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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

From: Janelle Cornwell, AICP, Planning & Zoning Director

CC: Todd Lawson, County Administrator
Everett Moore, County Attorney

Date: November 15, 2019

RE: Agency Response to Council Questions for CU 2176 KH Sussex

Attached are the responses received from the agencies to your specific questions. Per the County's legal staff, to the extent that any of the information is non responsive to the questions posed, that information is not to be used in your deliberative process and decision.

Please be aware that the release of the information will not start the 5 day period of written response from the public or applicant. The 5 day period will begin when the comments are reported in open session to Council.



COUNTY ADMINISTRATIVE OFFICES
2 THE CIRCLE | PO BOX 417
GEORGETOWN, DELAWARE



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
DIVISION OF CLIMATE, COASTAL, & ENERGY

CLIMATE & SUSTAINABILITY
PROGRAMS

100 WEST WATER STREET, SUITE 5A
DOVER, DELAWARE 19904

PHONE: (302) 735-3480

November 8, 2019

Janell Cornwell
Director, Sussex County Planning and Zoning Office
2 The Circle
PO Box 417
Georgetown, DE 19947

**Re: SCPZ 2019 CU 2176 KH – Gas Station; Tax Parcel #234-11.00-56.02, 56.03, 56.06,
& 56.09**

Dear Ms. Cornwell:

This letter is provided on behalf of the Department of Natural Resources and Environmental Control's (DNREC) Planning Technical Advisory Committee (PTAC). DNREC received your letters, dated October 10th, seeking advice on the conditional use application for the construction of a gas station, with convenience store, at the intersection of John J. Williams Highway (Route 24) and Angola Road. Specifically, you requested information regarding: (1) if sufficient mitigation steps and procedures were in place if a large spill occurs at the proposed gas station, (2) if DNREC studies or tests for runoff of rain and fuel, and (3) concerns with the location/distance of gas station tanks and their proximity to wellheads, wetlands, and streams. The comments below provide information on these topics, as well as information about the wellhead protection area, and natural resources on site that are part of a larger contiguous tract of ecologically important wetlands and forests.

First, to address County Council's question regarding sufficient mitigation steps and procedures if a large spill occurs at the proposed gas station, the *Regulations Governing Underground Storage Tank Systems* (Title 7 DE Administrative Code 1351) provide the regulatory requirements for the installation, operation, and closure of underground storage tank (UST) systems including those found at gasoline stations. Spill prevention and detection practices include requirements for double walled tanks, fill line protection, spill buckets, overflow protection and prevention, cathodic (corrosion) protection, and spill release detection systems. Owners and operators of underground storage tanks are required to perform daily, weekly, and monthly inspections and maintain inspection records for tank release detection systems,

inventory, fuel deliveries, and water checks. The various leak detection systems are also required to be tested on a regular basis to ensure that they are functioning. Depending on the system, regular testing occurs annually to once every 36-months as specified in the regulations. Owners and operators are required to have an individual on site who has successfully completed UST operator training, which details the regulatory requirements for the operation of a UST system in the State of Delaware. Also, owners and operators of all regulated UST systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of UST systems. They are also required to notify DNREC within 24-hours of any failed test or evidence of a suspected leak. Financial responsibility requirements are located in Part F of the *Regulations Governing Underground Storage Tank Systems*. DNREC has the authority to inspect UST systems at any time including during construction and will complete a thorough compliance inspection of all tank systems on a 3-year rotation. For more information, please contact Mindy Anthony, DNREC Division of Waste and Hazardous Substances, at Mindy.Anthony@Delaware.gov.

In addition, DNREC has an Emergency Response Team, which maintains a rapid, comprehensive, statewide, 24/7 response to emergency and non-emergency petroleum and hazardous substance incidents for the protection of human health, safety, and the environment. DNREC's Emergency Response Team is a member of the State Emergency Response Team which includes the Delaware Emergency Management Agency, the Delaware State Fire School, the Delaware State Police, the Division of Public Health, local and county government agencies, and local fire companies. More information about DNREC's emergency, prevention and response can be found here: <http://www.dnrec.delaware.gov/dwhs/EPR/Pages/RespGroup.aspx>.

