

**Planning and Zoning Commission Meeting**  
**March 26, 2019 @ 5:30pm**

In attendance were Town Manager Debbie Botchie, Commissioners Pat Plocek, Cathy Scheck, Glen Faden, Marshall Gevinson, Tim Roe, Town Solicitor Seth Thompson, and GMB Representative Andrew Lyons, Jr.

1. **CALL TO ORDER:** Town Solicitor Seth Thompson called the meeting to order at 5:30 p.m.
2. **PLEDGE OF ALLEGIANCE**
3. **NEW BUSINESS**
  - A. P&Z Organizational Meeting

Town Solicitor Seth Thompson stated the point of this meeting is to set who on the Commission will be chairman and secretary, as well as informing members of the Planning & Zoning (P&Z) guidelines and letting the members ask questions. Town Manager Debbie Botchie stated an introduction of GMB representative Andrew Lyons to the board, and he is the Town's engineer and planner who will be working with the P&Z board on every application. Mr. Thompson stated the P&Z Commission is set up as an advisory board to the Mayor and Council, and it derives its authority from the State Code which allows municipalities to have a P&Z Commission and identifies some of the issues the P&Z deals with as well as how the Commission works. Mr. Thompson stated one of the functions the P&Z does is makes recommendations with regard to potential ordinances, which would amend the Town Code. Mr. Thompson stated members may want to look online and read up on the zoning ordinance and subdivision ordinance as those are the key chapters the P&Z Commission will be dealing with. Mr. Thompson provided different Code links such as the Freedom of Information Act (FOIA), the Code of Conduct, and other Town P&Z meeting information. Mr. Thompson stated the Town tries to stay away from an even number of P&Z members as there could be a deadlock in voting, so there are usually five (5) to nine (9) members, depending on how big the town or city is. Mr. Thompson stated the P&Z annually has to elect a chairperson and secretary, and the P&Z may appoint a records custodian, which is usually the Town Clerk. Mr. Thompson stated there is no compensation for being on the board, but can reimburse members for certain expenses, which is mostly aimed at mileage for attending training sessions. Ms. Botchie stated if a P&Z member attends training, the Town will pay for the registration fee, but will reimburse for mileage getting to and from the training. Mr. Thompson stated the P&Z board will have to, depending on what works for the board, decide what day and time they will be holding their meeting, which doesn't have to be tonight but very soon. Mr. Thompson stated the P&Z board can have more than just a monthly meeting, for instance, if there is a meeting held and the board wants to table the issue to have more time to think on it, the board can schedule a second meeting later in the month, but it will have to comply with FOIA protocols of notification: posting the agenda seven (7) days in advance for a regular meeting and, for public hearings, placing a notice in the newspaper fifteen (15) days in advance of the meeting.

Mr. Thompson stated the P&Z board can adopt rules of procedure but they can't be inconsistent with what is in the Town Code. Mr. Thompson stated he provided the board with Board of Adjustment (BOA) rules to help provide an example of a smooth run of a meeting. Mr. Thompson stated the Town Code doesn't require the P&Z to have a public hearing but the board can. Ms. Botchie stated when she and the other two (2) members were on the P&Z Committee for the past three (3) years, they did have public hearings for each meeting due to the fact that she and another Town employee were sitting on the committee and it would be more publicized to have more attendance at the meetings because she believes the P&Z meetings are a very important step. Mr. Thompson stated all meetings are public under FOIA, but a public hearing is a meeting when the public has a chance to speak before the governing body makes its motion. Mr. Thompson stated meeting minutes, which don't need to be verbatim, do need to be approved at the next meeting. Mr. Thompson stated if the chairperson cannot get a quorum of

three (3) or more commissioners for a meeting and the meeting cannot be rescheduled, the Town Code does allow for the Town Manager to be the first alternate and the Town Code & Building Official to be the second alternate.

Mr. Thompson stated the Code sets up staggered terms, so one (1) of the members will volunteer for one (1) year, two (2) will volunteer for two (2) years, and two (2) will volunteer for three (3) years. Mr. Thompson stated there are no term limits, but you have to be a bonafide resident of Millville, so if you move, you're relinquishing your seat. Mr. Thompson stated if the Mayor and Council want to remove someone, they would have to hold a hearing to vote on removing someone. Mr. Thompson stated the State requires there is a comprehensive plan and the Town is required to go through a large planning process every ten (10) years to see where the Town is headed in the next ten (10) years. Mr. Thompson stated the comprehensive plan, which also goes over transportation, flooding, utilities, etc., doesn't just cover the Town but also other areas of interest outside of Town which may annex into the Town. Commissioner Pat Plocek asked if the annexations would come before P&Z. Mr. Thompson stated yes, he would expect that to be the case. Ms. Botchie stated the Town has an annexation committee. Mr. Thompson stated he thinks Council would want P&Z involved. Ms. Botchie stated it would be at Council's discretion.

