

Planning and Zoning Commission Meeting
April 15, 2019 @ 6:00pm

In attendance were Town Manager Debbie Botchie; P&Z Chairman Pat Plocek; P&Z Secretary Marshall Gevinson; Commissioners Cathy Scheck, Glen Faden, Tim Roe; GMB Representative Andrew Lyons, Jr.; and KCI Technologies Representative Debbie Pfeil.

1. **CALL TO ORDER**: P&Z Chairman Pat Plocek called the meeting to order at 6:00 p.m.

2. **PLEDGE OF ALLEGIANCE**

3. **ADOPTION OF MINUTES**

A. March 26, 2019

Chairman Plocek stated the Commission will not be adopting minutes tonight as they did not have the minutes to approve. Mr. Plocek stated a reminder to Commission members that cell phones need to be turned off during the meeting so there are no interruptions.

4. **NEW BUSINESS**

A. Training the P&Z Commission – Debbie Pfeil, KCI Technologies

Ms. Debbie Pfeil, of KCI Technologies, stated right now the Town is reviewing its Comprehensive Plan, which is the document the Planning & Zoning Commission (P&Z) will be using from now on and it is currently in its draft format and shipped out to the State for review. Ms. Pfeil stated the plan gives the P&Z its guidelines and how the community wants to see the land developed in the Town. Ms. Pfeil stated the goal today is to provide a better educational tools and resources to make the commission members a better P&Z commission as well as offer some advice on areas where other municipalities have been successful and not successful.

Ms. Pfeil stated the P&Z was re-established in a committee form this past January 2019 and the P&Z is one of the most important bodies in a municipality because in most municipalities the Town Council “rubber-stamps” the initiatives being done by the P&Z. Ms. Pfeil stated the P&Z “gets into the nuts and bolts of details, puts people in the hot seat a little bit, asks some good common sense questions.” Ms. Pfeil stated the items before P&Z should be considered with what’s best for the community and they should almost have the items “wrapped up in a bow” before it goes to Council; if it’s not sorted out, Council makes its decision on what way they want to go. Ms. Pfeil stated Chapter 33 of the Town Code relates to the P&Z, and one thing to remember is P&Z is a recommending body to Council, but the ultimate decision is up to Council. Ms. Pfeil stated there can be five (5) to nine (9) people on a P&Z; however, nine (9) is a lot and most times it’s good to have five (5) or seven (7), otherwise there are “too many hands in the cookie jar.” Ms. Pfeil stated there are three (3)-year terms but the initial set-up rotates, which is great because you do not want five (5) fresh members all at once; so two (2) members are here for three (3) years, two (2) members are here for two (2) years, and one (1) member is here for one (1) year, and all members are eligible for reappointment unless you either choose not to return or you’re not chosen. Ms. Pfeil stated if there is not a quorum of three (3) members, the Town Manager or Code & Building Official serve as the alternate. Ms. Pfeil stated P&Z members may be removed by majority vote of the Council due to a conflict of interest which wasn’t revealed, or don’t have “clean hands,” meaning they owe taxes. Ms. Pfeil

stated P&Z members are required to attend seventy-five percent (75%) of the meetings in a twelve (12)-month period.

Ms. Pfeil stated under State law, meetings and records should be open to the public, and P&Z members are subject to the Freedom of Information Act (FOIA), meaning emails, texts, phone calls, any kind of record you have regarding Town business – you are an extension of the municipality so you are subject to the FOIA. Ms. Pfeil stated if someone, for instance, comes into Town Hall and wants to do something out of the normal, maybe against the Code, you say no, Council says no, the applicant “lawyers up” and they can do a FOIA request for all the data and who talked to who. Town Manager Debbie Botchie stated it’s been two (2) years now since the Town got Council their own emails and Ms. Botchie was thinking of doing the same for the P&Z, so do other P&Z commissioners have their own email accounts? Ms. Pfeil stated no, they usually do not because while the Council is almost a day-to-day operation while P&Z is a “once-and-once operation” so anything that gets said in front of the public gets heard together. Ms. Botchie stated she thinks the email accounts would be more for strictly internal communications. Ms. Pfeil stated she thinks Ms. Botchie could do it but this session will go more into why. Ms. Pfeil stated the P&Z members can be reimbursed for travel and training.