The second question posed by County Council concerned runoff of rain and fuel. DNREC does not actively study or test water for fuel related products as it relates to stormwater runoff onto the ground surface or into surface water bodies. However, several divisions within DNREC work collaboratively to recommend stormwater best management practices during construction, and provide advice about public and private wellhead locations and potential groundwater flow paths. With this information, DNREC has advance notice in identifying the closest receptors to potential contamination if a spill were to occur. For more information, please contact Doug Rambo, DNREC Division of Water, Water Supply Section, at Douglas.Rambo@Delaware.gov.

Tidewater Utilities provides drinking water to local residents from the Columbia aquifer. Tidewater Utilities and the Delaware Department of Health and Social Services Office of Drinking Water are responsible for testing and analyzing drinking water. Tidewater Utilities is required to publish a Consumer Confidence Report (CCR) indicating the quality of the water delivered to their customers on an annual basis. This report lists any water quality exceedances or violations to State of Delaware and U.S. EPA established drinking water standards. A copy of the Angola District CCR can be found here: https://www.middlesexwater.com/wp-content/uploads/2019/06/Tidewater_CCR_2019_E-copy.pdf. Local customers of Tidewater Utilities are generally supplied a copy or a web link to access the CCR in June of each year.

Finally, to address the question regarding proximity of tanks to natural resources, there are no DNREC regulations or County ordinances that prohibit the construction of a UST facility in or adjacent to a wellhead protection area. UST systems can operate effectively as long as they are constructed properly and operated and maintained in an efficient manner. If a spill were to occur at the tanks and DNREC was notified (as required by law), steps would be taken to clean-up and remediate the spill and implement monitoring of surface and groundwater sources.

PTAC members would also like to take this opportunity to provide general recommendations to improve development on the parcel. The forest on site is part of a larger contiguous tract that is ecologically important, high quality, and supports rare species according to the Division of Fish and Wildlife. Therefore, measures should be taken to mitigate tree removal on site. Trees act as natural sponges and help reduce surface runoff, absorb pollutants, and lower surface and air temperatures. PTAC reviewers encourage the use of trees as assets to be included in project design. The Division of Fish and Wildlife would like to work with the County and DelDOT to minimize potential wildlife impacts and improve wildlife road crossings. For more information, please contact Brian Galvez, DNREC Division of Fish and Wildlife, Species Conservation and Research Program, at Brian.Galvez@Delaware.gov.

Thank you for seeking DNREC's technical advice on this conditional use application. If the start of the project is delayed more than a year past the date of this letter, please contact DNREC again for the latest information. If you require additional assistance, data, or other support, please do not hesitate to reach out to me for at Marcia.Fox@Delaware.gov or by phone at (302) 735-3495.

Sincerely,

A handwritten signature in black ink that reads "Marcia A. Fox". The signature is written in a cursive, flowing style.

Marcia A. Fox
Principal Planner

cc: Mindy Anthony, DNREC, Division of Waste and Hazardous Substances
Brian Galvez, DNREC, Division of Fish and Wildlife
Matthew Grabowski, DNREC, Division of Water
Doug Rambo, DNREC, Division of Water



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
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DOVER, DELAWARE 19903

JENNIFER COHAN
SECRETARY

November 8, 2019

Ms. Janelle M. Cornwell, Director
Sussex County Planning & Zoning
P.O. Box 417
Georgetown, DE 19947

Dear Ms. Cornwell:

Thank you for your letter of October 10, 2019, regarding Conditional Use application CU 2176 KH Sussex and the additional questions asked by County Council. Those questions, and DelDOT's answers are as follows:

