

**MINUTES OF THE MILLVILLE  
TOWN COUNCIL MEETING  
December 13, 2016 @ 7:00 p.m.**

In attendance were Mayor Bob Gordon; Deputy Mayor Steve Maneri; Treasurer Susan Brewer; Secretary Valerie Faden; Council Member Steve Small; Town Solicitor Seth Thompson; Town Manager Debbie Botchie, and Town Executive Assistant Matt Amerling.

**1. CALL MEETING TO ORDER**

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

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

Mayor Bob Gordon stated tonight's meeting would push up item seven (7)-B, regarding the Dove Landing extension request, to the top of the items under review tonight, ahead of item six (6)-A.

**3. ADOPTION OF TOWN COUNCIL MINUTES AND NOTES**

**A. Adoption of Town Council Minutes – November 8, 2016**

Secretary Valerie Faden motioned to approve the minutes from the November 8, 2016, Town Council meeting. Council Member Steve Small seconded the motion. Motion carried 5-0.

**4. FINANCIAL REPORT – Treasurer Susan Brewer**

**A. November 2016**

Treasurer Susan Brewer read the Financial Report for the month ending 11/30/16.

**November 30, 2016:**

General Revenue: \$ 92,076. Restricted Revenue: \$ 175,347.

General Expenses: 45,965. Restricted Expenses: 211,238.

Council Member Steve Small motioned to approve the Treasurer's Report for the month ending November 30, 2016. Secretary Valerie Faden seconded the motion. Motion carried 5-0.

**5. ADMINISTRATIVE MATTERS**

**A. Administrative Report for November 2016 – Town Manager**

Town Manager Debbie Botchie stated, regarding the December 5, 2016, meeting, Town Solicitor Seth Thompson, Ms. Faden, and Ms. Botchie met with the Office of State Planning (OSP). Ms. Botchie stated the Town has twenty-three (23) parcels which have some boundary issues, specifically with the Town line separating them into some of Millville and some of Sussex County. Ms. Botchie stated she met with the OSP to try and form a plan to move forward on hopefully getting the parcels in Millville cleaned up, and work on that through a comprehensive plan amendment, which will be a large project for the Town. Ms. Faden stated with Ms. Botchie's report, Ms. Botchie had attached the new system instituted by the Delaware State Police (DSP), specifically with crime-mapping, and Ms. Faden thinks it is a great system but it

has prompted Ms. Faden's request to put this issue down to be on the agenda for the next Town Council meeting to possibly increase the Town's DSP patrol coverage, particularly during the winter time when it seems like the incidents of crime increase and because some property owners may not live here during the winter months. Ms. Botchie stated the Town can put the item on the January 10, 2017, Town Council meeting agenda. Mr. Small thanked the Town Manager for her time and attention to this matter.

## 7. **NEW BUSINESS**

**B.** Discuss and possible vote on an eighteen (18)-month extension on the approved final site plans for the Dove Landing Residential Planned Community. *Synopsis:* Final Plans for the Dove Landing RPC was approved in December of 2007; the Code states a subdivision will be deemed null and void after three (3) years of recording unless substantial construction is in place. The developer was granted a three (3)-year extension on February 8, 2011. At the January 14, 2014, Town Council meeting, Council voted 5-0 to approve a three (3)-year extension on the approved final site plans, extending the due date to January 14, 2017. On November 22, 2016, the Town Planning & Zoning (P&Z) Committee reviewed, with Beazer Homes, a concept plan revising the final approved site plan of Dove Landing.

Town Solicitor Seth Thompson stated, from the legal department, the Town's subdivision ordinance defines "substantial construction" as meaning "the right-of-way has been cleared, the roadway has been rough graded, the drainage system and the stormwater management facilities have been rough graded and erosion and sediment control measures are in place and being actively maintained, or construction in accordance with an approved construction sequence for the project." Mr. Thompson stated as for the standards for granting an extension, the applicant must "demonstrate an unusual difficulty or circumstances beyond the applicant's control." Mr. Steve Marsh, of George, Miles & Buhr, LLC (GMB), stated he is here to represent Beazer Homes tonight, specifically to the request for an eighteen (18)-month extension for the Dove Landing project, and also present are Mr. Steve Brodbeck and Mr. Ed Gold, both of Beazer, as well as David Hutt from Morris, James, Wilson, Halbrook & Bayard LLP. Mr. Marsh stated GMB did present a revised land plan to the Town's P&Z Committee on November 22, 2016, and the P&Z Committee unanimously voted for GMB and Beazer to move forward to the preliminary plan submittal, which will come back before the Council. Mr. Marsh stated there were some preliminary comments made by AECOM representative and Town Planner Kyle Gulbranson and Town Code & Building Administrator Eric Evans at the P&Z meeting, which GMB is currently addressing and GMB is getting ready to submit the preliminary end, which will come back to Council. Mr. Marsh stated GMB and Beazer are here tonight to specifically request the eighteen (18)-month extension on the original final site plan approval for Dove Landing. Mr. Marsh further stated GMB and Beazer feel the eighteen (18) months will give them adequate time to submit the preliminary, address Council's comments, and while that is going on, GMB would also be going back to Sussex County for sewer revisions, addressing some minor revisions to the stormwater management plan, and getting through all of the approval process, followed by coming back for final approval, posting bond and then starting construction. Mr. Marsh stated assuming Council approved the eighteen (18)-month extension, the expiration date would be July 14, 2018.