Ms. Pfeil stated the P&Z’s powers and duties are to “plan for the development, improvement and beautification of the Town,” which is broad, and “the comprehensive plan, the preparation and implementation”; so when the Town gets the comprehensive plan, there is an implementation section in the back which shows everything needing to be looked at every year and there’s a report due to the State every year stating what the Town is working towards for its plan. Ms. Pfeil stated ninety percent (90%) of the implementation in the back requires funding. Ms. Pfeil stated each year, in January, she would recommend the P&Z to start talking about what they would like to do outside of the applications and the comprehensive plan, and to pick one (1) implementation item or two (2) to say what you’d like to focus on, notifying the Town Manager to putting it on the upcoming fiscal year budget to try and get the one or two items implemented. Ms. Pfeil stated the P&Z will do recommendations on subdivisions, site plan review applications, change of zoning, and comprehensive plan amendments. Ms. Pfeil stated the minute the Town does the comprehensive plan in June, somebody will come in and want to change something in it. Ms. Pfeil stated the changes in the amendments will get passed onto the developer for the cost unless the Town chooses to waive it. Ms. Pfeil stated if somebody comes in and says there’s someone who wants to buy their property and it has a bigger value so the person is going to sell it but it doesn’t have the right zoning, the Town has to look at the future land use and the zoning, and if they don’t match, the person has to come to P&Z to request a re-zoning and explain to P&Z why they want to make the zoning change. Ms. Pfeil stated the request will also go before the State and Town Council. Ms. Pfeil stated there is a description for the P&Z to “do all other duties as assigned by Council,” so if, for instance, an applicant wanted a new zoning district for their land, the P&Z would have to “do the homework” on what kind of zoning would fit and give a report back to Council. Ms. Pfeil stated in the Code, the P&Z must hold a meeting within sixty (60) days after an application is received by the Town for a zoning issue. Ms. Pfeil stated a P&Z commissioner may seek advice from various consultation groups but only through the Town Manager, so any questions you may have regarding consultation will go to the Town Manager who will filter the questions through to the appropriate person/people.

Ms. Pfeil stated the P&Z members cannot enter any contract or agreement with any kind on

behalf of the Town. Ms. Pfeil further stated other duties P&Z has are amendments to provisions by the Town Council and there are often a lot changes to Code, and new regulations are constantly coming out, so some amendments will come directly from Council, the Town staff, or a consultant. Ms. Pfeil stated the P&Z members can hold a public hearing before submitting changes to Council. Ms. Pfeil stated there is one town whose P&Z would hold a public hearing before every meeting and the audience members would come in and complain or get emotional and the meeting would go on and on; so people felt it was a platform to be heard. Ms. Pfeil stated the Town suggested having the public comment after the applicant's presentation so some of their questions may be answered, and not everything requires a public hearing; public hearings are not by right. Ms. Pfeil stated she wants the P&Z members to be careful on allowing the public to speak at the appropriate time because the Town wants to hear what the public has to say but, at the same time, it's not a platform "to grandstand or play politics." Ms. Pfeil stated people may be mad that an applicant can do something with their land others don't agree with, but that decision was already made based on what is permitted under the zoning in the Code.

