

MICHAEL S. KATZ
STATE SENATOR
Fourth District



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DOVER, DELAWARE 19901

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April 13, 2009

The Honorable Carolann P. Wicks
Secretary of Transportation
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903

Re: Pending Development Plans for Barley Mill Plaza and Greenville Center

Dear Secretary Wicks:

New Castle County Councilman Robert Weiner has shared with us a copy of your recent response to his inquiry regarding the pending development plans for Barley Mill Plaza on Route 141 and Greenville Center on Route 52 in New Castle County, Delaware. He has also provided us with a copy of the recent reply from Orth Rodgers Associates [ORA] answering the defense offered by Apex Engineering to ORA's criticisms of the entrances, exists and internal circulations patterns and traffic counts at Greenville Center.

To substantiate the community's concerns, Citizens for Responsible Growth in New Castle County [CRG] informs us that it has commissioned ORA to take new traffic counts at Greenville Center, and is proposing to obtain a traffic software simulation of the existing problems, showing what will occur if the proposed expansion is allowed to proceed. We understand from CRG that ORA may also be commissioned to update traffic counts at the Route 141/Barley Mill Road intersection. It is encouraging to see this exchange of information among traffic engineers, the community and the applicant, elected officials and government departments that will assist DeIDOT and the County Land Use Department to perform their respective functions in connection with these proposed developments.

As you are probably aware, the recent decision of Vice Chancellor Strine in the case of Christiana Town Center LLC et al v. New Castle County et al, C.A. No. 4044-VCS, plainly empowers DeIDOT to determine the applicable Level of Service in connection with redevelopment projects in New Castle County such as Barley Mill Plaza. As stated by the Vice Chancellor in that case, at pages 23, 24 (copy enclosed):

. . . [N]otwithstanding the UDC's exemption of . . . plans [such as Barley Mill Plaza] from the Article 11 TIS process, DeIDOT may still regulate development in line with its own regulations. Therefore, [the UDC] explicitly allows DeIDOT to require a TIS, a reduction in gross floor area, or transportation improvements.
* * * [T]he requirement that "DeIDOT transportation impact standards" be

observed . . . reiterates that DelDOT may impose greater requirements if it so chooses.

(Underlining added.) Although the Vice Chancellor's decision has been appealed, we do not think that the appeal will adversely affect the Court's recognition of DelDOT's power to impose greater requirements, because the Appellant's objective is to enforce a minimum LOS D standard on redevelopment projects that are also involving a rezoning. Since Barley Mill Plaza does not involve a rezoning, the appeal should not affect DelDOT's rights and powers.

The Chancery Court decision also recognizes that the justification for DelDOT sometimes allowing a LOS lower than service level D for redevelopment plans is to facilitate bringing a dilapidated property up to code (or much closer to code), which would otherwise remain badly out of compliance with current requirements. Barley Mill Plaza in its current state already complies in most important respects with the Unified Development Code and is not a dilapidated project needing rehabilitation. Thus, there is no reason for DelDOT to relax the LOS standard below service level D in evaluating the proposed expansion plans for Barley Mill Plaza, particularly in light of the fact that Tyler McConnell Bridge, nearby intersections and road segments already appear to be failing at peak rush hour.

We are therefore writing to express our strong expectation that DelDOT will evaluate the Barley Mill Project from the perspective of requiring that LOS D be maintained, and will require a reduction in the gross floor area below that which would might otherwise be permitted by the County under the UDC, if necessary to keep the proposed development from making worse any affected intersection or road segment that is already in failure or would fail if additional traffic were to be added (such as, but not limited to, the Tyler McConnell Bridge and intersection of Route 141 and Barley Mill Road).

We are also writing to express our strong expectation that DelDOT will exercise its right and power by requiring transportation improvements to actually be constructed (not merely partially funded by a developer contribution) as needed to prevent the Level of Service at intersections and on roads affected by Barley Mill Plaza from falling below service level D, **and to protect country roads from becoming overburdened.** Allowing development to proceed which will worsen the situation for years to come in return for a **developer contribution to future road improvements that the State is unlikely to be able to pay for at any time in the foreseeable future would, in our view, be totally unacceptable.** In this regard, the regional traffic modeling study that we understand is being performed by DelDOT to scope out the regional impacts of the proposed expansion of Barley Mill Plaza and Greenville Center, should prove invaluable.

As for Greenville Center, we understand that DelDOT must issue a permit for all entrances and exits from and to public highways and that any increased use of an exiting curb cut for which a permit was previously in effect must have DelDOT approval. The expansion of Greenville Center several years ago to accommodate the construction of a new supermarket apparently did not require DelDOT's review and approval because the size of the project, being less than 20,000 square feet, was processed by New Castle County as a minor record plan. However, **the fact that New Castle County did not require a consent letter from DelDOT at the time does not**

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change the fact that the supermarket has considerably increased the use that previously had been made of the entrance/exit between Greenville Center and Buck Road.

To disprove Apex's contention that the Buck Road entrance functions satisfactorily and will continue to do so after the proposed 60% expansion, the community has retained Orth Rodgers to take current, accurate trip counts at the Greenville Center entrances and is commissioning a traffic software simulation of the problems so that everyone can clearly understand the failed and dangerous situation there. Among other problems, tractor trailers exiting onto Buck Road and turning towards Route 52 must jump the divider and swerve into the travel lane for ongoing traffic (vehicles traveling from Route 52 on Buck Road towards Route 100) in order to complete their exit from Greenville Center. No one who has actually experienced the Buck Road entrance/exit during a busy time can deny it fails to function properly, posing a danger to the travelling public.

We are therefore calling upon DelDOT to make clear that *no increased use* of the Buck Road entrance/exit at Greenville Center as presently configured will be allowed. And we want to make clear our strong expectation that DelDOT will not obtain or grant any additional right-of-way for the expansion of the use of this entrance. Since DelDOT has previously denied right-of-way usage for expanded entrances to other applicants, precedent exists for such a denial. If permitted, the expanded use sought by the developer at Greenville Center would facilitate the unacceptable placement of a 12 story building against a single family detached community, visible for miles along the Route 52 scenic byway corridor in violation of the purpose and spirit behind designation of The Kennett Pike as Delaware's first national scenic byway. **It is inconceivable to us that any State agency with the ability to prevent such a travesty would grant property rights or use its power to obtain property to facilitate such a result.**

As always, we appreciate the fine work that DelDOT does for our State under your leadership, and look forward to monitoring these two developments with the objective of making certain that they proceed in a way that is beneficial both for the developer and the community. Towards that end, we ask that your staff and you meet with us, with County elected officials and with New Castle County Land use staff as soon as possible to discuss how to coordinate DelDOT's review of the traffic entrance issues at Greenville Center with the internal traffic circulation analysis that falls within the County's purview. **Given the current unacceptable conditions at Greenville Center, it is paramount that these interrelated issues be analyzed and coordinated in a comprehensive fashion, rather than piecemealed across arbitrarily established governmental lines.**

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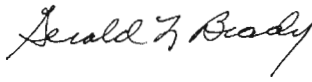
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Sincerely,



Michael Katz
State Senate
4th District



Gerald Brady
State Representative
4th District



Deborah Hudson
State Representative
12th District

Enclosure

cc:

Councilman Robert Weiner, Council District 2

Citizens for Responsible Growth in New Castle County

David M. Culver, General Manager, NCC Land Use Department

Orth Rodgers Associates

Pam Scott, legal counsel for the Stoltz organization

Area civic leaders and residents