Mayor Bob Gordon stated he was on Council back in February 2011 and Mayor Gordon heard the same request at that time; and there was something that stood out then as it did again in January 2014 in regards to substantial construction. Mayor Gordon asked if Beazer had “put a shovel in the ground” yet. Mr. Marsh stated the pump station is in, which should be significant construction. Mayor Gordon asked if an entrance had been put in or anything else. Mr. Marsh stated yes, the main entrance off Burbage Road is in. Mayor Gordon asked if that is the entrance to the tank farm. Mr. Marsh stated no, that entrance was per the DelDOT approved plans, which was the entrance construction permit for the Dove Landing project. Mr. Marsh stated the pump station went in, which will service the entire project and it’s also part of a regional system, so it accepts flow from off-site areas as well. Town Manager Debbie Botchie asked when it was that Beazer and GMB came to Council to request the tank farm to be moved. Mr. Marsh stated he is not sure, but he thinks it was back before Bishop’s Landing started but not too long after because they had a small tank farm that served the first fifty (50) homes in Bishops, and the new location was centrally located between Bishop’s and Dove Landing. Ms. Botchie asked Mr. Marsh when he thinks the preliminary plan will be ready for submittal to the Town. Mr. Marsh stated he would say two (2) weeks, and he didn’t want to get too into the particulars of the design because GMB and Beazer will be back to present to Council, but the road layout is essentially the same, so it is a reduction in density, and reconfiguring the lot arrangement. Ms. Botchie stated the review is a lot sooner than what the Town anticipated. Mr. Marsh stated he knows the right-of-way of the project to the north is being evaluated for what kind of impact that has on the stormwater catch, but Mr. Marsh thinks GMB can accommodate to provide right-of-way for the next property.

Mr. Thompson asked, by way of standards, what kind of unusual difficulties has GMB and Beazer run into. Mr. Marsh stated being down here for the last twenty (20) years doing development projects, it is really hard to project out a large project and plan it – with everyone wanting the project to be exactly what was presented – but the market changes so frequently, and there is also a project going on across the street which is doing really well, so it would make sense for that project to roll into the next project without, from a sales standpoint, competing against each other. Mr. Marsh stated this is a reduction in density so in terms of the overall revenue compared to what was anticipated in 2007 is probably less because GMB and Beazer are reducing by eighty-six (86) units. Mr. Marsh further stated the market doesn’t support the construction of four (4) thirty (30)-unit condo buildings, which is seen down the road at Bayside. Mr. Marsh stated to address the marketplace and to get Council and the community a project that is going to be successful and blend in well to what the market wants now as well as what people want, Mr. Marsh thinks the Town may need to be a little flexible and this extension is a response to all of that, and is something we have to deal with. Mr. Marsh stated it is a lot different now then it was in 2007. Mr. Thompson stated that sounds like it plays into the second element in terms of circumstances beyond the applicant’s control, and Mr. Thompson would take from Mr. Marsh’s comments that the market is off. Mr. Marsh stated yes, that is the driving factor and if we were still in an environment where one-hundred-twenty (120) condo units were viable and something everyone wanted, then they wouldn’t be deleted from the project; and there are no condos in Bishop’s so Dove Landing would’ve provided a different market than at Bishop’s and it