Ms. Pfeil stated she thinks it's best if everybody doesn't expect P&Z members to look at a site plan to know the diameter of what has to be done for the sewer, to know the specifications of how deep something has to be in the ground, or how wide a parking space has to be; those kinds of details aren't the P&Z member's job, but is the job of the Town staff and consultants. Ms. Pfeil stated it is the job of consultants like Ms. Pfeil and Town engineer/GMB representative Andrew Lyons Jr. to put their name and seal of approval on a plan to say they've went through the Code and the plan is either fine or has issues; and it's not the job of P&Z members to make sure specifications are correct to Code. Ms. Pfeil stated the consultants' job is to make sure the applicant has met all of the requirements, and if they didn't, the applicant shouldn't be in front of P&Z. Ms. Pfeil stated for the P&Z members to not make a decision if they feel they do not have enough information, and one thing P&Z members can do as a courtesy is contact the Town staff to present any questions you may have on an agenda item. Mr. Plocek asked if an application comes in and not all of the required materials are submitted, can the Town send back the application and start the sixty (60)-day clock over. Ms. Pfeil stated yes, the Town has a Code requirement which states what is required to submit, there is a checklist, and it should be done before it comes to the P&Z members. Ms. Botchie stated the Town is kind of exacting when it comes to having the proper approvals and documents, in that there are a lot of sit-downs with the engineer and developer to make sure things are to Code, and the Town sits down with each P&Z commissioner and Council person individually to go over all of these things before it goes to a meeting. Ms. Botchie stated sometimes something may come up where a P&Z member has every right to ask questions and an item may need to be tabled. Town engineer/GMB representative Andrew Lyons Jr. stated if the developer has done everything on the checklist and Mr. Lyons has reviewed a plan and made comments on his letter to the Town, the developer has the right to request a waiver for certain items, wanting the plan submitted now. Ms. Pfeil stated yes, and there would be comments in Mr. Lyons' letter stating what the developer is requesting, but everything else should be done. Ms. Botchie stated if the meeting is not done within sixty (60) days for the P&Z, it will automatically go to Council. Mr. Plocek asked if there is a time period with which P&Z needs to have the application done. Ms. Pfeil stated, in terms of approval, with her experience, by the time the engineer has gotten through the review, the plan is pretty much "fine-tooth combed" except the few things you may be curious about, but it's pretty rare it gets denied – unless the engineer and the applicant cannot see eye to eye. Ms. Pfeil stated it's very rare to see an application dragged out because there's

so much work which happens before it comes to P&Z that it really comes down to “we followed the Code, we followed the Comprehensive Plan,” and it keeps a little bit of liability off you. Ms. Pfeil stated contingencies can be listed when approving an application but it’s usually only one (1) or two (2), and tabling something is very rare; you can table for more information but to deny something, you must justify and explain the reason why. Ms. Pfeil stated if the Town staff approved, the Town engineer approved, and everything required is to Code, but the P&Z denies it because they “don’t like it,” the applicant will “lawyer up” and they’ll be at the next meeting. Ms. Pfeil stated any time you want more information, table the item, don’t deny it otherwise the applicant’s lawyer(s) will be here in a heartbeat.

Ms. Pfeil stated regarding meeting packets, the Town has been great at “running a tight ship” and having packets ready before a meeting. Ms. Botchie stated she has been known to pull an item if the Town doesn’t receive the appropriate approvals or items before a meeting. Ms. Pfeil stated she understands this is a voluntary position and there are times when things come up, but when you decided to miss a meeting and don’t notify the Town of your absence, plus two (2) or three (3) other P&Z members do the same thing, there’s a problem because there’s no quorum. Ms. Pfeil stated the Town is lucky it has the Town Manager or Town Code & Building Official to fill in if a quorum is needed, but if you don’t notify them and there is no quorum regardless of the Town’s staff filling in, plus there are paid consultants from both sides present for the meeting, the public and the applicant are here, there can be no meeting because there aren’t enough people to make a quorum, and the staff has to do the process all over again, usually having to delay the application for thirty (30) days (until the next meeting).

Ms. Pfeil stated another thing to remember for P&Z members is whatever position or profession you have held in the past or whatever experience you have gained, remember there are Codes and regulations in place which most likely are different and/or have changed since your time in that prior profession. Ms. Pfeil stated it is great if a commissioner has some experience in the field; however, you are representing the Town and there are codes which you may never have been subject to or even be aware of. Ms. Pfeil stated if you have questions, please contact the Town Manager or Code & Building Official, and if you find something with your background knowledge, bring it up and ask questions. Ms. Pfeil stated also don’t count out “thinking outside of the box” and making suggestions to the applicant, which they may say no, but it’s worth suggesting and throwing some ideas out there. Ms. Pfeil stated the P&Z could use *Robert’s Rules* or set up its own rules in terms of how it will operate, because, otherwise, things can get a bit out of control. Ms. Pfeil stated you always want to hear what the applicant has to say as well as the Town engineer and staff, before the public speaks because the applicant and staff should address some of the public’s concerns. Ms. Pfeil stated for the commissioners to be prepared for disagreements and maybe even some major disagreements or arguing amongst fellow P&Z members, but the chairman must keep control of the meeting. Ms. Pfeil stated to make sure to be courteous, to treat others the way you want to be treated, and you are a representative of the Town; and if you are going to have such personal feelings and emotions about the items coming up, maybe the Town should reconsider your position.

