

**FUQUA AND YORI, P.A.**  
ATTORNEYS AT LAW  
28 THE CIRCLE  
P.O. BOX 250  
GEORGETOWN, DELAWARE 19947  
PHONE 302-856-7777

FAX 302-856-4584  
circlelaw@fuquaandori.com

JAMES A. FUQUA, JR.  
JAMES A. YORI  
TIMOTHY G. WILLARD  
TASHA MARIE STEVENS  
MARGARET R. COOPER

October 21, 2004

Constance Holland-AICP  
Director, Office of State Planning Coordination  
540 South DuPont Highway  
Thomas Collins Building, Third Floor  
Dover, DE 19901

**RE: MUDDY NECK  
PLUS - 2004-07-15  
CZ# 1557 (SUSSEX)**



Dear Ms. Holland:

In response to comments and recommendations received as a result of the PLUS process and in particular comments from DNREC the following modifications have been made to the Muddy Neck Site Plan.

1. Town home units 94 through 104 and associated storm water management facilities have been removed from the forested uplands area of the site.
2. All Federal and State wetland areas (as shown on the attached plot) shall be made subject to a conservation easement to ensure their perpetual protection and non-disturbance.
3. The conservation area includes several non-wetland areas of wooded upland which shall be subject to the conservation easement.
4. The plan has replaced single family lots with single family condominium units allowing a significant open space/buffer area to be located between building and the western boundary line of the property which borders lands of the State of Delaware. In addition a fence will be erected along the western boundary from Double Bridges road to the Federal Wetland line.
5. The development will be served by central water, county sewer and will utilize

best management practices in its design and operation of its storm water facilities.

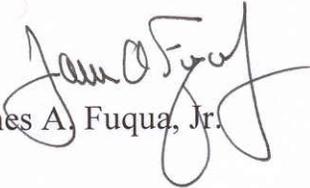
6. I enclose a copy of a letter from Davis, Bowen & Friedel to Sussex County addressing the environmental impact of the development.

We have attempted to address DNREC's concerns while maintaining the goal of the community's design.

The application will be presented to the Sussex County Council on November 10, 2004 and we would request your further consent.

Please contact me if you have any questions.

Very truly yours,



James A. Fuqua, Jr.

JAF/csw

cc: Kevin Coyle (DNREC)  
Richard Kautz (Sussex County)  
Zack Crouch (Davis, Bowen & Friedel)

October 18, 2004

Gerald G. Friedel, P.E.  
Michael R. Wigley, AIA  
Randy B. Duplechain, P.E.  
Charles R. Woodward, Jr., LS  
Jo Anne Williams, P.E.  
Charles A. Hauser, P.E.

Mr. Lawrence B. Lank, Director  
Sussex County Planning & Zoning  
P. O. Box 417  
Georgetown, Delaware 19947

Re: Muddy Neck Property Rezoning Application  
Sussex County Tax Parcel 1-34-17-39.00  
Application C/Z #1557

Dear Mr. Lank:

Davis, Bowen & Friedel, Inc., is pleased to submit the following information on behalf of Muddy Neck, LLC, in support of a re-zoning request for the above-referenced property.

As requested by DNREC through the PLUS review process, the original design has been revised to relocate units C-81 through C-105, effectively reducing the amount of clearing necessary to implement the project. Also in response to PLUS comments a broad conservation easement has been incorporated into the design which provides additional forest and wetlands protections and an effective buffer between the community and adjacent wildlife habitat to the east and south.

These efforts to address the environmental issues associated with the County's Environmentally Sensitive Developing Area while offering an attractive housing option are discussed in more detail below. Please consider this letter, the enclosed brochure and plans as an "Environmental Assessment and Public Facility Evaluation Report." Land utilization summaries and vicinity maps are included on the Preliminary Plan. A copy of the PLUS application as submitted to State Planning is also provided.

**Background/Project Description:**

The property is located on the south side of Double Bridges Road, approximately 1,100 feet southwest of Muddy Neck Road intersection. The property consists of +/- 64.23 acres and is currently zoned AR-1. Current land use is agricultural or fallow fields, wooded uplands and wooded wetlands. The site is within the Environmentally Sensitive Developing Area of Sussex County, as well as within the Muddy Neck Sewer District of the South Coastal Regional Wastewater Facility.

The developer is applying for a MR/RPC overlay zoning designation. The project as proposed will contain 138 condominium units.

Items of environmental concern are addressed below, as suggested by Sussex County through the PLUS review process. Although the submission predates the requirements of the ESDA Ordinance, the items are listed with specific criteria and numbering scheme as outlined in the code.