can't be controlled. Council Member Susan Brewer asked if Council grants this extension tonight, what will prevent from another extension? Mr. Marsh stated GMB and Beazer have presented a hard plan and have invested money in the engineering of that plan; and they have worked with the Town to work through its issues. Mr. Marsh further stated there has already been a pretty significant financial investment from Beazer, who wants to get this thing started. Mr. Marsh stated the pump station and main entrance are already in for this development, as well as the propane facility for both communities; so it doesn't make sense for Beazer to sit on it any longer than they have to. Mr. Marsh stated he is sure Beazer would've loved to have sold three-hundred (300) units at Dove Landing but the market just didn't dictate that, and the Town has worked with Beazer for several years now and they're a great company to work with. Ms. Faden asked what progress was made during the first eighteen-month extension. Mayor Gordon stated they were two (2) three (3)-year extensions granted prior by Council and not eighteen-month extensions. Mr. Ed Gold, of Beazer Homes, stated the answer to Ms. Brewer's question on why there won't be any more extensions is Beazer is running out of lots at Bishop's and Beazer wants to go into the ground so they can move right across the street. Mr. Gold stated in answer to Ms. Faden, in case anyone missed it, there was what everyone calls the "great recession of 2008" but Mr. Gold calls it "the great depression of 2008," and those extensions came at a historic, horrible time for homebuilding when we've never seen anything like it and are barely coming out of it now. Mr. Gold further stated Bishop's is the anomaly and he thinks it's as the result of the attention to detail the Town and Beazer have paid in bringing that community to life. Mr. Gold stated this is about "going across the street to finish what was originally called Dove Barrington," a project originally bought by Centex, and when Beazer disbanded their joint ventures together, Beazer took the Delaware property and Centex took the Virginia properties. Mr. Gold further stated the reason why there won't be an additional eighteen (18)-month extension is because Beazer is "going right across the street" and Beazer is planning on going in the ground as quickly as they can. Mr. Gold stated Beazer can go in the ground right now in 1-A, there are single family homes there and lots can be put. Mr. Gold stated Beazer thinks that is not the right thing to do, but the appropriate thing to do is come into the Town and be straight forward with Council, and to inform Council that Beazer is eliminating the one-hundred-twenty (120) condominiums, which Mr. Gold thinks not anybody really wants, and Beazer knows there's no market for it. Mr. Gold further stated what Beazer is trying to do is imprint themselves across the street.

Mr. Thompson stated the one element he'd like to understand just a little further is the interplay between the extension and the concept plan for the revision; so, seemingly, if the concept plan is kind of better at meeting the current market, then why the need for the extension on the old plan? Mr. Marsh stated the way the Town Code reads is if after January 14, 2017, GMB and Beazer have not met the Town's definition of "substantial construction," those approvals are no longer valid, so GMB and Beazer have submitted a revised plan and the extension allows GMB and Beazer to work through those revisions which were presented to the Town P&Z (on November 22, 2016). Mr. Thompson stated his thinking is the construction table is going to be slightly different in the sense that if GMB and Beazer's concept plan goes through the process of preliminary and final, then it will gauge when things need to be put in place. Mr. Marsh stated yes, some of the stuff is not going to change that much but the sewer is one of the first things that goes in because it's

the deepest, and where the laterals line up are specific to where the final lot lines are located; and that can't go in until GMB and Beazer have final approval from the Town. Mr. Marsh further stated the County won't approve it until GMB and Beazer have an approval from the Town. Mr. Thompson stated the thought he's trying to get at is that GMB and Beazer are going to do some of the construction that isn't changing under the revisions while the revised plan is going through the Town approval process. Mr. Marsh stated GMB and Beazer would not want to do that because the lot lines throughout the entire community are changing, so GMB and Beazer are shifting some product around, there's a reduction in density; that sewer design as one of the first things to go in – there's not much construction that will happen until that sewer goes in. Mr. Thompson stated he thinks that is getting into dangerous territory when you're working under one plan you think is not going to be the final plan but you're doing some construction there. Mr. Marsh stated he doesn't think anyone wants that to happen and there are some permits (like the Conservation District) which won't approve anything as long as there are other approvals still being finalized.

