

**MINUTES OF THE MILLVILLE  
TOWN COUNCIL WORKSHOP  
January 24, 2017 @ 7:00 PM**

In attendance were Mayor Bob Gordon, Deputy Mayor Steve Maneri, Treasurer Susan Brewer, Council Member Steve Small, Town Solicitor Seth Thompson, Town Manager Debbie Botchie, Town Executive Assistant Matt Amerling, and Town Code & Building Administrator Eric Evans. Secretary Valerie Faden was absent.

**1. CALL TO ORDER:**

Mayor Gordon called the meeting to order at 7:00 p.m.

**2. PLEDGE OF ALLEGIANCE TO THE FLAG**

Mayor Gordon led the pledge of allegiance.

**3. NEW BUSINESS**

**A. Discuss Town of Millville Council Policies & Procedures Manual.** *Synopsis:* The Town Manager has drafted a manual for Town Council to assist them by documenting accepted practices and clarifying expectations. Procedures have been established so that expectations and practices can be clearly enhanced.

Mayor Bob Gordon stated this is Town Manager Debbie Botchie's second try at this draft for a policy and procedure manual as she distributed the first draft to Council back in June, and now this is phase two, where Ms. Botchie has detailed more procedures. Town Manager Debbie Botchie stated after she started reaching out to her fellow town managers throughout the state to see how their procedures for things such as agendas, citizen privilege, Ms. Botchie felt it was important for Council members new and old to stay up-to-date on their roles as far as what aligns in the Town Charter as well. Ms. Botchie stated she also felt it was important to place in the manual the meeting practices, particularly with the Freedom of Information Act (FOIA) guidelines the Town has to follow. Ms. Botchie stated this manual goes into a lot of detail regarding motions, reasons for going into executive sessions, how to handle public hearings, and Council decorum and conduct. Ms. Botchie stated she gave Council a draft of this a few weeks ago and Town Solicitor Seth Thompson also reviewed it, making any necessary changes per State Code and the Town's Charter.

Mr. Thompson stated he wanted to make clear on the first page the form of government for the Town is a municipal corporation, so the Town is constricted by what authority the legislature has given Council in its Charter, which is why Mr. Thompson placed "... under its Charter" in the first paragraph, so people wouldn't think the Council could simply add or do anything it wanted. Mr. Thompson stated, regarding his comment on the second paragraph on the first page, there are a few exceptions regarding a particular person on Council having powers but those are few and far between. Mr. Thompson stated he also wanted to make sure it is known there are some votes which require a "super majority," but those are few and far between as well. Mr. Thompson stated, on page two (2), the Council controls the Town Code, but not the

State Code, and occasionally the State Code overrides the Town Code, such as FOIA which can change under the State. Mr. Thompson further stated the procedure for amending the Charter is a two-thirds vote and the Governor doesn't have to sign the bill but he can veto the bill.

Mr. Thompson stated, on page twenty (20), there are certain towns which, at their monthly meetings, have the Council receive grievances and the Town already does that near the end of their monthly meetings with the public comment section. Mr. Thompson stated, on page twenty-seven (27), it is mentioned no member of Council shall be required to explain the reasons for their vote, to which Mr. Thompson added, "... unless required by the Mayor or applicable law." Mr. Thompson stated there are certain decisions Council makes of which the reasoning has to be explained, so any courts may know why something was voted on. Mayor Bob Gordon asked if a Council member explaining why they voted how they did should become regular practice. Mr. Thompson stated he thinks it's helpful for the citizens to know why Council is voting the way it's voting, but Council doesn't want its meetings to drag out; so Council has to create a good balance of record in responding. Ms. Botchie asked if a citizen or resident can ask a Council member why they voted how they did during the meeting, right after a motion. Mr. Thompson stated usually the questioning ceases after a public hearing closes, and then the Council has its discussion and votes on the matter. Mr. Thompson stated the Town hasn't adopted a rule prohibiting that procedure so it could be allowed but Council is not required to answer.

Council Member Steve Small stated he had gotten the impression that when it came to zoning matters, Council did not truly have the power to vote no, regardless of a Council person's reason. Ms. Botchie stated if everything complies with the Town Code and State Code, she wouldn't know why a Council person would vote no. Mr. Thompson stated a zoning issue in terms of enacting an ordinance which amends the Town's zoning Code or rezones a parcel – those are legislative decisions and the vote in terms of no can have to do with planned growth and appropriate utilities. Mr. Thompson stated, for example, let's say an applicant comes in to build a hotel on a parcel which is zoned for such, but Council says they don't want the applicant to build a hotel; Council cannot tell the applicant they can't build a hotel there because it falls under all permitted uses and zoning as per Town and State Code.