1. Stormwater

After approval of the re-zoning request, the final design for the proposed residential project will be completed, including comprehensive sediment and erosion control plans for the construction phase and long-term stormwater management plans for the finished project. The stormwater management design will meet all State and County requirements through a combination of best management practices (BMPs). BMPs will be selected for specific site conditions. The plan will achieve the necessary water quality and flow rate controls to protect the quality of life in the new community as well as assure protection of the surrounding water and wetlands systems. If suited to the site conditions, bioretention and other green technologies may be utilized. Among other BMPs, proposed extended detention stormwater management facilities are proposed with vegetated safety benches. Vegetated benches can be effective in reducing of nitrogen and phosphorus in stormwater runoff.

Existing drainage includes agricultural ditches which transmit runoff to the south and east. The proposed stormwater management and grading design will detain runoff to reduce sediment and nutrients in the stormwater and to maintain flow rates. If possible, bioretention may be used prior to the extended detention stormwater management ponds. Beyond the regulatory requirements for the design of the stormwater management system, the system will be constructed to contribute to the landscaping and aesthetic appearance of the project.

It is estimated that a 15 percent reduction of nitrogen and phosphorus may be achieved through redevelopment of the property from agricultural to residential use. More specific evaluation of the water quality improvements will be conducted under the final design process. A nutrient budget will be prepared and submitted to DNREC for review. The combination of stormwater BMPs and public wastewater facilities (see Item 3, below) assists in mitigating water quality impacts to the Inland Bays Drainage Basin, as required under the TMDL regulations.

2. Water Supply:

If the property is re-zoned, public water service can be provided to the community by Delaware regulated public utilities. Both Tidewater Utilities and Artesian Water Company have water supplies and water distribution networks in the vicinity.

Tidewater Utilities, Inc. (TUI), has been contacted and has indicated an ability to serve the project. Once a water service agreement is finalized between Muddy Neck, LLC, and TUI, the utility will apply for a Certificate of Public Necessity and Public Convenience through the Delaware Public Service Commission.

As provided in the PLUS review letter, the water service provider will be required to meet all the regulations of the Office of Drinking Water, DNREC Water Supply Branch and the State Fire Marshals Office. The water system will be included in the final design process to assure adequate and sustainable water supplies, water that is safe to drink based on the latest Drinking Water Standards and water flows, pressures and access points to provide fire protection to the community.

3. Wastewater Treatment:

If re-zoning is approved, no on-site wastewater disposal will be required for residential development of the property. Sanitary sewer service is expected to be provided by the Sussex County through the South Coastal Regional Wastewater Facility. A letter from Sussex County Engineering (July 11, 2003 to Mr. Stephen Soule, P.E.) and the PLUS review letter indicate the County Engineering Department has available capacity in the Clearwater sewer main for the project as proposed. The conceptual layout for the sanitary sewer system has been approved by Sussex County Engineering Department for annexation into the South Bethany Sanitary Sewer District.

The wastewater collection system within the community will be designed and constructed in accordance with Ordinance 38. It will be consistent with the planning for the South Coastal Regional Wastewater Facility. The final design process will determine whether other appurtenances will be required to transmit the wastewater to the County treatment facility.

Utilization of the public wastewater treatment capacity eliminates on-site wastewater disposal within an area identified by DNREC as an area of Exceptional Recreational or

Ecological Significance (ERES) Waters. The system will also assist the area in meeting nutrient reduction goals of the Inland Bays TMDL program.

4. Traffic:

A traffic study was completed for a somewhat larger conceptual plan with 150-single family homes on the same parcel, and submitted to DelDOT in July 2002. The Department concluded that the residential development would have minimal impact on the near-by intersections. Based on that original study, DelDOT also recommended improvements for the project entrance on Double Bridges Road and suggested sidewalks within the development. The PLUS review letter indicates that the Departments original comments are applicable to the currently proposed project, as well.

Before the final design of the project entrance, the developer will coordinate with DelDOT regarding the status of the Alternate Route 54 study, easement and right-of-ways needs and to discuss specific elements of the highway entrance to be included in the design. The applicant agrees to work with DelDOT and Sussex County to implement the intent of DelDOT's recommendations.

5. Species and Habitats:

As noted in the comments from the Office of State Planning Coordination, the property is located within the Environmentally Sensitive Developing Area of Sussex County, and therefore deserves additional consideration for minimizing the impact of development on natural resources. In response to the collected comments in the PLUS review letter dated August 19, 2004, the project has been modified to cluster the residential units in areas that are currently farmed in order to preserve wooded uplands that otherwise would be available for clearing and development.

Long-term preservation of the set-aside uplands will be accomplished through the establishment of a conservation easement as shown on the Preliminary Plan. The easement provides additional protections to woodlands, above and beyond the regulations regarding identified wetlands on the site. Minimal clearing of the existing woods will assist the State in various conservation efforts for plants, wildlife and game, as well as serve as an effective buffer between the proposed community and adjacent wildlife habitat to the east and south.