Deputy Mayor Steve Maneri asked if the eighteen (18) months, which GMB is saying is being requested because of the economy, will be for just the building part. Mr. Marsh stated no, the eighteen (18) months will be for GMB and Beazer have to come back before Council twice – once for preliminary – as well as during that time, resubmitting to County and the Conservation District, and these aren't huge design changes but that entire process alone will be a six (6)- to eight (8)-month process. Mr. Marsh further stated those steps are followed by preconstruction meetings, having to post bonds after approvals, coming back before Council for the final plan, and then GMB and Beazer have to get construction started to the point where they meet the definition of “substantial construction.” Mr. Marsh stated so GMB and Beazer are not coming to Council to request an additional three (3) months, Mr. Marsh thinks eighteen (18) months now is an appropriate time to make sure all of these things get done. Mr. Maneri stated he was not on Council during the time but he thinks GMB and Beazer had their last extension in January 2014, and Mr. Maneri doesn't understand how nothing was ever really put into place with Dove Landing these last three (3) years. Mr. Gold stated if you think about it, there was eight-hundred-sixty-five (865) lots and Beazer had four-hundred-forty-one (441) approved on the south side of the street and Beazer had four-hundred-two (402) approved on the north side of the street, and Mr. Gold thinks there's no way in the world anyone would try to put all eight-hundred (800) in the ground first. Mr. Gold stated Beazer put four-hundred-forty-one (441) in the ground, with Beazer breaking ground in January 2013, and that has been extremely successful. Mr. Gold further stated it is time, because, to say it differently, Beazer is running out of lots; therefore, Beazer is running across the street to get it set up the way it's been successful, instead of “jumping the gun” and doing it the way it was laid out and approved ten (10) years ago. Mr. Gold stated the market has proved itself that whatever was done appropriately on the south side of the street, Beazer wants to now do on the north side of the street; and Beazer doesn't want to copy the way some other company planned years before the big market downturn of 2008. Mr. Marsh stated GMB started working on it back in 2003. Mr. Gold stated Beazer broke ground on the first piece in January 2013 and Beazer's intention is to just go right through and build it out the way the Town thought they originally were. Mr. Maneri stated the way he's reading it is with the word “cannibalized,” so Beazer doesn't want Bishop's Landing to go first while building Dove Landing because Beazer would have the two

competing against each other for sales. Mr. Gold stated Beazer has a lot of projects going around. Mr. Maneri stated Beazer has two (2) projects next to each other and Mr. Maneri doesn't understand why Beazer would do that and not start both of them. Mr. Gold stated if you look at the original concept plan, it was done in 2003 and had completely different product on the north side of the road, but that product doesn't work today in that there is no market for that product. Mr. Gold stated the product built on the south side of the street clearly has worked and not stalled; to go into the north side of the street and build the product that was designed thirteen (13) years ago, before the market downturn, is not going to cut it. Mr. Gold stated because of the housing boom from 2000 to 2005, Mr. Gold tried to start his own business in 2005 and didn't make it. Mr. Gold further stated whatever concept there was in 2003, in which you could bring nine-hundred (900) units to life, simultaneously, didn't work after 2008, and that is everywhere, not just here. Mr. Maneri stated he figures the last three (3) years, something could have been done on changing products Beazer wanted to change because Beazer is seeing that certain products wouldn't work, and that could have been changed so Beazer isn't coming in and requesting another extension. Mr. Gold stated Beazer started moving dirt in January 2013, with the model opening in July 2013, and the clubhouse wasn't opened until May 2014, which is when everything kind of blossomed; and there's been around one-hundred (100) units per year since then. Mr. Marsh stated it's been two-and-a-half (2 ½) years since the opening of the clubhouse and GMB and Beazer have been talking about this since August, so they've been internally working on land plans and coming up with seventeen (17) or twenty (20) different options they do before anything is submitted. Mr. Marsh stated two (2) years after the clubhouse opened at Bishop's, GMB and Beazer are already re-planning Dove Landing, and it seems like a long time, but in terms of when Bishop's became successful to when GMB started to re-plan Dove Landing, it's really not that long a period of time and the market is pretty fluid. Mr. Marsh stated he doesn't feel GMB and Beazer have "been sitting on their thumbs, waiting for this approval to expire," as GMB and Beazer had twenty (20) different land plan iterations before the Town saw anything. Mr. Marsh stated the fact that the plan has the letter X-2 on it proves there were twenty-four (24) iterations gone over before this one being reviewed for approval from the Town.

Council Member Steve Small stated his appreciation to Mr. Marsh for his tact when it comes to working with the Town and for his client (Beazer). Mr. Small stated Mr. Marsh covered some of the differences between the first plan, to which GMB and Beazer are seeking an extension, and the second plan, which has been through P&Z and moving on more rapidly than the Town expected. Mr. Small stated the amenities in both plans for Dove Landing are not identical. Mr. Marsh stated yes. Mr. Small asked if the amenities in the new plan, rather than in the old plan, are closer to being able to serve the eventual residents of that community. Mr. Marsh stated during the P&Z meeting, Ms. Botchie and Mr. Evans made it very clear they were going to evaluate the Dove Landing submittal based on the fact that community should stand alone in terms of its amenities being able to support the Dove Landing community. Mr. Marsh stated there were three iterations – the original, the original concept plan revision, and the plan requested by Ms. Botchie, Mr. Evans and Mr. Gulbranson, showing more detail to the amenity areas. Mr. Marsh further stated the size of the clubhouse between the first concept plan's revision submittal and what was settled on at the P&Z meeting has gone up two-and-a-half (2 ½) times to close to four-thousand (4000)-

