



Planning & Zoning

Agendas & Minutes

MINUTES OF THE REGULAR MEETING OF JANUARY 12, 2006

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 12, 2006 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Acting Chairman Wheatley presiding. The following members of the Commission were present: Mr. Wheatley, Mr. Gordy, Mr. Johnson, Mr. Smith, and Mr. Burton with Mr. Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Mr. Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of January 4, 2006 as circulated.

Mr. Robertson read a statement explaining how the Commission meeting is conducted and the procedure for the public hearings.

PUBLIC HEARINGS

Subdivision #2005-56 – application of **REYNOLDS POND, L.L.C.** to consider the Subdivision (Cluster Development) of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 836.32 acres into 1.630 lots, located at the intersection of Route 30 and Road 227.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on December 21, 2005 and that the report will be made a part of the record for this application; that the applicant's attorney and engineer submitted an Exhibit Booklet that contains Overview and Site Data, Economic Benefits, Utilities and Services, Declaration of Restrictions, Traffic Impact Study, PLUS Comment Letter of December 16, 2005 and Applicant Response Letter, Findings and Conclusions from Environmental

Site Assessment with Updates, Eastern Shore Soil Service Soils Reconnaissance, GTA Preliminary Geotechnical Report, Wetland Delineation Report, Jurisdictional Determination, U.S. Army Corps of Engineers, Cultural Resource/National Heritage Report, Preliminary Subdivision Plan, Conceptual Illustration, Sussex County Tax Maps, Adjacent Property Owners, Beideman Road Property Owner Correspondence, and Proposed Hosing Types and that the Exhibit Booklet will be a part of the record for this application; that three revised preliminary subdivision plan sheets have been submitted; that a letter from Dean and Jill Malloy was received in opposition to this application, that letters were received from Tim Martz, L. Edward Jestice, Jr., Dale Ockels, Burton D. Messick, Lawrence Jestice, Hugh Rowan, R. Chris Clark, and Shawnee Country Club

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were received in support of this application; and that all of the letters will be made a part of this application.

The Commission found that Glen Urqhart; Developer, Jim Fuqua, Attorney, Ross Harris of ECI, Jim Willey of GMB, Bob Rodgers of Orth – Rodgers, Ed Lunay of Environmental services, and Jerry Esposito of Tidewater Utilities were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that 1,630 single family lots are proposed on 836 acres; that the proposed density is 1.94 lots per acre which complies with the AR-1 Zoning District and the Low Density Area of the Land Use Plan; that the applicant has purchased the property from the Isaacs family; that there are a number of community features such as pools, athletic fields, a community center, equestrian facility, small and large parks, a 9 miles of trails proposed; that there are 54 acres of usable lakes proposed; that there are 361 acres of active open space proposed; that 42% of the site is active open space and that there is a total of 49% of open space provided; that the project will be phased over eight years; that an environmental site assessment has been conducted; that a soils reconnaissance study has been conducted; that a geotechnical report and a traffic impact study have been conducted; that the traffic impact study was conducted on a previous application for 1,592 units, 160,000 square feet of commercial area, 220 assisted living units and a golf course, that this application was denied by the County Council and stated that the previous design was not in accordance with the Comprehensive Land Use Plan; that this application does not require a rezoning; that no multi-family units or commercial areas are proposed in this application; that the proposed design is a permitted use by the Zoning Code and Land Use Plan; that the design complies with the Subdivision and Cluster Ordinances; that this application was filed prior to the moratorium being put into effect; that the project has been designed in compliance with all ordinances and that they have taken into account comments from various agencies; that Delaware Electric Cooperative will provide electric to the site; that Sharp Energy will provide gas to the area; that telephone service will be provided by Verizon, that Comcast will provide cable television to the area; that Tidewater Utilities will provide central sewer and water and that all have submitted letters stating that they are willing and able to serve the development; that a

homeowners' association will be established and professionally managed; that the design is based on the AR-1 Cluster Ordinance Design requirements; that an area along Route 30 will be fenced; that the clustered areas will be separated by man made lakes; that these lakes are for aesthetic and storm water management purposes; that there are setbacks from all wetland areas; that interconnectivity is provided throughout the site by trails; that the proposed lots are located away from the agricultural preservation districts; that interconnection roads have been provided to adjoining lands that have the potential to be developed; that Hummingbird Road will be realigned; that there is one entrance proposed off of Route 30; that there are not any strip lots located along any County numbered road; that the proposed wastewater treatment plant will not be visible from the lots or any roads; that 80% of the forested areas will be maintained; that the amenities will be