Mr. Thompson stated P&Z will make recommendations on subdivision applications, which is under Chapter 125 in the Town Code. Mr. Thompson stated the subdivision application comes before P&Z for a recommendation to Council. Mr. Andrew Lyons Jr., of GMB, stated for both site plans and subdivisions, the P&Z will receive a site plan for review, which Mr. Lyons also reviews to make sure the plan(s) meets the requirements of the Town Code before it comes to P&Z and sometimes it goes back-and-forth between Mr. Lyons and the applicant's engineer three (3) or four (4) times before it comes before P&Z or Council review. Mr. Thompson stated the site plan process is different from the subdivision process in that the site plan is for one parcel which is not divided up into parcels; for instance, Dollar General had to go through the site plan process. Mr. Thompson further stated the site plan process is designed so the P&Z Commission and the Council can review how the site is laid out in terms of how it fits in with its neighbors and with the community in general. Mr. Thompson stated the notion for the site plan process is it's an approved use but the Town gets to weigh in and attach certain requirements so the use blends well with the others. Mr. Thompson stated there are a lot of applications which come to the Town in a combined form for subdivision and site plan. Mr. Lyons stated the applications for both are almost identical so when a subdivision plan comes in, they're coming in to do the subdivision and site plan review all at the same time. Commissioner Cathy Scheck asked if a person would be reviewing a subdivision and a site plan in conjunction with each other. Mr. Lyons stated yes, with a subdivision site plan you would. Mr. Thompson stated once someone is "in the pipeline" with what was passed, they have those requirements which were valid when they applied and the plan was approved. Mr. Thompson stated, for instance, if during the process, Council amends an ordinance making the lot size minimum bigger than it was when the applicant started the process, the applicant can keep the lot size the original minimum it was under Town Code when they started. Mr. Thompson stated there are also differences between a major subdivision and minor subdivision and it basically has to do with whether the applicant is proposing a new street. Mr. Lyons stated that is a big part of it as well as how many lots. Mr. Thompson stated the minor subdivision process is designed to be faster – for instance, if a family farm is twenty (20) acres and the parents pass away, and the siblings want to subdivide it so they each have a home on a lot, they're taking one (1) lot and making it two (2) lots, not adding any new streets, it will be faster and they don't have to worry about public utilities. Mr. Thompson further stated there would be no site plan review for a single family home but that's only if it's being built as one (1) home, which is why you see on the Town agenda subdivisions which are only homes and site plans but still come before Mayor and Council for approval. Mr. Lyons stated if the sites are along Route 26 or Route 17, it's a little more complicated because there are development and design standards which have to be reviewed, and a lot of those are recommendations they have to meet. Mr. Lyons stated there are some requirements but some recommendations which are architectural, or some of

where the parking lot is located and if it's in the front, there has to be a pretty good reason for such a placement. Mr. Lyons further stated what also has to be taken into account is how the site will work with surrounding properties because, on Routes 26 and 17, there are a lot of residential uses which are also zoned as commercial. Mr. Lyons stated when you have a commercial site next to a residential, there is more of an impact. Mr. Lyons stated he will review the plans before they come to P&Z but there are certain times when the applicant may request a waiver – such as on parking (which is a big one). Mr. Thompson stated the subdivision plat gets recorded at the Recorder of Deeds office, but the site plans don't typically get recorded. Mr. Thompson stated when there is a preliminary subdivision approval (which is given by P&Z), the developer takes it in hand and goes to outside State agencies to get approval from them before coming before Council for final approval. Mr. Thompson stated DelDOT will control the entrance permit for a use going in on Route 26, and the Town doesn't weigh in on the entrance permit as it falls under DelDOT's authority and expertise. Mr. Lyons stated there's a very little which can be done by the Town in its Code, and one is if you are on a corner lot on Route 26, your entrance has to be on the side street rather than on Route 26, but that's also a requirement DelDOT likes. Mr. Thompson stated he knows stormwater management has been another issue, so the Sussex Conservation District (SCD) is the agency which approves stormwater management plans. Commissioner Marshall Gevinson asked how much clout the Town has in relation to the tax ditches. Mr. Lyons stated tax ditches are regulated by an organization appointed by the court and the ditches' right-of-way is enforced by the Delaware Department of Natural Resources and Environmental Control (DNREC). Mr. Lyons stated you can get the right-of-way changed by court order and they have their own maintenance so everyone who lives along that tax ditch is taxed for the maintenance responsibility element. Mr. Gevinson asked if the Town can force maintenance to be done. Mr. Thompson stated no, that's a preemption element, so it would be like the equivalent of the Town charging an additional school tax to give to the school district, which the Town can't do. Mr. Thompson stated the way the State set it up is the tax ditch authorities – the one which taxes you, uses the money and is supposed to use the money for maintenance – and they may not be using the money for maintenance or have enough. Mr. Lyons stated some of the taxes on ditches are low due to the fees being set up in the 1940s and 1950s, and the tax ditch authority has never had a quorum at that particular tax ditch to raise the tax ditch rates.