square feet. Mr. Marsh stated the main point was because the P&Z Committee was very specific that the amenities for the Dove Landing site would be evaluated as if, regardless of other communities in the area, those amenities had to support just the Dove Landing community. Mr. Marsh stated after all of that discussion, the P&Z Committee recommended unanimously 4-0 to move forward to preliminary, so what Mr. Marsh takes from that is GMB and Beazer addressed P&Z's concerns and provided adequate amenities on that concept plan, specific to supporting Dove Landing. Mr. Small stated, not to put too fine a point on it, but asked if it is fair to say the tests Mr. Marsh just spoke about, if applied to the original plan, would have been insufficient to serve the community. Mr. Marsh stated he doesn't know if he could say exactly that but the original submittal was significantly smaller than what GMB and Beazer have now. Mr. Marsh stated the size Beazer has come up with now, which is thirty-nine-fifty (3950) square feet, is a prototype Beazer has had experience with other communities in the mid-Atlantic, ranging from three-hundred-fifty (305) units to five-hundred-twenty (520) units with that size clubhouse, and the proposed Dove Landing is at three-hundred-sixteen (316) units, which is at the lower end of what Beazer has evaluated as the appropriate size clubhouse for that size community.

Mr. Small stated while the first approval of the now-final plan, of which an extension is sought on, occurred about nine (9) years ago, there was substantial discussion leading up to that point, and isn't one of the differences between the two plans that one plan operates under the laws as they were at that time – a decade ago – but the new plan will operate under the laws as they are now? Mr. Small stated one significant difference is that Delaware Uniform Common Interest Ownership Act (DUCIOA) was passed by the legislature in-between the initial approval of the plan in which you seek an extension and now, and Mr. Small asked if that was correct. Mr. Marsh stated the approvals GMB and Beazer have in terms of engineering and the Sussex Conservation District, what GMB and Beazer are changing has to be brought up to current Code; and, between 2007 and now, Mr. Marsh thinks Beazer has learned some differences in terms of amenities and Mr. Marsh thinks the Town has probably seen some different things about what they like and what they don't like. Mr. Marsh further stated he thinks the level of understanding and the level of communication back-and-forth and trying to provide something, Mr. Marsh thinks there is a "greater understanding across the board." Mr. Small asked if before submitting the revised concept plan, Beazer unsuccessfully attempted to sell the land. Mr. Marsh stated he cannot speak to that because he is not in those conversations. Mr. Gold stated every corporation goes through what is in their shareholders' best interest and, last year, it's no secret, Beazer had one-hundred-fifty million dollars' (\$150,000,000.00) worth of bonds that came due and were "retired." Mr. Gold stated had Beazer been able to sell Dove Landing, Beazer would have been able to make a substantial payment to the one-hundred-fifty million dollars (\$150,000,000.00), which is Beazer's responsibility to its shareholders. Mr. Gold stated Beazer decided not to sell Dove Landing because of the success of Bishop's Landing. Mr. Gold stated the fact Dove was on the market is very clear, the reason it was on the market is very clear, and Beazer has no bonds that come due in 2017, but Beazer does have another one-hundred-fifty million dollars (\$150,000,000.00) due in 2018, and another two-hundred million (\$200,000,000.00) due in 2019; Beazer is no different than any other publicly traded company. Mr. Gold stated Beazer did try to sell Dove but Mr. Gold and Mr. Steve Brodbeck were two strong advocates against selling, and they won.