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located in the center of the project; that the State relies on the Strategies and Spending Policies and that this site is located in a Level 4 area; that the State does not support development in a Level 4 area; that the Strategies and Spending is not a law but a policy; that the project has been reviewed by PLUS three different times; that the design complies with all local codes and ordinances; that DelDOT and the Department of Agriculture are opposed to this development; that the State does not want to see any development in a Level 4 area; that the Department of Agriculture cannot force anyone to continue farming; that farming is a right; that Agricultural Preservation Districts are voluntarily; that the applicants do not have to please all State Agencies or Citizens Groups; that the County regulates land use issues; that the design complies with the 2003 Land Use Plan, the Zoning Ordinance, the Subdivision Ordinance, and the Cluster Subdivision Ordinance; that the purpose of the Zoning Ordinance includes low density single family residential development; that this application does not exceed two lots per acre; that this design is better than a lot of smaller subdivisions all bunched together; that low density single family dwellings are appropriate and have been permitted since 1970; that the 2003 Comprehensive Plan permits single family lots; that the plan calls for the clustering of lots; that the proposed density does not exceed the AR-1 zoning; that the State of Delaware certified the Land Use Plan; that the Level 4 area is in conflict with the Comprehensive Plan; that there is a legal standard for agricultural protection; that development is not prohibitive in agricultural areas; that there will be fifty foot setbacks from agricultural lands; that thirty foot forested buffers have been incorporated where necessary; that the restrictive covenants include the agricultural use protection notice; that future lot owners cannot sue farmers from continuing farming operations; that none of the individual lots contain any wetlands; that no lots or homes will be built in a flood plain; that homes located in the beach areas are built in flood plains; that environmentally sensitive areas have been protected with buffers from ponds, streams, Reynolds Ponds, and agricultural buffers are provided; that no wetlands or flood plains are being disturbed; that no historical features have been found on the site; that 49% of the site is open space; that 122 acres of forested areas will remain; that there will not be any negative impacts to agricultural lands; that no objectionable features are proposed; that the treatment plant will be buffered and there will be open space along all county roads;

that Tidewater Utilities will provide central water and sewer and will be required to comply with all state regulations; that the storm water management system will utilize best management practices; that sidewalks and streetlights will be provided throughout the project; that a variety of housing styles are proposed and will start at \$290,000.00; that the proposed homes will have a positive impact to the area; that residential development is permitted in agricultural areas; that \$500.00 from the initial sale of each lot will be contributed to the Sussex County Land Trust Foundation; that a community center and multi use building is proposed; that the site is located in the Cape Henlopen School District and that there will be minimal impacts on the School District; that the area is protected by the Milton Fire Department with a small portion protected by the Ellendale Fire Company; that police protection is provided by the Delaware State Police;