Ms. Scheck asked if an applicant for commercial or residential on Route 26 or Route 17 comes to the P&Z and gets approved, they then go to DelDOT to get their entrance approval, do they come back to P&Z or go to Council? Mr. Thompson stated the applicant will go to Council for final approval. Mr. Lyons stated any road in Millville which is not in a subdivision is a DelDOT-owned road, so every entrance gets approved by DelDOT. Mr. Lyons stated all private roads in subdivision communities meet Town Code requirements. Mr. Thompson further stated it's like a house – the Town has a say in what size the house is and where it's located on the lot, but, ultimately, it's not the Town's house, it just has to meet the Town Code. Mr. Thompson stated homeowners' association (HOA) issues can sometimes cloud things in subdivision applications. Mr. Thompson stated the Town looks at the restrictive covenants for issues such as making sure they don't say the roads are being dedicated to the Town; but the Town isn't reviewing the HOA documents for purposes other than Town purposes. Mr. Thompson stated HOA documents could require your house to be painted purple, and the Town won't care; as long as the HOA documents don't conflict with the Town Code, that's fine and the HOA documents can be more stringent. Mr. Thompson further stated the Town Code may say a house size has to be at least twelve-hundred (1200) square-feet, but the HOA document can say the home has to be at least two-thousand (2000) square-feet; the notion being the HOA by contract is trying to produce a certain quality of residents, and the Town wants to make sure the minimum is met. Mr. Lyons stated the Town doesn't enforce HOA restrictions. Mr. Gevinson asked if the Town has in its Code how many people can occupy a house, such as so many people per square feet. Mr. Thompson stated no, the Town Code doesn't limit occupancy but some HOAs may. Mr. Gevinson stated his community has some renters who squeeze up to eighteen (18) people in a residence. Commissioner Tim Roe asked if there would be an ordinance on the Town's end which could stop the overflow of multiple renters. Mr. Lyons stated there is a parking requirement in a subdivision where you need to have so many spaces per unit. Mr. Thompson stated his

recommendation would be to steer clear of family relationships and having the Town try and figure out who is who, but there is only so much space per bedroom per unit. Ms. Botchie stated this topic will be one of the first ordinances P&Z will be reviewing, and Ms. Botchie is looking into Ocean View, which is for rentals. Mr. Thompson stated going back to parking, the Town Code sets up minimum requirements and if the applicant meets the requirements, the Town doesn't get involved; but the Town does get involved if the parking is in a spot that doesn't make sense or there's not enough depth which will have people parking on the sidewalk, the Town can make suggestions. Mr. Lyons stated parking requirements can be met with the garage and the driveway if the driveway is wide enough and long enough, so there may be no excess parking because the spots are met when the individual driveways and garages are taken into account. Mr. Thompson stated he knows it will be expected to have guests over but the streets should be wide enough to allow for parking. Mr. Lyons stated most of the time, yes, the roads are wide enough so someone could park and others can still get around them. Mr. Gevinson asked if there is a set distance in the Town Code for the road width in a development. Mr. Lyons stated there is through DelDOT, and there's a minimum paving width from the Town but there is not a set right-of-way. Mr. Thompson stated there is a distinction between the width of the right-of-way versus the actual paved road, so you may have a fifty (50)-foot right-of-way but you may only have twenty-six (26) feet of pavement. Mr. Gevinson stated in Bishop's Landing, they have a road which is theoretically wide enough to park your car on each side and still pass a fire truck through it, but the HOA covenants say they can't park on the road because it prohibits emergency vehicles to go through. Mr. Lyons stated that is a restricted covenants in there, and Mr. Lyons has worked on Town roads which were twenty-three (23) feet wide, have one-way traffic, and parking on both sides, and, if you do the math, the cars don't fit; but it was a historic road and that's what was done.