Ms. Pfeil stated for the P&Z members to make their decisions based on facts and information provided and not on what you’ve heard on the street, from neighbors. Ms. Pfeil further stated emotions can be misinterpreted so if, for instance, an applicant may get you to sympathize with them, commissioners don’t have to speak to applicants outside of Town Hall or the meetings and it’s best to keep distance from the applicant until their meeting. Ms. Pfeil stated it doesn’t

matter whether a P&Z commissioner dislikes, doesn't trust, or likes an applicant, a P&Z commissioner must have the applicant stand on their merits of having done what's proper to Code. Ms. Pfeil stated there are conflicts of interest, such as if you have a financial interest in what's coming from the application, and even if you could possibly be seen as a conflict of interest, when in doubt, you "take the high road and don't participate." Ms. Pfeil stated if there is something that comes up from Millville by the Sea (MBTS), how many commissioners live in MBTS? Two P&Z commissioners raised their hands. Ms. Pfeil stated the two (2) commissioners would abstain from voting and there would still be a quorum of three (3) to vote. Commissioner Tim Roe asked when should a P&Z member abstain or recuse. Ms. Botchie stated to recuse, that person would have to leave the room and building and someone would come get them after the vote, but to abstain means you would just step off the dais and sit in the audience and not vote. Ms. Botchie stated a commissioner would either abstain or recuse the moment the item was announced by the chairman. Secretary Marshall Gevinson asked if you can't vote on something related to the community in which you live. Ms. Pfeil stated yes, a conflict of interest is if a vote on an item can be perceived as you having any kind of financial gain for or against the vote, whether it's through property appraisal or re-investment of your property; so, if it were Ms. Pfeil, she would abstain from the vote because you put the Town in a possible litigation situation if something were to come up over an appeal. Ms. Pfeil stated if there is even the slightest thought of conflict of interest, there are four (4) other P&Z members to review the item(s). Ms. Pfeil stated you can seek legal counsel if you disagree with the conflict of interest and you tell the Town Manager of your opinion of disagreement with the conflict, the Town Manager has to go to the Town Solicitor and get an opinion from the solicitor on the matter, but that costs the Town money for the lawyer's time, it doesn't cost the developer. Ms. Pfeil further stated if you don't want to be viewed in any way that would cause harm or money or appeal process to the Town, abstaining is the best practice, and don't put the Town in that position. Ms. Botchie stated a lot of Council members in the past have disagreed with the conflict of interest because they have their constituents who live in their neighborhoods telling the Council person to "speak up for us and don't let the developer do this," but, if an application meets all of the criteria of the Town Code, you better have a very good reason not to vote for it because it will open the Town to litigation. Ms. Botchie stated this happens all the time because neighbors are upset with a developer and they want their representative Council or P&Z member who lives in their village/development to vote no to developer's application for the next phase. Ms. Pfeil stated P&Z commissioners and Council don't represent their neighbors in their individual development; they represent the Town as a whole. Ms. Pfeil stated there are commissioners or Council members who feel they can be impartial to a decision, but there will be someone who considers that commissioner or Council member as partisan and there can be legal action, so it's just best not to have that possibility.

Ms. Pfeil stated in terms of meetings outside of Town Hall or before a meeting, there are no decisions to be made yet because the applicant can say things verbally on top of what's in writing and you can hear what restrictions there may be that P&Z members may not know, so at no time should three (3) or more members get together and discuss applicant matters. Ms. Pfeil stated if there's something which needs to be communicated to all of the commission, it's best to wait until the public meeting, but if there's something urgent which needs to go out, you can tell the Town Manager and she can distribute it to the rest. Ms. Pfeil stated by going through the Town Manager, information which could be vital can also get to everyone, but there is also a paper trail in case of a FOIA request being submitted. Ms. Pfeil stated you also don't want to be a liaison for a resident who wants to request action from either P&Z or Council; that person

should come before the Town bodies themselves and voice their opinion or make a request. Mr. Faden asked if a resident couldn't attend a meeting and they wanted to voice their opinion on a subject up for review at that meeting, could that person talk to the Town Manager and the Town Manager would relay it at the meeting? Ms. Botchie stated yes, and for public hearings, a person can submit a letter which will be read out loud at the meeting if they can't make that meeting. Commissioner Cathy Scheck asked what commissioners should do if someone approaches them and wants to speak to the Town Manager. Ms. Botchie stated you can give that person her email and cell phone number as they are through the Town. Ms. Pfeil stated it's a good idea to ask the applicant if they talked to the people who will be affected by the applicant's action, and recommendations can always be requested by the commissioners. Ms. Pfeil stated if commissioners are approached by the public, let them know what's on the next agenda or when the next meeting is so they can attend. Ms. Pfeil stated the day of "good 'ol" deals are done and now everything is being done with more transparency and professionalism. Ms. Pfeil stated if the public really care about any issues with the Town – especially what's on the meeting agenda – have them come to the meeting(s), and if they can't because they're ill or out of town, have them contact the Town Manager and/or staff; it's why the Town Hall is open Monday through Friday.

