

**Memorandum of Understanding
between
The Town of Clayton, Delaware
and the
Delaware Office of State Planning Coordination**

WHEREAS, the State of Delaware has determined that certain local land use decisions have far reaching and complex effects on the region, resulting in development which often requires the commitment of finite resources by the various levels of government as well as private investors; and

WHEREAS, coordinated review of certain development proposals is expected to result in a more efficient, effective and timely use of resources and improved consistency and coordination between the various levels of government and other interested parties; and

WHEREAS, under Title 29, Chapter 92 of the Delaware Code, local land use planning actions by local governments are subject to pre-application review processes, referred to as the Preliminary Land Use Service (PLUS) and administered by the Office of State Planning Coordination (OSPC); and

WHEREAS, under Title 29, Section 9205 (c) of the Delaware Code, the OSPC shall, through a Memorandum of Understanding, exempt a local jurisdiction from the provisions of the Land Use Planning Act or modify the pre-application process when the local jurisdiction has a Certified Comprehensive Plan and imposes a more stringent review of projects;

NOW, THEREFORE, IT IS HEREBY AGREED AND UNDERSTOOD by and between The Town of Clayton, Delaware and the Office of State Planning Coordination as follows:

- A. Nothing in this agreement shall be construed to deny The Town of Clayton its final decision-making authority over proposed land use planning actions in the corporate limits of The Town of Clayton. Additionally, any comments received from state agencies, pursuant to Title 29, Chapter 92 of the Delaware Code, shall not exempt applicants from the responsibility of meeting all requirements set forth in The Town of Clayton's adopted land use regulations.
- B. The following land use planning actions are and shall remain subject to State review under Title 29, Chapter 92, Delaware Code:
 - 1 Residential subdivisions or land developments containing 50 or more dwelling units.
 - 2 Any non-residential subdivision or site plan involving new construction of structures or buildings with a total floor area equal to or exceeding 50,000 square feet.

3. Any application for rezoning or annexation that is inconsistent with the land use recommendations set forth in the current certified Town of Clayton Comprehensive Plan.
4. Any local land use regulation, ordinance or requirement referred to the Office of State Planning Coordination by The Town of Clayton for the purpose of providing the Town with advisory comments. These include the modifications to the Town's zoning and subdivision ordinances that implement the Comprehensive Plan.

Any development project voluntarily submitted by the developer to the Office of State Planning Coordination for review.

6. Any other project which is required to be referred to the State for pre-application review by The Town of Clayton's regulations.
7. Any amendment, modification or update to The Town of Clayton's Comprehensive Plan, as required by Title 22 of the Delaware Code.

- C. The Town of Clayton shall, at the time of their required pre-application meeting with applicants, identify those projects meeting the criteria defined in this agreement for State review, direct applicants whose projects meet State review criteria to submit necessary documents to the Office of State Planning Coordination in order to initiate the Preliminary Land Use Service (PLUS) review process, and not accept applications for those projects requiring PLUS review until such time as the Office of State Planning Coordination has issued comments, as defined in Title 29, Section 9204 (c) of the Delaware code, to the applicant and The Town of Clayton.
- D. In special circumstances, the Office of State Planning Coordination may waive the pre-application requirements of Title 29, Chapter 92 of the Delaware Code. Where such waiver is granted, the Office of State Planning Coordination shall provide a written explanation of the causes for the waiver to the relevant local jurisdiction and the applicant. These circumstances may include, but are not limited to, a local government's imposition of a more stringent review of projects enumerated in §9203(a) than required by Title 29, Chapter 92 of the Delaware Code, and/or projects expected to provide an extraordinary benefit to the State and the local jurisdiction through economic development, job creation, educational opportunities, public services or facilities, agricultural preservation, or protection and enhancement of the natural environment.
- E. This Memorandum of Understanding may be revised from time to time as circumstances warrant, only with the concurrence of both The Town of Clayton and the Office of State Planning Coordination.

Signature Page

Robert E. Berghorn
The Honorable Robert E. Berghorn
Mayor, Town of Clayton, Delaware

2/15/05
Date

Jeffrey Hurlock
Jeffrey Hurlock
Town Foreman, Town of Clayton, Delaware

2/15/05
Date

Constance C. Holland
Constance C. Holland, Director
Office of State Planning Coordination

Feb 8th 2005
Date