Mr. Thompson stated, on page thirty (30), there is a mention in terms of Council "may elect to have its preliminary oral discussion and vote formalized in a written decision, and in such case, the oral discussion and decision of the Council subsequent to the public hearing shall be deemed to be 'preliminary' in nature and the Council's decision shall not be deemed final until reduced to writing and approved by a majority of the entire Town Council." Mr. Thompson stated boards of adjustment do this and Mr. Thompson can see Council wanting to do this on a rezoning where an applicant is asking for a parcel change, so Mr. Thompson likes this idea.

Ms. Botchie stated, regarding the "order of business" on page nineteen (19), this is how Ms. Botchie would like to prepare the Town's agendas as well as how the meeting should be run. Ms. Botchie stated the citizens' privilege, visitors, presentations and appointments would fall before new business so the public may have a chance to make a comment, rather than having to wait until the end of the meeting. Ms. Botchie stated a lot of this procedure falls under the onus of the Mayor because he or she should be in charge of the meeting. Ms. Botchie stated there would also be a citizens' privilege at the end of the meeting, but if you spoke during the first,

earlier privilege, you could not make comment during the second privilege, unless the Mayor grants permission. Mr. Thompson stated he likes the idea of having the public speak before the end of the meeting. Ms. Botchie stated on page twenty-five (25), item C, there is an amendment to majority of the Town Council, or prevailing side. Mr. Small stated prevailing side covers both that and majority. Mr. Thompson agreed.

Council Member Susan Brewer asked, on page nine (9), item D, there is mention of removal of an unruly or disruptive person during the Council meeting, and asked who will remove the unruly person. Ms. Botchie stated the Mayor would make the decision to have the unruly person removed and would have to be removed by Town staff. Mr. Small stated he suggests at Council meetings, on the dais, the Mayor sit in the center, surrounded by the Deputy Mayor and Town Manager on either side, followed by other Council members, with others such as staff and guests sitting on the end of the dais. Mr. Small stated the Town is growing fast and is not so casual, so he also means no offense but finds it curious when Council and staff dress more formally when attending a dinner or event as opposed to when Council is conducting the people's business in the people's hall, but that is simply something to think about. Ms. Botchie asked if this item can be placed on the next Town Council meeting in February. Deputy Mayor Steve Maneri stated yes, he's comfortable with putting it on the next agenda after making the one change requested. Council agreed. Mayor Gordon stated if Council has any further questions or comments, please notify Ms. Botchie before the next Council meeting.

**B. Discuss the draft of Ordinance 17-05.** *Synopsis:* Draft Ordinance 17-05 will amend the Millville Town Code relating to Chapter 54, entitled "Dangerous Buildings," and Chapter 111, entitled "Property Maintenance," and will adopt the International Property Maintenance Code.

Town Code & Building Administrator Eric Evans stated this is a typed ordinance, prepared by Mr. Thompson, which takes over Chapter 111, which is "Property Maintenance," and nothing drastic has changed in there, except what Mr. Evans would like to see changed is in section 111-3, reducing the thousand-dollar (\$1000.00) fine to "not to exceed the sum of ninety-nine dollars (\$99.00) for each and every offense," because, that way, it can't be appealed. Mr. Thompson stated yes, it cannot be transferred from the J.P. Court to the Court of Common Pleas. Mr. Evans stated he would like request the same change to the following page, under item F. Mr. Thompson stated for repeated offenses, the fine would not be from fifty dollars (\$50.00) to ninety-nine dollars (\$99.00); it would simply be \$99.00 per each offense. Mr. Small asked depending on how complicated that would be, could this be something simply corrected as the second, separate offense the next day. Mr. Thompson stated this is set up so it is not based on the level of correction – although the court will take that into account – and Mr. Thompson knows the Town is not looking to turn this into a money-maker, but rather a more realistic means of enforcing the property maintenance. Mr. Thompson stated yes, Mr. Small is correct in that if there is a violation of the property maintenance code one day and the person should have been able to fix it that day, the next day is a violation. Mr. Thompson further stated he supposes the person would have a defense to impossibility if it was cutting the grass and that day there was a hurricane. Mr. Evans stated, typically, with regards to the height of grass, the person under violation has ten (10) days to cut the grass, so if within the ten (10) days the grass is not cut, that may be your first offense; however, Mr. Evans will backdate the violation to the original date of the letter and notify the owner they've been in violation for ten (10) days and

each day is a separate offense. Mr. Evans stated he doesn't know what the judge will say about it but Mr. Evans will explain his side. Mr. Small asked if Mr. Evans needs to lower the fifty dollars (\$50.00) to forty-nine dollars (\$49.00). Mr. Evans stated no, he just needs to change the \$1000.00 to a maximum of \$99.00.