- Question 1: Has DelDOT contacted the neighbor across Route 24 (parcel 234-11.00-60.01 – Carlton Dorman) to discuss the construction of the barrier that will limit their access to go east on Route 24?
 - Answer: No, DelDOT has not contacted the neighbor in this regard.
- Question 2: How far south off Route 24 along Angola Road is the entrance to the site? Could this make it very difficult for vehicles wanting to turn left into the 7-Eleven due to the turn lane onto Route 24 west?
 - Answer: The site entrance on Angola Road, like the rest of the site, has yet to be designed. DelDOT estimates that the entrance would be about 300 feet from the current centerline of Route 24. While DelDOT does anticipate that the queue of westbound vehicles waiting to turn left at Route 24 would back up past the proposed entrance during average weekday and summer Saturday peak hours, a separate left turn lane could be designed for traffic turning into that entrance and, once store patrons reach that lane, DelDOT anticipates a delay of no more than 9.5 seconds (still Level of Service A) for them to complete their turn into the site.
- Question 3: When was the most recent traffic count/study completed for northbound traffic on Angola Road to the Route 24 intersection?

- Answer: The most recent traffic count that DelDOT has for the intersection of Route 24, Angola Road and Robinsonville Road is dated November 1, 2017. The most recent summer Saturday traffic count that DelDOT has is dated June 25, 2016.

- Question 4: Has DelDOT considered widening Route 24, in the proximity of Angola Road, including acquiring the required right-of-way?
 - Answer: In the Land Use and Transportation Study for the Henlopen Transportation Improvement District (TID), which looked at projected conditions in 2030, DelDOT has identified a need to widen Route 24 to provide four through lanes, two each way, on Route 24 through the intersection with Angola Road and Robinsonville Road. DelDOT does not have a project in its current Capital Transportation Program (CTP) to do that work but intends to add such a project. Until DelDOT has planned and designed a project to widen the road, DelDOT cannot acquire the needed right-of-way through its normal process. If a developer is required to widen the road and cannot acquire right-of-way by negotiation, DelDOT can use its condemnation powers to assist the developer but cannot fund the purchase. The developer would need to pay the acquisition costs. Information on this process is available in Section 2308 of the Delaware Administrative Code. If DelDOT has a project in its CTP and a property owner wishes to have their property purchased early, they may request that through the Advance Acquisition Committee.

- Question 5: Is there consideration for the future total widening of Route 24 and/or Angola Road?
 - Answer: See our answer to Question 4 above. Similarly, in the Land Use and Transportation Study for the Henlopen TID, DelDOT has identified a need to widen Angola Road to provide 11-foot lanes and 5-foot shoulders. Again, DelDOT does not have a project in its current Capital Transportation Program (CTP) to do that work but intends to add one.

- Question 6: What is the dollar contribution and the amount of road improvements that the applicant is obligated to provide?
 - Answer: DelDOT anticipates requiring a cash contribution toward its planned Safety Improvement Project at the intersection but has not yet determined the amount of that contribution. The DelDOT also anticipates building some of the entrance improvements needed to support the proposed development, notably the raised concrete median on Route 24 and the widening and islands needed to allow for left turns into the site on Angola Road, and requiring the developer to pay for the extra cost these improvements would add. That cost is also undetermined.

- Question 7: Are all of the developments in the area of the Route 24 and Angola Road intersection that are proposed and/or approved contained in the DelDOT traffic counts for the 7-11 project? Please list the developments included in the traffic count/study for the Rt. 24 and Angola Rd. intersection improvement?

- Answer: The terms “area,” “proposed” and “approved” in this question are not defined. As discussed in DelDOT’s letter of September 17 (copy enclosed), changes were made to the list of committed developments provided in the scope for the TIS for the 7-11 project, to better accord with State regulations (DelDOT Development Coordination Manual, Section 2309 of the Delaware Administrative Code). DelDOT’s September 17 letter provides a correct evaluation of the intersection in the context of the TIS for the 7-11 project and the list requested is found on page 2 of that letter. The evaluation provided in the September 17 letter addresses all the developments required by our regulations. Depending on how one defines the terms mentioned above, there may be some that are not included.