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that a community security force will be established; that there have been two traffic impact studies conducted; that DelDOT reviewed a traffic impact study for a larger development than the one now proposed; that fewer driveways will be required for this project; that Hummingbird Road will be realigned and built to DelDOT standards; that all entrances will comply with all of DelDOT's requirements; that DelDOT supports a round about along Route 30; that improvements to Beideman Road will be required; that traffic signals are possible for six different locations; that all recommendations by DelDOT will be performed at the developer's expense; that necessary buffers are provided; that there are approximately different subdivisions in the area; that the site is near a future annexation area for the Town of Milton; that single family residential units with central water and sewer are proposed; that no commercial uses are proposed; that the site is suitable for development; that there will not be any major grade changes; that the street design will comply with Sussex County regulations; that all lots are in compliance with the subdivision code; that necessary easements for utilities and drainage will be provided; that area waterways are not being impacted; that recreational and open space areas are being provided; that the average lot size is 9,000 square feet while 7,500 square foot lots are permitted; that 1,672 lots are permitted by the ordinances and codes; that 1,630 lots are requested; that the design of this project has been on going for over three years; that they are trying to develop a nice community; that the design of the project has been based on Better Models for Development; that no golf course is proposed; that the plan has been redesigned based on previous concerns from various agencies; that the design meets the goals of Livable Delaware; that the design of this project is superior to a standard subdivision; that a scenic corridor has been created along Route 30; that there is a conflict between the Comprehensive Land Use Plan and the States' Policy for Strategies and Spending; that there is no need to debate the State's Policy or what laws may be enacted in the future; that Level 4 opposition is irrelevant; that the proposed use is permitted by County law; that the Isaac family has the right to sell their land for development; that there is land available for the Milton Fire Department for their use; that DelDOT may require additional information; that there are many second home owners and retirees moving into the area; that more affordable housing away from the beach area is being provided; that two swimming pools are proposed; that Hummingbird Road will be

improved to handle farm machinery; that the ponds will be stocked with fish; that there is not any access to Reynolds Pond; that Reynolds Pond is not owned by the applicant; that wetland delineation has not yet been verified by the Corps of Engineers but should be available within the next two to three weeks; submitted proposed conditions of approval that include 1) the maximum number of single family lots shall not exceed 1,630, 2) residential building permits shall not exceed 300 per year, 3) final site plan review by the Planning and Zoning Commission shall be required for each phase of development, 4) an underground gas storage facility for service to this project only shall be permitted subject to approval by the Office of the State Fire Marshal and other agencies with jurisdiction and subject to site plan approval by the Commission. The facility shall be no less than 50' from adjacent properties, 5) the interior street design shall be in accordance with or

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exceed Sussex County street design requirements. Street design shall include curbs, sidewalk, and street lighting, 6) all entrances, intersections, roadway improvements and multi-modal facilities required by DelDOT shall be completed by the applicant as required by DelDOT, 7) the core recreation area consisting of the multi-use village hall, community center, swimming pools, 3 basketball courts, 3 tennis courts, softball/baseball field, soccer/lacrosse field, parks and trails shall be constructed and open to use by residents in accordance with the following schedule: first pool and tennis courts by the issuance of the 200th certificate of occupancy, pool complex by the issuance of the 300th certificate of occupancy, sports fields and basketball courts by the issuance of the 400th certificate of occupancy, multi-use hall by the issuance of the 500th certificate of occupancy, multi-use village hall by the issuance of the 700th certificate of occupancy, and trails, paths and parks as the phases are built, 8) the subdivision shall be served by a publicly regulated, on-site central sewer system as defined by the Sussex County Zoning Ordinance, designed in accordance with Sussex County Engineering Department (Ordinance No. 38) specifications and in conformity with all DNREC regulations. The operation of the central sewer system shall be subject to the Delaware Public Service Commission and all applicable State and County regulations, 9) The clustered subdivision shall be served by a publicly regulated, central water system providing drinking water and fire protection as required by applicable regulations, 10) storm water management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. The applicant, its successors or assigns shall operate the storm water management facilities using Best Management Practices (BMPs) to provide groundwater recharge, 11) state wetlands shall not be included in individual lots. State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal and State permits, 12) No individual boat docks or boat launching facilities for motorized boats shall be permitted, 13) the applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of the streets, roads, buffers, storm water management facilities, and other common areas, 14) road naming shall be subject to the approval of the Sussex County Mapping and Addressing Department, and 15) the applicant will provide the agricultural buffers and notices in accordance with applicable State and County requirements; and submitted proposed