Mr. Thompson stated this ordinance is striking Chapter 54, which is the dangerous building ordinance, and breaking Chapter 111 into two (2) articles, with article one (1) already existing, naming it "Lawn Maintenance"; and article two (2) is "Other Maintenance," which is property maintenance. Ms. Botchie stated it is the property maintenance where Mr. Evans cites the International Property Maintenance Code (IPMC). Ms. Botchie asked if this ordinance is passed and the Town institutes the IPMC, will this ordinance give Mr. Evans any more power to enter a person's property. Mr. Evans stated he doesn't believe it gives him the authority to enter the property unless Mr. Evans has a warrant signed by a judge. Ms. Botchie asked Mr. Evans how he obtains such a warrant. Mr. Evans stated he thinks probable cause would have to be involved. Ms. Botchie asked what constitutes probable cause. Mr. Evans stated he's not sure how to get a warrant – that would be a whole other learning curve. Ms. Botchie asked how will this ordinance help the Town when it comes to dangerous buildings? Mr. Thompson stated the issue of being able to go onto someone else's property is not really in the Town's control under its Charter, and most municipalities have used their police force because under State law, police are authorized to enter a property; however, Mr. Evans does not have such authority in order to review a property. Ms. Botchie asked why the Town should adopt the IPMC. Mr. Evans stated the IPMC will be a tool for the next step in that it will help lay the foundation to regulate what's to come when it comes to determining the quality of a building structure. Ms. Botchie asked if the Delaware State Police (DSP) is contracted by the Town, can the DSP help to enforce the Town Code? Mr. Thompson stated he would think the DSP can cite the Town's Code. Mr. Evans stated on page four (4) of the IPMC, there is mention under item 108.13 of a structure unfit for human occupancy, so if a property is full of trash and Mr. Evans has photographs of the trash, Mr. Evans would go to a judge. Ms. Botchie asked which judge, and should the process be "spelled out" in this ordinance. Mr. Thompson stated the Town isn't able to bestow jurisdiction on a court because it is something decided under State law, so the Town cannot contract a court to handle a specific item. Ms. Botchie stated she understands and simply wants to make sure the Town knows which process the Town does if this issue arises. Mr. Thompson stated with regard to citing someone for violating the property maintenance code, the Town will go to the J.P. Court #14, and if the Town wants a structure removed, the Town will go to the Court of Chancery because the Town would be looking for a mandatory injunction.

Ms. Botchie asked how much money these actions will cost the Town. Mr. Evans stated hopefully, because the Town will change the fines down to \$99.00, the Town can stay within the J.P. Court system and the violator cannot appeal the fine to a higher authority. Mr. Evans stated if it gets to a point where Mr. Evans has to condemn a structure because it is unsafe, then the individual would have to take Mr. Evans to court but Mr. Evans isn't sure which court. Mr. Thompson stated there is a lot of notice which happens before such a scenario but it would be Chancery. Ms. Botchie stated she would like to discuss the authority the Town would be able to have with the courts and not have to spend a lot of money on legal fees, because there are times when it would cost five-thousand dollars (\$5000.00) to get five-hundred dollars (\$500.00). Ms. Botchie further stated it will cost money to enforce this code. Mr. Evans stated he has seen where municipalities have put into their budget the cost of enforcing such codes or flattening a

structure. Mr. Maneri asked how many properties the Town currently has with which this ordinance would apply. Mr. Evans stated this would be for the entire town, so if someone in Millville by the Sea (MBTS) doesn't repair their roof, Mr. Evans can cite them for not repairing. Mr. Maneri stated there is also a homeowners' association (HOA) in MBTS to go through and there are a lot of things the Town cannot do within HOA communities because that is what the HOA is for. Mr. Evans stated if he goes to a HOA home and the structure is unsafe because it has water coming into the structure, Mr. Evans can condemn the structure because it's unsafe and the HOA has to figure out what it's going to do with the residents. Ms. Botchie asked, if this ordinance is adopted, how many structures does the Town currently have where the Town could go after it "full force" to condemn, Ms. Botchie could think of three (3). Mr. Evans stated there are about half a dozen. Ms. Brewer asked if any of them are in a HOA community. Mr. Evans stated none of them are in a HOA, and some of them could be classified as commercial. Mr. Thompson stated, setting aside the structures which might fall in the condemnation descriptions and definitions within the IPMC, Mr. Thompson thinks if the Town notices a structure becoming dilapidated, the easiest thing to do is to cite the person for any issues before the structure comes to the point of having to be condemned; and the Town can certainly do that, just like with citing a property in a HOA if it builds a fence too tall. Mr. Thompson further stated he doesn't think a house in a HOA will be applicable often to this type of code because this ordinance discusses mostly buildings which are old and falling down.