Thank you again for the opportunity to comment with regard to this application.

Sincerely,



Drew A. Boyce,
Director, Planning

DAB:tbm

cc: Todd Lawson, Sussex County Administrator
Michael DuRoss, Assistant Director, Regional System Planning
Marc Coté, Assistant Director, Development Coordination
Todd Sammons, Subdivision Engineer
Susanne Laws, Sussex County Subdivision Coordinator
Joshua Thomas, Planning Supervisor
T. William Brockenbrough, County Coordinator
Troy E. Brestel, Project Engineer
Claudy Joinville, Project Engineer



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JENNIFER COHAN
SECRETARY

September 17, 2019

Mr. Christopher Duke
Becker Morgan Group, Inc.
250 South Main Street
Suite 109
Newark, Delaware 19711

Dear Mr. Duke:

This letter is to document a re-evaluation of the analysis of the intersection of Delaware Route 24, Robinsonville Road and Angola Road done in the KH Angola Traffic Impact Study (TIS).

Following the completion of DelDOT's review of the TIS (See enclosed letter dated July 25, 2019.), it was discovered that four nearby committed developments were not included in the scope of the study when DelDOT provided it on March 28, 2019. Additionally, three developments were included in the scope that should not have been.

Re-examining the list of committed developments, we arrived at the list of nine developments shown in the table below. The original scope we provided to you included seven. Two of those, Love Creek Elementary School and Saddle Ridge were not within two miles of the site. Another one, Acadia only has preliminary plan approval. DelDOT regulations require that committed developments be within two miles of the site and be recorded or substantially approved. Another four developments, Headwater Cove, Burton Pond, Middle Creek Preserve and The Woods at Burton's Pond should have been included in the scope; their omission was an error on our part.

Development	Dwelling Units	Other Descriptor
Pelican Landing Shopping Center		85,000 square feet
Marsh Island	152	
Marsh Farm Estates	104	
Love Creek Marina Residential	188	
Love Creek Marina Commercial		5,000 square feet
Total per Original Scope	444	
Headwater Cove	163	
Burton Pond	365	
Middle Creek Preserve	313	
The Woods at Burton's Pond	165	
Total Additional	1,006	
Total	1,450	

As shown in the enclosed Level of Service (LOS) table, these changes to the committed developments in the area will result in poor LOS at the intersection of Route 24, Robinsonville Road and Angola Road. However, this higher level of delay can be primarily attributed to the other committed developments considered, not the subject application as traffic generated by the subject application accounts for a small percentage of total intersection traffic and is primarily pass by driven. DeIDOT finds seven aspects of this table significant:

- 1) The land use scenario presented by the completion of all nine developments, while consistent with DeIDOT regulations, is only nominally a scenario for 2022, the anticipated build out of the convenience store. In fact, it will take much longer for all of these developments to be completed. As the subject application completes construction, the level of service will be closer to the level of service reported in the original TIS rather than future cases which anticipate all committed developments contemplated will be constructed by 2022. The full buildout is closer to a future scenario contemplated in the Land Use and Transportation Study for the Henlopen Transportation Improvement District (TID).
- 2) There are other developments proposed along Robinsonville Road and Angola Road that have only preliminary plan approval and as such do not qualify as committed developments. If they were considered, the volumes would be still closer to the 2045 scenario contemplated for the TID.
- 3) As with all TIS, there are more distant developments for which the study does not explicitly account. However, growth factors are applied to background traffic to address them.
- 4) The fact that DeIDOT erred with regard to the committed developments in the study area arguably points to a need for improved quality control but it also points to a need for a

close relationship with the County's Planning and Zoning staff. That relationship has been strengthened in recent months.