Ms. Pfeil stated to always be prepared for a meeting – make sure you pick up your agenda packet long before one (1) day before, or the day of, the meeting; mark up your documents, write down notes or questions because they're yours to keep; and call the Town with any questions you may have so if the Town can answer your question, you'll be prepared before the meeting. Ms. Pfeil stated vote your way after the facts and presentation, but state your reason(s) for voting a certain way as an option, especially if you vote against something or table it – plan on explaining why you came to your decision. Ms. Pfeil stated if you plan on denying something, please run it by the Town Manager first because if you don't want something but the Code allows it, you have to be very careful because maybe you're not understanding the Code or the comprehensive plan or decisions which lead to an ordinance before. Ms. Pfeil stated you may not agree or understand why the Town Code or comprehensive plan say, but that is no reason to deny an application. Ms. Pfeil further stated use the Code, comprehensive plan, and Town engineer letter as tools to help guide and make your decision.

Ms. Pfeil stated ensure the decisions you make are in the authority of the Town regulations, and agencies such as DelDOT, the Delaware Department of Natural Resources and Environmental Control (DNREC), the Sussex Conservation District (SCD), the Fire Marshal, Sussex County Engineering and other particular utility providers (water, cable, electric, etc.) have jurisdictional authority over the Town. Ms. Pfeil stated DelDOT has one-hundred percent (100%) jurisdiction over roadways, so you may think you have a traffic issue, but, in DelDOT's eyes, DelDOT will determine if you have a traffic issue or not. Ms. Pfeil stated you can still state your concerns and make requests, but ultimately, DelDOT will make the decision of what needs to go where. Ms. Pfeil stated you can tell the public you agree with the traffic issues; however, it's a DelDOT decision and the Town can certainly go on record and request things but DelDOT has to ultimately approve it because all roads not in a development are owned by DelDOT, not the Town. Ms. Pfeil further stated be very careful denying an application on items such as traffic and the other agencies listed because they are not in the Town's jurisdiction and it can lead to litigation if everything on the applicant's part has been done to Code and agency approval. Ms. Botchie stated she and Ms. Pfeil cannot overstate this enough – especially with the traffic and transportation – because the Town is going to experience more traffic on Route 26 and 17; so

the Town is trying to be proactive by working with DelDOT. Ms. Pfeil stated another thing is with drainage, which goes through the SCD and DNREC, who have jurisdictional authority over the Town. Ms. Pfeil stated drainage, flood plains, wetlands, tax ditches are all regulated by someone else. Mr. Lyons stated in communities, with treatment and any time ditches or drainage goes to flooding or how the drainage is managed system-wide, that is the SCD. Ms. Botchie stated the Town, in the past year, has required topography maps (topo's) which have cut down on flooding. Mr. Lyons stated he just came from a meeting with the SCD and the SCD said their complaints from Millville have gone down ninety percent (90%) since the topo's have been required. Ms. Pfeil stated the Fire Marshal has the final say over fire walls or any fire restrictions. Ms. Pfeil stated the width of the streets in the subdivisions are regulated by the Town. Ms. Pfeil stated is the Town's job to make sure all agency approvals have been received before moving forward on a site plan application. Ms. Pfeil stated the water and sewer are run by other agencies, not the Town.

