

Livable Delaware Activity

Activity/Policy/Program name: Support Facilities Reports

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Purpose: A “Support Facilities Report” is used to help governments figure out whether the public systems such as transportation are big enough to support a new (proposed) development or zoning change. The report may recommend that a Traffic Impact Study be conducted.

Enabling Laws: 9 Del. C. § 2661, 4961, 6961. These sections, each titled “Highway Capacity” were respectively added to the New Castle, Kent, and Sussex County parts of Title 9 (Counties) to implement the Quality of Life Act discussed below.

Policies: None

History: In 1988, the Quality of Life Act, among other things, required each county to reach an agreement with DelDOT “to provide a procedure for analysis by DelDOT of the effects on traffic of each rezoning application.” The three resulting agreements created three parallel but unique processes. In all of them, the County planning agency sent us a form (the names and content varied) telling us about a proposed rezoning and we sent back a form, called a Support Facilities Report, in which we provided the above analysis. The essential information that this report provides is whether or not a traffic impact study is needed before action on the rezoning.

Because of the constraints of their zoning processes, Kent and Sussex Counties chose to make this a preapplication process. In that process, the applicant cannot file their rezoning application until the County receives either a Support Facilities Report saying a study is not required or a letter from DelDOT commenting on the study. In Sussex County, this situation applies to conditional use applications as well as rezoning applications.

In 1998, New Castle County unilaterally stopped participating in the Support Facilities Report process. We understand their reasoning to be that their Unified Development Code has replaced our agreement with them. Functionally, it appears to have done so. Arguably, however, that Code does not meet the letter of the Delaware Code because it is not a signed agreement between DelDOT and the County.

Current Situation: As prescribed in the agreements discussed above, we provide a traffic analysis to Kent and Sussex Counties on each proposed rezoning and each proposed conditional use in Sussex County. Where we find that more information is needed to adequately analyze the situation, we ask that the County defer the application until we have the results of a traffic impact study. Typically, our Support Facilities Reports are one or two page forms, but where we find it necessary, we provide a letter explaining our position.

Many of the proposed rezoning and conditional use applications that we review are trivial with respect to traffic. For those applications, this process is an unnecessary delay. For the non-trivial applications, there is a sequencing problem in Kent and Sussex Counties in that the Support Facilities Reports and traffic impact studies are done before the application is filed and the LUPA review is done after the application is filed. Regarding New Castle County, something should be done to bring them into compliance with our agreement, either by changing their process or by changing the agreement. Their local process provides them with more information than our process would, so their non-compliance is not a practical problem, but it should be addressed.

One solution to all three problems would be to eliminate Support Facilities Reports in favor of LUPA reviews. Doing so, however, would mean that we would not identify the need for a traffic impact study until after an application has been filed. We could address that in either of two ways. First, we could require the counties to halt their approval processes while a traffic impact study is done. Second, we could be content to not have such studies until the subdivision and land development process. Quite arguably, that is where those studies should occur.

The primary reason for requiring them prior to rezoning is that the County has more authority to exact mitigation measures from an applicant in the rezoning process than they do in the plan approval process. Kent and Sussex have historically been unwilling to use that authority in the rezoning process because they believe doing so would be contract zoning, which is an illegal practice. Instead, they exact mitigation measures only in the subdivision and land development process. Their regulations in that regard could be strengthened but that is beyond the present issue. In any case, if they were unwilling to exact mitigation measures from an applicant in the rezoning process, then giving the information needed to do so would not cost them anything.

Eliminating the Support Facilities Report process, in favor of the LUPA process and changes in the Kent and Sussex county codes, would allow for better coordination of public policy planning and decisions (Goal #11) and would streamline the regulatory process (Goal #5).

Revisions/Actions Needed: Since the Support Facilities Report is primarily a determination of whether or not a Traffic Impact Study is needed, this information could easily be included in the LUPA review instead. Repeal the Delaware Code sections listed above, dissolve the agreements that the Counties and DelDOT negotiated as a result thereof, and require that each of the three counties include requirements pertaining to traffic congestion in their subdivision and land development regulations. A provision to accept New Castle County's current standards in this regard may be appropriate.

Resources Needed to Create/Revise: +/- 10 person-hours to draft legislation to change the Delaware Code, dissolve the agreements, and require changes to the county codes. +/- 100 person-hours to draft model language for use in County codes and provide technical support to Counties as new regulations are adopted.

Process for Creation/Revision: Draft legislation described above. Get legislation passed. Work with County land use agencies to prepare amendments to their codes.

Schedule: Changing the Delaware Code should be doable within a year. Changing the county codes will take longer because we need to educate the Kent and Sussex County governments first on the need to do something and then on what they need to do. We estimate 18 months for the county code changes.

Measures to Guide Progress: Percent reduction in average time from applicant's initial contact with county planning department to action by county council or levy court on rezoning and conditional use applications. This information would have to be collected by the county planning departments. DeIDOT has no independent way of knowing when applicants first contact the county.

Interactions or Inter-relationships with Other Agencies or Units of Government: As discussed above, Support Facilities Reports exist to fulfill the requirements of a portion of State law that seems to have somewhat outlasted its usefulness. Eliminating the reports would require changing that law. Eliminating the reports while retaining their benefits would require changes to the Kent and Sussex County codes to include level of service standards. As discussed in Transportation Impact Studies, the county governments will have to be educated on the need for them to do this before they can be expected to do so willingly.