Mr. Small asked if Beazer's new plan will go forward one way or another, regardless of what Council does tonight. Mr. Thompson asked, if the new plan is superior and the product is going to be better, why is the extension necessary? Mr. Marsh stated GMB and Beazer are submitting their plans as a revision to what was previously approved; and the way Mr. Marsh evaluates the Code and the approvals GMB and Beazer have in place is different in terms of submitting a revision of the approved plan. Mr. Marsh further stated even though Council is looking at the land plan like GMB and Beazer are starting over, administratively, from review agencies, that is not the way GMB and Beazer see it, but rather as a revision to something they have already approved, and the extension protects those previous approvals. Mr. Thompson asked if Mr. Marsh meant the outside agencies. Mr. Marsh stated yes, and GMB and Beazer are not really changing the road layout, so GMB will be pretty specific in its engineering submittal to the Town, which Mr. Evans and Mr. Gulbranson will review, of what GMB has changed. Mr. Marsh further stated this way, GMB and Beazer can limit the review to technical issues to what has changed versus saying "we're starting all over even though the road layout is essentially exactly the same." Mr. Marsh stated he thinks of the extension as administratively protecting the outside agency approvals that GMB and Beazer have in place, and not having to start over. Mr. Thompson stated he thinks that is helpful because in terms of the practical benefit because Mr. Marsh is right in saying, with the revision, the way the Town Code reads, the Town reviews this as if it were a new application. Mr. Thompson stated, from the Town's perspective, the Town tries "to stay in our lane" and, whether you have the extension or not, GMB's plan going forward, the Town would view the same; and it sounds like this is to facilitate keeping outside agency approvals. Mr. Marsh stated yes, when GMB submits the land plan to the Town, GMB is looking at it like the Town will comment on it regardless of whether it was already approved or not, because, the way the Town Code reads, any substantial change essentially means going back to the beginning in terms of the Town approval; but, administratively, from the fact there are a whole bunch of other agency approvals, GMB is resubmitting those as revisions to what has already been approved. Mr. Marsh stated, to GMB and Beazer, there is a big difference in dealing with the review agencies that GMB and Beazer deal with every day – and have good working relationships with – and what is already approved versus having to start all over again. Ms. Botchie stated as this comes into the Town, the Town is looking at this plan as a brand new plan – as the Town did with Bishop's and its outside agency approvals. Ms. Botchie stated, regarding this plan for Dove, when GMB and Beazer come to the Town with the final site plan is when "all of the t's crossed and the i's dotted" in terms of agency approvals, and what the Town will be getting from the State agencies are revised approvals. Mr. Marsh stated yes, a re-approval of a revised plan; and there is a pretty substantial difference in GMB's and Beazer's world between that and a completely new plan when it comes to how those submittals work. Mr. Marsh further stated hopefully Council can understand now why, administratively, GMB and Beazer are asking for the extension. Ms. Botchie stated yes, the Town was not looking at GMB and Beazer's already current State agency approvals. Mr. Thompson stated, from the Town's perspective, the concern was if the new plan seems to be a better plan, then why did GMB and Beazer need an extension on the older plan? Mr. Thompson stated now, however, he thinks Mr. Marsh has addressed that concern.

Mr. Small stated he thinks any reasonable person not only would appreciate Mr. Gold's candor in the role the cash flow played, but also Mr. Gold's desire not to compete against themselves (Beazer) in a very similar market for two (2) developments. Mr. Small asked if the company's ability to escalate the completion of Bishop's, and to simultaneously get ready to go with Dove Landing, is somewhat complicated by Beazer being the lead builder of over four-hundred (400) units on The Estuary. Mr. Gold stated he's not sure what Mr. Small is asking. Mr. Small asked Mr. Gold how many projects Beazer can do. Mr. Gold stated Beazer doesn't view The Estuary as being in the same market as Millville. Mr. Small stated no, but Beazer is using some of the same workers who would otherwise be available to move faster on Bishop's, so Beazer would not be competing with itself when it began on Dove. Mr. Gold stated he has twenty-four (24) projects going on at the same time and he basically uses the same contractors, so Mr. Gold doesn't necessarily agree with Mr. Small on that point; and larger organizations have the capacity – when the market allows them to – because Beazer is talking about a return on capital, so having a project that doesn't return on that capital isn't the same as having ten (10) projects that do. Mr. Gold further stated it is not a function of how many projects you do have in the ground, it's having projects in the ground which are actually selling. Mr. Gold stated in Owings Mills (Maryland), in Baltimore County, he actually has a five-hundred-twenty-one (521)-lot community that is selling three-point-nine (3.9) miles away from a three-hundred-fifteen (315)-lot community, and it may not be exactly the same product, but it has the same contractors, the same builders. Mr. Small stated he is wondering how Beazer will address three (3) projects simultaneously. Mr. Gold stated Beazer will probably have more than three (3) very soon in this area. Mr. Small asked when Beazer will be able to start with Dove Landing under either the old or new plan. Mr. Gold stated as soon as GMB has the plans approved by Council and the County, Beazer will put a shovel in the ground. Mr. Small asked how fast can Beazer get Bishop's Landing to a level where Beazer is not competing with itself? Mr. Gold stated Beazer believes it is already there and Bishop's will be out before they are able to get lots on the ground, and the overlap will be just a little bit; but Mr. Gold does not know how the market will be or if interest rates will go up, but Beazer is counting on things going the way they have in the past two (2) years. Mr. Small stated he appreciates what Mr. Gold is trying to do, but, for Mr. Small, Dove Landing is a community that has taken almost a decade not to happen; and Mr. Small thinks the fastest way to get there is to deny the extension and move forward, hand-in-hand with Beazer, as fast as we can on the new and improved project. Mr. Gold stated he would respectfully disagree because it only took Beazer eight-and-a-half (8 ½) years to get Barrington out of the ground, and, from Beazer's track record, Beazer has done what they said they were going to do with the Town, and Beazer has been in the ground two-and-a-half (2 ½) years with Bishop's. Mr. Gold further stated he thinks it's a bit simplistic to ignore the decade Beazer went through, and Mr. Gold thinks most nationals would have closed the operation down, the Town would have nothing, and the approvals would be gone. Mr. Gold stated Beazer has not abandoned this project and Council will see from Beazer's track record that is who they are – Beazer sticks with it until the end – and Mr. Gold thinks it is a wrong move to deny the extension, and that Beazer has proved time and again that they are willing to work with the Town and Council.