- 5) DelDOT's planned safety improvement project at this intersection will provide a significant improvement.
- 6) Additional improvements beyond DelDOT's planned safety improvement project at this intersection will be needed. The Land Use and Transportation Study for the Henlopen Transportation Improvement District identified a need for two through lanes each way on Delaware Route 24 by 2045. Regardless of whether the TID moves forward, the study provides a technical basis for a second project at this intersection to complete the widening. DelDOT will work with the County to monitor growth in the area to determine the timing of inclusion of the proposed widening project into our Capital Transportation Program.
- 7) The subject convenience store with gasoline pumps would contribute to traffic at this intersection but only marginally as approximately 76% of traffic generated by the convenience store is pass by traffic or traffic already on the road network. In our view, your client should be required to contribute to the solution but not to be the solution.

In summary, adjusting the traffic from the committed developments and re-analyzing the intersection, we find that the intersection would not operate as well as previously reported (See enclosed Level of Service table.). However, the text of McCormick Taylor's July 25, 2019, letter is still valid; the scheduled DelDOT safety improvement project will be a sufficient improvement for the purposes of this TIS and the developer should be required to contribute toward it.

If you have any questions concerning this letter, please contact me at (302) 760-2109.

Sincerely,



T. William Brockenbrough, Jr.
County Coordinator

TWB:km

Enclosures

cc with enclosures: Jennifer Cohan, Secretary of Transportation
Mr. J. Michael Riemann, Becker Morgan Group, Inc.
Ms. Constance C. Holland, Office of State Planning Coordination
Ms. Janelle Cornwell, Sussex County Planning and Zoning
Mr. Andrew Parker, McCormick Taylor, Inc.
DelDOT Distribution

DelDOT Distribution

Brad Eaby, Deputy Attorney General
Shanté Hastings, Director, Transportation Solutions (DOTS)
Drew Boyce, Director, Planning
Mark Luszcz, Chief Traffic Engineer, Traffic, DOTS
Michael Simmons, Assistant Director, Project Development South, DOTS
J. Marc Coté, Assistant Director, Development Coordination
Peter Haag, Traffic Studies Manager, Traffic, DOTS
Alastair Probert, South District Engineer, South District
Gemez Norwood, South District Public Works Manager, South District
Susanne Laws, Sussex Subdivision Review Coordinator, Development Coordination
David Dooley, Service Development Planner, Delaware Transit Corporation
Mark Galipo, Traffic Engineer, Traffic, DOTS
Anthony Aglio, Planning Supervisor, Statewide & Regional Planning
John Andrescavage, Sussex County Subdivision Reviewer, Development Coordination
Troy E. Brestel, Project Engineer, Development Coordination
Claudy Joinville, Project Engineer, Development Coordination

PEAK HOUR LEVELS OF SERVICE (LOS)

Update to KH Sussex (f.k.a. KH Angola)

Original Report dated June 7, 2019

Prepared by Becker Morgan Group, Inc.

Signalized Intersection ¹	LOS per DelDOT ²		
	Weekday AM	Weekday PM	Saturday Midday
Delaware Route 24 / Angola Road / Robinsonville Road			
2019 existing	C (28.7)	C (31.6)	D (46.3)
2022 without development	E (65.5)	F (116.7)	F (157.2)
2022 without development – with HSIP project ³	D (40.9)	E (62.0)	E (61.8)
2022 with development	F (82.3)	F (142.4)	F (181.7)
2022 with development – with HSIP Project ³	D (46.3)	E (70.6)	E (76.5)

¹ For both unsignalized and signalized intersection analyses, the numbers in parentheses following levels of service (LOS) are average delay per vehicle, measured in seconds.

² In their analysis, DelDOT used a cycle length of 150 seconds, removed all eastbound Robinsonville Road and westbound Angola Road right-turn on red volume, and added the eastbound and westbound overlapping right-turns.

³ HSIP project consists of converting each approach to have an exclusive left-turn lane, exclusive through lane, and exclusive right-turn lane.