Mayor Gordon asked if it is possible, when the Town changes these fines, the judge at the time of the hearing can throw out the case anyway. Mr. Evans stated yes, but, most of the time, the judge will work with Mr. Evans on making sure the warrant and paperwork is correct before moving forward with the case. Ms. Botchie stated when it comes to Mr. Evans doing the paperwork, the Town is saving the taxpayers money because the Town is doing the legwork rather than hiring an attorney. Ms. Brewer asked if there is any additional staff required at this point. Mr. Evans stated no, not at this time, but as the Town grows into the thousands regarding rooftops and residents, it may be time to consider additional staff. Mr. Small stated he believes Mr. Evans assessment of the benefits of codifying this ordinance and IPMC, but Mr. Small wants to make sure there is not any problem Council creates in terms of interaction with the laws of the County or State if the Town does codify this ordinance. Mr. Thompson stated the International Code Council (ICC) is the body which creates the IPMC and the IPMC is the "model act" for property maintenance for municipalities to utilize. Mr. Small asked if the U.S. government also utilizes the IPMC. Mr. Thompson stated yes. Mr. Evans stated every year, the Delaware Housing Authority (DHA) asks the Town what housing code it has, and Mr. Evans has contacted the DHA twice now, and the DHA has yet to respond to Mr. Evans to say the DHA will change its property maintenance code and adopt the 2012 IPMC. Mr. Evans stated he doesn't think the DHA will have a problem with the IPMC, but the DHA likes to give approval prior to adoption, so Mr. Evans is still working and waiting on this, and why this item is at a workshop meeting, but once the Town gets the DHA's authority, the Town can adopt the IPMC. Ms. Botchie stated she will place this item on the February Town Council agenda.

#### **4. PROPERTY OWNERS/AUDIENCE COMMENTS AND QUESTIONS**

Ms. Robin McClane, of Surfsong Landing, stated she loves it here in Millville, but has noticed on Substation Road lately there is an illuminated sign stating the speed limit is fifty (50) miles per hour (mph). Ms. McClane stated she placed a question on the Millville by the Sea (MBTS)

Facebook page, asking if anyone knew what was going on with the speed limit. Ms. McClane stated most responses stated people didn't know what was going on and agreed the 50 mph was too fast. Ms. McClane stated Mr. Maneri's suggestion was to approach Council at tonight's meeting to state her concern, which is why she is here tonight. Ms. McClane further stated she and Mr. Isaac have both mailed letters to Senator Hocker, voicing their concern. Ms. Botchie asked Ms. McClane if she had gotten a response. Ms. McClane stated not yet, but she had just sent it out a few days ago. Ms. Botchie stated before Christmas, DSP Officer Treska came to see her and informed Ms. Botchie the DSP had been getting a lot of complaints about the speed on Substation Road. Ms. Botchie stated Substation Road is a 50 mph speed limit road. Ms. McClane stated the speed limit needs to be changed. Ms. Botchie stated she knows and because the road has no speed limit sign, it is considered a 50 mph road. Ms. Botchie stated the Town knows about this because the Town went through the same thing recently when it acquired property along Dukes Drive and had to put in speed limit signs to lower the speed limit from 50 mph to 30 mph. Ms. Botchie stated Officer Treska informed Ms. Botchie he would like to do a little experiment and place the monitor for 35 mph, then follow it up by placing a 50 mph monitor along the road. Ms. Botchie stated once Officer Treska got the comparative data to Ms. Botchie, they could contact DelDOT so DelDOT can come out, lay down strips to count traffic usage and speed, and make a recommendation for a speed limit. Ms. Botchie stated she is waiting for Officer Treska's comparative data so they can approach DelDOT. Ms. Botchie further stated the Town had problems with getting the speed limit along Cedar Drive to 30 mph, so residents shouldn't get their hopes too high that DelDOT will come back with a low speed limit for Substation Road. Ms. Botchie stated she agrees with lowering the speed limit and she will do her best with what she can, but the road is not the Town's road, it's a State road.

Mr. Doug Isaac, of Pembroke Lane, stated he agrees with Ms. McClane, but his other issue with this is there is no posting of the speed limit at all. Mr. Thompson stated yes, he can understand the confusion or frustration, but, generally, on a two-lane road with no speed limit sign in Delaware, the speed limit is 50 mph. Ms. Botchie stated she will pursue this issue as best she can. Mayor Gordon asked if or when Ms. McClane or Mr. Isaac hear a response from Senator Hocker, please pass on the reply to Ms. Botchie. Ms. McClane and Mr. Isaac agreed pass on the reply to Ms. Botchie.

#### **5. ANNOUNCEMENT OF NEXT MEETING – TOWN COUNCIL MTG., FEB. 15, 2017**

Council agreed to change the next Town Council meeting from Tuesday, Feb. 14, 2017, to Wednesday, February 15, 2017, on account of St. Valentine's Day.

#### **6. ADJOURNMENT**

Mr. Small motioned to adjourn at 8:38 p.m. Mr. Maneri seconded the motion. Motion carried 4-0.

Respectfully submitted,  
Matt Amerling, Town Executive Assistant