Mr. Small asked, regardless of the pace of development on Dove Landing, is Mr. Gold – on behalf of Beazer – willing to commit tonight to say Beazer will not use undeveloped lots in

Dove Landing to cast any votes on any community outside of Dove Landing, be that homeowners association (HOA) turnover, change in rules? Mr. Gold stated Beazer will continue to comply with the law as submitted and Beazer will follow to the letter the POS that has been issued by the State. Mr. Thompson stated this is starting to “get a little out of our lane” as far as the municipal role and this is not the forum for such discussions. Mr. Small stated if one has any belief in democracy, holding something open until 2038 so most of the residents who are already there will be dead, is not democratic “with a small ‘d.’” Mr. Thompson stated his concern is a local government needs to know its role in that it is not “unbound authority.”

Mayor Gordon motioned to not grant the eighteen (18)-month extension and to hold Beazer to the January 14, 2017, deadline. Deputy Mayor Steve Maneri seconded the motion. Mr. Maneri voted yes. Ms. Faden voted yes. Ms. Brewer voted yes. Mr. Small voted yes. Mayor Gordon voted yes. Mr. Maneri stated his decision to deny was because while he understands the economy was not doing well in the past, even though he knows administrative work has been done, there has not been anything substantial construction, except the entrance by DelDOT and the tank farm, and Mr. Maneri thinks Beazer has had enough time. Ms. Faden stated her reason to deny was while Beazer had multiple extensions, there was no proof of unusual difficulty or circumstances beyond Beazer’s control that seemed to warrant another extension. Ms. Brewer stated her reason to deny was basically the same as Ms. Faden’s, especially in Beazer not proving an unusual difficulty to not move forward, and Ms. Brewer thinks Council has granted enough extensions at this point. Mr. Small stated his reason to deny was because, at present, Dove Landing is a community nearly a decade in the unmaking, and perhaps things will go quicker with a newer plan under current law. Mayor Gordon stated his reason to deny was also the same as Ms. Faden’s and Ms. Brewer’s, with it taking a long time to get where we are, and Mayor Gordon hasn’t seen anything of where we’re at since 2007. Motion carried 5-0.

## **6. OLD BUSINESS**

**A.** Discuss and possible vote on the Municipal Wide Discount Ambulance Subscription Service Agreement. *Synopsis:* At the January 26, 2016, Town Council Workshop meeting, Millville Volunteer Fire Company (MVFC) President Doug Scott presented the program to Council, who decided to hear more about the program at a later public hearing. On February 9, 2016, Council held a Town public hearing meeting to discuss and vote on the program. Council voted 2-0 (with one abstention) to approve the program for the Town with the condition of the Solicitor’s confirmation of Town authority and an agreement negotiated by the Town Manager. At the September 13, 2016, Town Council meeting, Council voted 3-0 (with one abstention) to approve the program with the conditions that a section/number eight (8) be added regarding language such as a paid subscriber’s bill from another ambulance service being covered by the MVFC; the MVFC’s by-laws being modified; and section/number five (5) being amended regarding changing the expenditure review meetings from annual to quarterly.

Ms. Velicia Melson, of the Millville Volunteer Fire Company (MVFC), stated when the MVFC came before Council in September 2016, Council requested the MVFC review and

modify some of the policies and procedures the MVFC had implemented since the theft and embezzlement was discovered. Ms. Melson stated the MVFC fast-tracked that motion to have special meetings within the MVFC to write the bylaws, and the MVFC reiterated to Council in September 2016 these actions would take about four (4) months, if not longer, to complete the task due to the structure within the MVFC. Ms. Melson stated in the interest of meeting the deadline, MVFC President Clarke Dronney, Chief Doug Scott, EMS Chief John Watson and the bylaw committee spearheaded this action to write the bylaws with the help of the State auditors as well as the forensic auditor who was hired by the insurance company to resolve the insurance claims. Ms. Melson stated the MVFC emailed the bylaws to Ms. Botchie on November 10, 2016, after they were passed by the MVFC the prior night, November 9, 2016. Ms. Melson stated she had a conversation with Ms. Faden this afternoon, trying to answer some of Ms. Faden's questions and concerns, and Ms. Melson would be happy to answer any questions the rest of Council may have tonight.