Findings that include 1) The Development is designed in accordance with the Cluster Development Ordinance. The proposed Cluster design is superior to a standard subdivision with 49.1% of the Project remaining as open space. This includes 43.2% of the site used as common areas or recreational areas. 2) The items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed. 3) The development will contain 1,630 single family detached residential lots on 836 acres of land, being a density of 1.95 lots per acre which is within the density permitted for an AR Subdivision. 4) The development is consistent with the trend of development in the area. Several residential developments exist just North of the site at Jefferson's Crossroads, West and East of the site and significant development is planned in the "North Milton" Milton Annexation area. 5) The development will fully comply with all agricultural use requirements

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required by law including buffers, structure setbacks and agricultural use deed notifications. 6) The development will be served by central water and sewer systems operated by Tidewater Utilities, Inc. 7) The development's location provides easy access to Route 1 and Route 16 major roadways as well as shopping areas in Milton. All entrance and off site roadway improvements required by DelDOT will be the developer's responsibility. 8) The developer will be responsible for construction of all water and sewer utility systems. The development will generate significant revenue to Sussex County through transfer taxes, permit fees and real estate taxes. 9) The development is consistent with the uses permitted in the "Low Density Area" of the 2003 Sussex County Land Use Plan and the purpose of the AR Zoning District. 10) The development provides extensive active and passive recreational uses including swimming pools, basketball and tennis courts, fields for softball and soccer, an exercise facility, a multi-use building, a community center, numerous parks, miles of multi-use trails and sidewalks. 11) The development is designed to minimize environmental impact. In addition to central water and sewer systems, storm water management facilities will be designed and operated in accordance with DNREC regulations and will utilize best management practices. Significant buffers are provided from all wetland areas, no wetlands are located within lot lines and an extensive area of existing woodlands will be preserved. 12) The development meets the purpose and standards of the cluster ordinance, the subdivision ordinance, the AR District of the Zoning Ordinance and the low density area of the 2003 Land Use Plan.

The Commission found that Michael Parkowski, Attorney representing the Isaacs' family, was present in support of this application and advised the Commission that the Isaacs have provided for their future; that farmers do not have a retirement plan; that they have made a decision to sell their property; that the Farm Bureau supports farmers who want to sell their property through right of choice; that a decision on this application is not required to be made on opinions or policies; that this design is far better than standard cookie cutter subdivisions; that the Isaacs family will remain in the area; that this design is the best way to develop the property; and that the applicant has complies with all laws.

The Commission found that Harold Truxon of Ellendale was present in support of this application and advised the Commission that the project will benefit other developers in the Ellendale area and that Tidewater Utilities will provide central sewer and water to the area.

The Commission found that Tom Herholdt of Milford was present in support of this application and advised the Commission that other developments in the area do not have fire protection; that fire protection will be a benefit since central water will be supplied to the area; and that the design of the project protects natural features.

The Commission found that Hugh Rowan of Ellendale was present in support of this application and read his letter that was previously introduced into the record.

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The Commission found that James Wise, a resident of Biedeman Road, was present in support of this application and advised the Commission that he supports this application since Beideman Road will be improved.

The Commission found that Ernest Ziner of Rehoboth Beach was present in support of this application and advised the Commission that the project will be a benefit to the County.

The Commission found that Richard Page, a resident of Beideman Road, was present in support of this application and advised the Commission that the plan has a good design; that if the plan is not approved, larger parcels could be sold in pieces; and that if this occurs, there could possibly be more lots requested than this application.

The Commission found that Wanda Mixon of Milton was present in support of this application and read a letter from R. Chris Clark that was previously submitted into the record.

The Commission found that Keller Hopkins was present in support of this application and advised the Commission that he supports growth in Sussex County; and that developments benefit employers and employees.

The Commission found that Hal Godwin, Town Manager for Milton, was present in opposition to this application and read and submitted comments from the Mayor of Milton.

The Commission found that John Breeding, an area resident, was present in opposition to this application and advised the Commission that DelDOT is going to have to revamp the Reynolds Pond Spillway to reduce the water level of the pond; that the area floods during heavy rains; that Route 113 is becoming a limited access road and that this project will increase traffic in the area; that the applicant's presentation was a law lecture rather than

discussing the merits of the plan; and that the proposed density is too much and not compatible with the area.

