuant to Title 10 Section 8126 of the *Delaware Code*, notice of the adoption of this Ordinance shall be published in a newspaper of general circulation.

AND, FURTHER, THE TOWN OF CLAYTON HEREBY ORDAINS that this Ordinance shall take effect upon adoption.

ADOPTED June 8, 2015.

By



Dave Letterman
Mayor and Council President
Town of Clayton, Kent County, Delaware

APPENDIX C. Preliminary Land Use Service (PLUS) Comments



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School of Public Policy & Administration
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