Ms. Pfeil stated the most common thing she sees in municipalities is a commission member wanting to deny something because of traffic, and you can make a note of the traffic issue, say your hands are tied, because, ultimately, it is out of your jurisdiction and DelDOT makes the decision; and if DelDOT signs off on approval of an item, it is DelDOT's decision. Ms. Pfeil stated P&Z commissioners do not have the right to deny an application for any issue such as traffic. Ms. Pfeil stated the same goes for a permitted use. Ms. Pfeil further stated a good example is someone came into Georgetown and wanted a tattoo parlor, but the P&Z said no because they didn't want "those kind of people" in town, so they denied it; and just before the applicant brought in their lawyer, they appealed the decision to the Council and the Council made a condition of making sure no one was in the window where the needle work was visible and the Council passed the application, and the business is still there today. Ms. Pfeil stated the applicant's request for a tattoo parlor was a permitted use and they had met the requirements of the Code, so, to say no for anything that doesn't meet the Code will put you in litigation and it will get you removed from P&Z. Ms. Pfeil stated if P&Z, Council, Town administration and the public thinks there are particular items in the Code need to be changed – such as permitted uses – there are times when such items can be up for discussion and possible Code amendment.

Mr. Plocek asked if zoning has already been met before it comes to P&Z. Ms. Pfeil stated yes, you should never see a plan if it does not meet the comprehensive plan, the zoning requirements, or the use allowed in that zone. Mr. Roe asked about variances. Ms. Botchie stated variances are done before the Town's Board of Adjustment (BOA) to review. Ms. Pfeil stated if someone comes in and wants to get a waiver on parking, they will go to the BOA, and if the request is granted by the BOA, the site plan comes before the P&Z to review. Mr. Lyons stated there are some items the Council can waive in terms of Code requirements but anything not listed for Council to waive would have to go to the BOA for a variance.

Mr. Gevinson stated, in terms of his community Bishop's Landing, the developer is building some more houses across Burbage Road and people have been asking whether there will be a crosswalk, but that is all DelDOT's decision? Ms. Botchie stated yes because it's a DelDOT road, and Ms. Botchie has reached out to DelDOT on this matter because these two (2) communities are now one, and Ms. Botchie has even reached out to their legislator. Ms. Pfeil stated citizens can also reach out to DelDOT or their legislator too. Ms. Pfeil stated DelDOT has a lot of standards – otherwise there'd be crosswalks and lights everywhere – and a lot of times common sense doesn't or can't always apply because where a crosswalk is, is then

measured by how bad traffic will be backed up and whether it gets hindered or slowed down more than needed. Ms. Pfeil stated if you've gone to the Town – who has gone above and beyond because they could just truthfully say it's not in their jurisdiction – and they've taken it to DelDOT, who's said no, the Town can take it further “up the chain” to the DelDOT Secretary Jen Cohen or their legislator, but sometimes pressure from the public themselves is a bit stronger so the residents can contact these individuals as well. Ms. Botchie stated she's contacted both, and the Town has asked Beazer to do the same. Mr. Gevinson asked about a pedestrian walking bridge over the road. Ms. Pfeil stated that is very rare. Mr. Lyons stated in the development Bear Trap, they did that and it was basically a one-million dollar (\$1,000,000) bridge for golf carts but that's different from public roads.

Mr. Plocek asked if the P&Z can make a recommendation with conditions. Mr. Lyons stated yes, but ultimately it is up to Council to approve or deny the application and Council can approve with the P&Z's conditions or without them. Mr. Lyons stated he will provide his comment letter, detailing what needs to be changed to Code, and there will be referencing of prior concerns to make sure they're addressed. Ms. Botchie stated in the Town Code, there used to be a list of what an applicant could possibly apply for in terms of needing a conditional use but the Town took those out; let P&Z and Council determine what would be a good use. Ms. Botchie stated on the conditional use, you have “all the leverage in the world.” Ms. Botchie stated the next P&Z meeting will be reviewing three (3) items and she can sit with P&Z members one-on-one or, at most, two (2) at a time, to help answer questions or address any concerns you may have by stating facts and Code.