As part of the final design process, the developer will present the project to the Joint Permit Process group, which includes the US Fish and Wildlife Service for the review of impacts to various species of interest. At that time, the Wildlife Service representative will also be contacted directly regarding the Delmarva Fox Squirrel, as required.

6. Wetlands:

A careful inventory of wetlands has been completed for the site. The USDA Natural Resources Conservation Service has commented on non-regulatory "prior-converted" wetlands, as well as regulatory "farmed wetlands" on the site. The DNREC tidal wetlands have been identified and location of the DNREC jurisdictional boundary has been finalized. A 50-foot building setback buffer has been shown on the Preliminary Plan.

Non-tidal wetlands that are anticipated to be under the jurisdiction of the Federal 404 program have been delineated, surveyed and submitted to the Army Corps of Engineers for a jurisdictional determination. These activities have been completed in conformance with the comments from DNREC regarding wetlands in the PLUS review letter.

Under the current Preliminary Plan, wetlands located with the agricultural ditches will be disturbed. The total lost acreage will be calculated under the final design process. After the USACOE Jurisdictional Determination is finalized, a wetlands permit will be applied for and all applicable regulations associated with the issued permit will be followed. Prior to completion of the final design, the project will be presented to the Joint Permit Process group to assure coordination in meeting all state and federal regulations regarding the wetlands on site. Mitigation of the disturbed area is proposed, in part, through the establishment of a permanent conservation easement in the form of a single +/- 28.18 acre woodlot.

7. Agriculture and Forest:

The project is bound on the west by property owned by the State of Delaware. These lands are leased for farming in some areas or currently removed from active farming under Conservation Reserve and Conservation Reserve Enhancement Programs (CRP and CREP, respectively.) We note that these federal programs are not permanent land use designations, but are contractual in nature, with terms of 10 to 15 years.

After final approvals are obtained, the development will provide prospective buyers with the required information regarding adjacent activities related to farming. Because the adjoining lands are not in permanent agricultural preservation, no setbacks due to agriculture are required. However, the State has, in other parts of Sussex County, transferred ownership of its farmland to private individuals for development; therefore, the Preliminary Plan includes a 50-foot buffer to provide a suitable transition from the proposed community to the agricultural lands, and to assure a satisfactory screen between the community and unforeseen changes in land use.

Based on the recommendations in the PLUS review letter, a +/- 28.18 acre permanent conservation easement is proposed to include the State tidal wetlands, the majority of the non-tidal wetlands and over 3 acres of wooded uplands. Exclusion of this area from development will provide a wide, natural buffer between the proposed community and public lands that allow legal hunting activities. The combination of buffer on the west side of the property and extensive conservation easement to the east and south place the residential units from 100 to over 800 feet from the property line, as suggested by DNREC through the PLUS review.

The provision of a permanent conservation easement assists the State in its efforts to preserve its Green Infrastructure and promotes the public-private partnership that is essential to preservation of large forest blocks that extend over multiple properties. The revisions to the Preliminary Plan effectively reduced forest fragmentation as requested by DNREC through the PLUS review.

8. Infrastructure:

As discussed throughout this report water and sewer for this project will be provided by public/community facility as provided by the South Coastal Regional Wastewater Facility and Tidewater Utilities, Inc. Muddy Neck, LLC is in the process of developing an agreement with Tidewater Utilities, Inc., for long-term water supply and fire protection. All on-site sewer components will be designed, constructed, and maintained in accordance with Ordinance 38 and with requirements DNREC. Water supply designs will be in accordance with Tidewater Utilities Standards and the applicable regulations of the Division of Public Health. Other utilities will be extended to the property including cable TV, telephone, and electric. Drainage and stormwater management systems will be developed pursuant to County requirements as herein before described and operated in accordance with agreements with Sussex County.

9. Historic and Cultural Resources:

The State Office of Historic Preservation noted, through the PLUS review that there is a high probability for historic and prehistoric sites within the project area. In particular, the wooded areas may contain sites of value. After consideration of the various comments regarding the wooded areas on the project site, the Preliminary Plan has been revised to limit the amount of disturbance within the southern wooded area. A +/- 28.18 acre permanent conservation easement is proposed to include both wooded wetlands, but also wooded uplands that may preserve historic and/or prehistoric elements.

10. Other Related Topics:

As the final project design is completed, landscape architectural elements will be incorporated that utilize suggestions from the various PLUS reviewers regarding the avoidance of invasive species, the use of transition vegetation between turf and the conservation easement areas, incorporation of walking paths as part of the residential/conservation transition.