The Commission found that Sue Robinson, an area resident, was present in opposition to this application and advised the Commission that the County is being overdeveloped; that she moved her from New Jersey after 911; that there is no need for over development; and that there have been numerous traffic fatalities at the intersection of Route 5 and 30 within the past few months.

The Commission found that Mabel Granke of Rehoboth Beach was present in opposition to this application and questioned if this application is legal since the County enacted a moratorium on November 29, 2005; that the County does not have a full compliment of

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staff to review traffic, and environmental issues as the State does; that the County is already reaching the population projected for 2020; and read and submitted a letter into the record.

The Commission found that Michael Tyler, President of the Citizens Coalition, was present in opposition to this application and advised the Commission that he is not against people selling property; that there are problems with this size of development; that the State's Policy for Spending protects agricultural resources and prevents sprawl; that this is not a small scale subdivision; that all lots should have access to open space; that the subdivision would increase impervious surfaces by 13%; that the County needs to consider the cumulative impact on the area; that traffic will increase in the area; that Route 30 is designated as a truck route; and read and submitted a letter into the record.

The Commission found that Hobby Isaacs, a resident of Reynolds Pond Road and an adjoining property owner, was present in opposition to this application and advised the Commission that he is not trying to pressure the family into an agricultural preservation district; that he is not opposed to development but to the size of the proposed development; that to keep traffic flowing, you don't install traffic lights; that he disagrees with DelDOT's comment about the traffic impact study; that the average household would have 2.5 vehicles; that this project is in the wrong place due to the number of agricultural preservation districts in the area; that there are other agricultural preservation districts proposed for the area; that the size of this development would be similar to another town; that the site is not located in a development district; that the area is rural in character; that the development will create crime and pollution in the area; that the size of the development would be a burden to emergency services in the area; that Route 30 is a designated truck route; that there is not enough infrastructure available in the area; that there should be a minimum 100 foot buffer from Reynolds Pond; that there is hunting in the area and along Reynolds Pond; that Reynolds Pond is privately owned; that agricultural and poultry operations need to be preserved; and that many poultry operations are moving to Maryland due to the County being over developed.

The Commission found that Jeff Chorman of Allen Chorman, Inc. was present in opposition to this application and advised the Commission that the development is out of character with the area; that the size of the development is equivalent to starting a new town; that his family business does crop spraying from airplanes and that the proposed development would negatively impact this operation; and that they would need a waiver from the FAA every time they applied this practice.

The Commission found, by a show of hands, that 47 people were present in support of this application.

The Commission found, by a show of hands that 11 people were present in opposition to
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this application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer action. Motion carried 5 – 0.

Ordinance Amendment – AN ORDINANCE TO AMEND CHAPTER 115 SECTION 25 OF THE CODE OF SUSSEX COUNTY, TO ADD A REQUIREMENT THAT ALL AR-1 CLUSTER DEVELOPMENTS BE LOCATED WITHIN A DEVELOPMENT DISTRICT AS SHOWN ON THE ADOPTED COMPREHENSIVE PLAN FOR SUSSEX COUNTY.

Mr. Lank introduced and summarized the proposed Ordinance Amendment.

Mr. Lank read a letter in support of the Ordinance Amendment from Constance C. Holland, Director of the Office of State Planning Coordination.

The Commission discussed the Ordinance Amendment.

Mr. Kautz stated that Section 1 and 2 could be given consideration or Section 3 could be considered and that adopting all three sections will create a conflict within the Zoning Ordinance.

Mr. Wheatley questioned limiting clustering to Town Center, Developing Areas and the Environmentally Sensitive Developing Area and added that gray areas in the Ordinance should be corrected.

Michael Tyler, a resident of Lewes, stated that the title of the Amendment references “Development District; that clustering should be in developing areas, not the low density

areas; that creation of the present Ordinance was an error on the County's part; that clustering can be a benefit if located in the right area; that clustering reduces infrastructure and saves development cost; that density should not be increased; that clustering is out of character in rural areas; that there is plenty of open land in the development districts; and that he supports Section 3 of the Amendment.