Ms. Scheck asked whether a commissioner should recuse and leave the building or simply abstain and step off the dais. Ms. Botchie stated the Town's attorney lets you abstain from the vote and come into the audience and you can ask questions as a resident if it's a public hearing. Ms. Botchie stated if one of the commissioner's spouses came before P&Z to open a restaurant or something, the commissioner would have a major financial interest in the decision, at which point Ms. Botchie would request that commissioner recuse themselves from the entire session. Ms. Botchie stated we do nothing without our legal counsel's advice and written opinion. Mr. Gevinson stated with more building happening in Bishop's Landing, just because Mr. Gevinson lives there doesn't mean he should sit out of the vote. Ms. Botchie stated according to the Town's attorney, yes, you have to at least abstain from the vote because if there is “any inkling of a conflict (of interest)” from anyone, there'll be trouble. Ms. Pfeil stated if the developer brings in three-hundred-thousand dollar (\$300,000) homes, and your house is appraised at one-hundred-thousand dollars (\$100,000), by you voting on that person coming in, it could increase the assessment of the appraisal value of the property; without you even being a part of it, you got a financial gain or deficit from it. Ms. Pfeil stated you are not mentally involved in it but you could be perceived as getting that financial gain. Ms. Pfeil asked if your vote is that important to put the Town in a situation of a potential lawsuit, on which you can be individually named as well, and it's better to just “take the high road” and abstain. Ms. Pfeil stated if you really, really want to vote on an item, the bigger concern would be why you want to vote so bad on that item. Mr. Roe stated if you have a problem with your developer, you have to go to your homeowners' association (HOA). Ms. Pfeil stated yes.

Mr. Faden asked if the items is recommended by a majority of the commission or does all of the commission have to vote yes. Ms. Botchie stated if there are five (5) members present, three (3) vote yes and two (2) vote no, the item is passed/recommended. Mr. Faden asked if a

commissioner has to state the reason why they voted no. Ms. Botchie stated they don't but the Town likes them to. Ms. Pfeil stated if you say no because of transportation/traffic, and anything comes out in legal, it will be asked of you why you said no because of transportation because you don't have jurisdiction. Ms. Pfeil stated don't be surprised though when the Town lawyer, staff, the applicant or the public ask why you denied and if it meets all the Code requirements, you'll have to be ready to answer. Mr. Lyons stated he has seen many times where the Town lawyer will ask why there was a denial and the voting members have to explain because the way the meeting went, it was perceived there is a conflict there or there's personal opinion, and if it's perceived that way from the Town lawyer, the developer will definitely see it that way and will bring their lawyer. Mr. Plocek asked if there is a roll call vote. Ms. Botchie stated public hearings have a roll call vote, but for P&Z, it's at the discretion of the commission. Ms. Pfeil stated she sees more towns going toward a roll call vote but either way is fine.

Mr. Faden asked if you have a lot of public opinion that is negative but it's an approved thing per the Code, is it possible to table the item pending further consideration for something that can be adjusted and brought back. Ms. Pfeil stated it's like with her tattoo shop example earlier; if a tattoo parlor comes and they're permitted by Code but the public majority at the meeting say they're against it and put public pressure so you're against it, but it's permitted, what else do you want to screen, what else needs to be reviewed which would be justifiable to put off a permitted use? Ms. Pfeil stated that pressure can't make you deny it, and when you table it, what are you tabling for, to let them keep saying the same thing over and over again or to change the Code, because you can't change the Code. Mr. Faden stated it's maybe to pursue further dialogue, to maybe have the owner reconsider what they want to bring so the neighbors aren't up in arms. Mr. Lyons stated he has seen it where a developer has come in and there have been suggestions, and if the developer agrees to them, it's OK, but if everything's permitted and the developer has done their due diligence and they say no, then it's not going to be done. Ms. Pfeil stated you can't make a suggestion with a permitted use itself, but you can do it with a setback, the way a structure looks, parking, etc.; however, with a use that's allowed, you can't say "we and the public don't want a tattoo parlor, we want a McDonald's®, can you put that in?" – you can't do that because that is not what's before the commission. Ms. Pfeil stated you can't tell them what to do but you can ask if the applicant is interested in tabling their item, but if the applicant says no, you have to either recommend, deny or table; and if you deny or table when everything's been done to Code, you better have a real good reason. Ms. Pfeil stated you have sixty (60) days just to have a meeting on an application, but there aren't many reasons to table an item – you can't table an item because you didn't "do your homework," or consult the Town staff who are here Monday to Friday, or you didn't have time to look at the engineer's letter, or because you're not ready. Ms. Pfeil stated you also can't table an item just because the public came out in droves and are against it.

Mr. Plocek stated the next P&Z meeting will be on Thursday, May 9, at 7 p.m.

4. **ADJOURNMENT**

Mr. Faden motioned to adjourn the meeting at 7:59 p.m. Mr. Gevinson seconded the motion. Motion carried 5-0.

Respectfully submitted and transcribed
by Matt Amerling, Town Clerk