Recreational amenities such as sidewalks, aquascapes and a community pool will be incorporated within the proposed project reducing the need for off-site trips for such uses, mitigating in part some of the air quality issues raised by DNREC.

The site does not lie within an area of Excellent Groundwater Recharge, nor to our knowledge within any proposed wellhead protection area.

Mr. Lawrence B. Lank, Director  
October 18, 2004  
Page 8

Muddy Neck, LLC, and its team of engineers and environmental scientists look forward to working with Sussex County, after approval of the re-zoning application. Through the use of BMPs for stormwater management, utilization of existing public wastewater treatment capacity and establishment of permanent conservation easements, the proposed residential land use can be constructed with the proper balance between sustainable development and environmental protection that is desired within the County's Environmentally Sensitive Development Area.

Respectfully submitted,  
DAVIS, BOWEN & FRIEDEL, INC.



K. Elizabeth Brown, P.G.  
Geologist

KEB/eb  
P:\.1229A009\Draft env letter.doc

Enclosures

copy with enclosures: Muddy Neck, LLC  
Mr. James A. Fuqua, Fuqua & Yori



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF  
STATE PLANNING COORDINATION

November 15, 2004

Mr. James A. Fuqua, Jr.  
Fuqua & Yori, P.A.  
P.O. Box 250  
Georgetown, DE 19947

RE: PLUS 2004-17-15; Muddy Neck

Dear Mr. Fuqua:

Thank you for your letter dated October 21, 2004 outlining your response to the State agency comments that resulted from the August 4, 2004 PLUS meeting regarding the Muddy Neck to be located on 64.16 acres located south of Doubles Bridge Road, approximately 1,100 feet southwest of Muddy Neck Road.

The State is very pleased that you considered our comments and chose to remove town home units 94 – 104 and associated storm water management facilities from the forested uplands area.

We would also thank you for:

1. Making the wetland areas subject to a conservation easement to ensure their protection;
2. Including wooded upland and non-wetland areas in these conservation easements; and
3. Replacing the single family lots with single family condominiums units to allow an open space buffer area to be located between the buildings and the western boundary which borders lands of the State of Delaware.

As stated in our original letter, this project is located in the Environmentally Sensitive Development Area according to the Sussex County Comprehensive Plan and an Investment Level 4 area of the Strategies for State Policies and Spending. The Level 4 designation reflects the significant environmental issues on and around the site. The Department of Natural Resources and Environmental Control expressed serious concerns

Muddy Neck Follow-up

November 15, 2004

Page 2 of 2

regarding the development of this property. While we still have concerns regarding the development of this site, we appreciate the developer's efforts to address these concerns, and we encourage you to continue working with DNREC as the proposal moves forward.

With regard to the balance of the August 19, 2004 PLUS response letter, we urge the developer to continue to work with State agencies to address issues related to the development of this site.

If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

Constance C. Holland, AICP  
Director

CC: Mr. Zachary Crouch  
Sussex County  
Town of Ocean View  
Town of South Bethany



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF  
STATE PLANNING COORDINATION

November 15, 2004

Mr. Richard Kautz  
Sussex County  
P.O. Box 417  
Georgetown, DE 19947

RE: PLUS 2004-07-15; C/Z #1557 – Muddy Neck

Dear Mr. Kautz:

The Office of State Planning has received a letter from Mr. James Fuqua regarding the Muddy Neck project located on 64.16 acres south of Doubles Bridge Road, approximately 1,100 feet southwest of Muddy Neck Road. (Copy attached) This letter is in response to our August 19, 2004 PLUS response letter. (Copy attached)

The letter received gives specific information regarding changes made to the site plan as a result of the State agency comments. In our original letter, the State noted serious concerns regarding the development of this parcel because of the sensitive environmental features found on and around the site. To help address these concerns, the developer has changed the site plan as follows:

- Removed town home units 94 – 104 and associated storm water management facilities from the forested uplands area.
- Made the wetland areas subject to a conservation easement to ensure their protection;
- Included wooded upland and non-wetland areas in these conservation easements; and
- Replaced the single family lots with single family condominiums units to allow an open space buffer area to be located between the buildings and the western boundary which borders lands of the State of Delaware.

PLUS 2004-07-15

Muddy Neck

Page 2 of 2

As stated in our letter of August 19, 2004, this proposal is located within an area designated as Investment Level 4 according to the 2004 Strategies for State Policies and Spending. This designation reflects the environmental sensitivity of the area. While we are still concerned about development of this site, we appreciate the developer's efforts to minimize the impacts. We have responded directly to the developer in this regard.

If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

Constance Holland, AICP  
Director

CC: Mr. Lawrence Lank  
James Fuqua  
Town of South Bethany  
Town of Ocean View