James Restoggi, a property owner of property near Delmar, expressed conflicts between the Town of Delmar Comprehensive Plan and the County Comprehensive Plan and Ordinances.

Mr. Kautz stated that Section 3 is similar to the text of the Comprehensive Plan Update.

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Mable Granke of the Citizens Action Foundation read and submitted a Memorandum which referenced that the Foundation is gratified that the Council and Commission recognizes the misuse of the cluster ordinance that has taken place and seeking to rectify the situation; that the Foundation wishes to emphasize that the cluster design approach was never intended to encourage or permit increased density; that it should allow an applicant the flexibility to survey a site from the standpoint of proposing to develop a site to its maximum advantage taking into account the topography, natural features to be preserved and placing structures and impervious surface where it places the least possible impact on that which should be preserved; questioning if the 25% reduction achieves the proposed goal; that the amendment should be structured to require each application to prove superior design based on specific standards such as, access, natural features and preservation, placement of units, and reduction of impervious surface; and recommending that examples of good cluster design be reviewed and final decision based on placing requirements that enable the best approach.

Scott Daley stated that developers may revert back to standard developments in low density areas eliminating the opportunity to preserve open space and woodlands, and that reducing density will impact the farmers (sellers) since the density yield will be reduced.

John Davidson stated that clustering densities need to be reduced or limited and that cluster developments should not be approved in areas of larger lots.

Rick Banning stated that the clustering concept is a good concept since most newcomers to the area are retirees and do not want larger lots to maintain.

Mr. Lank offered an alternative to the Amendment by suggesting that Section 3 could be amended to read "(d) The cluster development lies within a TOWN CENTER, a DEVELOPING AREA, or an ENVIRONMENTALLY SENSITIVE DEVELOPING AREA (1) as described within the Land Use Element and (2) as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan. However, if the

proposed cluster development lies within a LOW DENSITY AREA (1) as described within the Land Use Element and (2) as shown on the Future Land Use Plan of the adopted Sussex County Comprehensive Plan, the Commission shall not approve the development unless the total number of lots has been determined by first reducing the gross area by twenty-five percent (25%)”.

Edward Thompson of Delmar stated that development is everywhere; that he agrees with Mrs. Granke; that development is based on profits; that there are too many people in the area and not enough infrastructure; that impact fees should be required; and that he opposes the proposed ordinance.

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Leonard Masia of Axion Consulting stated that densities offered by the Ordinance should provide for saving features of the site, woodlands and wetlands; that the number of lots can be maximized by clustering smaller lots; that AR lands will continue to be developed until stopped by the State or County; and that a definition for open space and open space ordinances are needed.

Mr. Robertson stated that the Commission can consider the following: (1) deny the proposed Ordinance Amendment, (2) recommend approval of Section 1 and Section 2 and reject Section 3, (3) recommend approval of Section 3 only, or recommend approval of Section 3 Alternative as read into the record by Mr. Lank.

At the conclusion of the public hearings, the Commission discussed this Ordinance Amendment.

Motion by Mr. Smith, seconded by Mr. Johnson and carried unanimously to defer action for further study. Motion carried 5 – 0.

ADDITIONAL BUSINESS

- A. Mr. Lank advised that Commission that a workshop is proposed by the Institute for Public Administration of the University of Delaware in reference to “PLANNING YOUR COMMUNITY’S FUTURE”; that the workshop topics are (1) Delaware Planning and Zoning Statutory Requirements, (2) The Elements of a Comprehensive Plan, (3) The Basics of Land-Use Control, and (4) The Role of the Planning and Zoning Commissioner; that the workshop is scheduled for January 25, 2006 for 3 hours; and that if any of the Commission members would like to attend the County will pay the registration fee.

There was a consensus of the Commission that they would all attend the workshop.

- B. There was a consensus of the Commission that they would hold a Special Meeting on February 1, 2006 at 3:00 p.m. to consider Old Business and Other Business items.

Meeting adjourned at 11:05 p.m.