Mr. Thompson stated the P&Z will make recommendations with regard to zoning change requests. Mr. Thompson stated this can happen if someone buys a property zoned residential but they're right next to a commercial zoned property and they want to re-zone theirs as commercial, the applicant has to come to Town to file a re-zoning request, and to see whether they need a comprehensive plan amendment. Mr. Thompson stated zoning changes are more of a legislative function and there are specific standards which apply to zoning changes. Ms. Botchie stated the Town has only got a re-zoning request once and it was right after the 2009 comprehensive plan was approved; someone had come in to re-zone a C-1 to a C-2 along Route 26, but it was denied due to the comprehensive plan and the Town not wanting big stores along Route 26 (Giant and Food Lion (now Weis) were grandfathered in). Ms. Botchie stated a C-2 district is for any building twenty-thousand (20,000) square-feet and over. Ms. Botchie stated when it comes to parking there are some big C-2 zoned-type of stores – such as the Lowe's in Millsboro – where it's required to have a lot of parking due to the size of the store(s), but, with Millville, Council has the opportunity to waive the parking requirement should the applicant put in more landscaping and impervious surface. Mr. Thompson stated P&Z gets to weigh in what the specific regulations are within a district, so, for instance, with accessory structures, for residentially-zoned properties, you can have a primary structure but the use of it needs to be a residence. Mr. Thompson stated the question is “what accessory structures can we have?”, and the Town put some size limits on detached accessory structures as well as setbacks, so someone can't build a three (3)-car detached garage one (1) foot off the line but it has to be ten (10) feet. Mr. Thompson stated there are regulations within a given district that apply to how you build on the lot which is zoned in that district. Mr. Thompson stated P&Z can make conditions to approve a project before it goes on to Council for review. Mr. Thompson further stated a P&Z member may also initiate discussing a new ordinance for possible review.

Mr. Thompson stated Ms. Botchie will let the P&Z Chairperson know when a new application comes in to Town so P&Z will know the sixty (60)-day clock to meet and review it is counting down. Mr. Thompson stated if P&Z doesn't hold the initial meeting within the sixty (60) days, Council may move forward without P&Z review. Mr. Thompson stated when making a motion for a recommendation, it's important for the public to know why P&Z is making the recommendation they are making. Mr. Thompson stated when it comes to conflicts of interest, it's basically a monetary interest which would

benefit you and/or a close family member, and the way that's been interpreted is voting on your neighborhood because of your HOA or voting on a new phase in a neighborhood where your sister lives would both be a big problem because there is a monetary issue and effect, even if it's just a small amount. Mr. Thompson stated the P&Z could use *Robert's Rules* or set up its own rules in terms of how it will operate. Ms. Botchie asked if the P&Z could use the same policies and procedures manual as Council. Mr. Thompson stated yes. The P&Z Commissioners agreed to use the Council manual. Ms. Botchie stated the P&Z members will have an even more extensive training on April 15, 2019, at 6 p.m., with KCI Representative Debbie Pfeil.

Commissioner Tim Roe motioned to nominate Pat Plocek as P&Z Chairman. Mr. Gevinson seconded the motion. Motion carried 5-0. Mr. Gevinson nominated himself as P&Z Secretary. Ms. Scheck seconded the motion. Motion carried 5-0.

Ms. Scheck stated she will take the one (1)-year term, but asked she would be considered for another term when the one year is up. Mr. Gevinson stated he would take a two (2)-year term. Chairman Plocek stated he would take a three (3)-year term. Mr. Faden stated he would take a two (2)-year term. Mr. Roe stated he would take a three (3)-year term. Mr. Gevinson motioned to approve the terms. Mr. Faden seconded the motion. Motion carried 5-0.

The P&Z Commission agreed to meet on the second Thursday of the month at seven o'clock (7 p.m.). Mr. Faden motioned to meet on the second Thursday of the month at 7 p.m. Mr. Gevinson seconded the motion. Motion carried 5-0. Ms. Botchie stated in terms of posting agendas for meetings, the Town administration handles that aspect. Mr. Thompson stated if P&Z decides to have a public hearing, they can have one but are not required to post in the newspaper fifteen (15) days in advance like Council is required. Mr. Plocek stated in terms of whether to make the meeting a public hearing or not, he thinks P&Z should make the call based on what kind of application comes before them, so if it's something rather simple, a public hearing won't be needed, but if it's a major subdivision that's a bit controversial, they can have a public hearing. Mr. Plocek stated if it doesn't work, P&Z can always revisit it. The P&Z members agreed. Ms. Botchie stated the first meeting will be on May 9 at 7 p.m. Ms. Scheck and Mr. Gevinson stated they will not be in Town on May 9.

#### **4. ADJOURNMENT**

Mr. Faden motioned to adjourn the meeting at 6:50 p.m. Ms. Scheck seconded the motion. Motion carried 5-0.

Respectfully submitted and transcribed  
by Matt Amerling, Town Clerk