Ms. Brewer asked what questions and answers were given during Ms. Melson's and Ms. Faden's conversation. Ms. Melson stated there was a question as to the segregation of duties, the number of account signers for the financial institutions, to which Ms. Faden questioned whether that was specified in the bylaws. Ms. Melson further stated the president, the vice president, the treasurer, and a member of the board of directors – as elected by the board of directors – are all account signers for the financial institutions; whereas, in the past, the MVFC only had one (1) signer, and the MVFC now has four (4). Mr. Small asked if any one (1) of those signatures is sufficient or does it require two (2) or more. Ms. Melson stated there are two (2) or more signatures required for each expenditure. Mr. Thompson asked if step one is all checks issued shall be approved by the budget department head and majority vote by the membership before being issued. Ms. Melson stated yes. Mr. Thompson asked if the next step is two (2) signatures will be required for each check issued by the MVFC and it will be the responsibility of the treasurer or, in the treasurer's absence, the vice president to ensure that both signatures are present, with the two (2) signatures being any combination of president, vice president, board member and the treasurer. Ms. Melson stated yes. Mr. Thompson asked if the account itself at the bank have any sort of indication where it says two (2) signatures are required. Ms. Melson stated all of the signature cards require two (2) signatures so the financial institutions are going to accept that check under one (1); and that is a banking regulation that the MVFC has no control over it. Ms. Melson further stated the budget chair reviews the packing slip, the invoice, then it goes to the treasurer's office for inputting Quickbooks before it goes to the MVFC membership for approval. Mr. Thompson asked if anyone reconciles the statement every month. Ms. Melson stated the bank reconciliations are done every month and they are reviewed by Ms. Melson and two (2) other people; and, in some cases, they're reviewed by the entire budget committee, which has eight (8) people. Ms. Faden stated she commends the MVFC for taking steps to add some information to their document; however, Ms. Faden feels some loose ends are still present and Ms. Faden would be OK with moving forward but would recommend the Town only doing a one (1)-year contract, as opposed to a three (3)-year contract, noting it will take the MVFC a while to get their "house fully in order" and Ms. Faden sees the year change as a compromise to move forward with the program,

but with the Town still having the ability to evaluate it as time moves on and the MVFC can move on with its financial controls. Ms. Faden stated a lot of the things Ms. Melson is discussing are not necessarily documented, so, while the MVFC is doing that, Ms. Faden would feel more comfortable if Council was reviewing the contract on a yearly basis. Ms. Melson stated the financial controls are not only documented in the bylaws, but they are documented in the budget policy and the monitoring of that budget, as part of the addendum to the bylaws. Ms. Melson asked Ms. Faden what “loose ends” are still present. Ms. Faden stated Ms. Melson mentioned she had input relevant to the bylaws but a third party had not reviewed the bylaws. Ms. Melson stated yes, the bylaws have not been reviewed by an attorney. Ms. Faden stated when Ms. Melson came to Council in September, there was a specific five-hundred dollar (\$500.00) limit to an expense the MVFC would have but now the limit is out of there and they establish a limit through the budget process, so that control was a little bit eased. Ms. Melson stated this is a living, workable document so specific dollar amounts were discluded because if the MVFC wants to make the limit one-hundred dollars (\$100.00), the MVFC would have that flexibility. Mayor Gordon stated no check could be signed with two signers either. Ms. Faden stated yes, and the MVFC could make the limit one-thousand dollars (\$1000.00) if they wanted to, so there’s no limit as to what was originally promised before in September. Mr. John Watson, of the MVFC, asked if the limit really matters to the Town. Ms. Faden stated no, not really to the Town, but what matters to Ms. Faden are the things put in the audit report are to put in some financial management controls. Ms. Faden further stated some of the things have been put in there and some things have been added; and some of the process things that have been added have not been detailed in the document. Ms. Faden stated she is comfortable with how Ms. Melson says some of those things have been modified, but Ms. Faden gets concerned when a modification isn't in writing because there is no assurance the modification will take place. Mr. Watson stated the only modification not written is that the MVFC’s budget committee of eight (8) people at the MVFC’s annual budget meeting has allowed a purchase of up to five-hundred dollars (\$500.00) so if Mr. Watson needed Band-Aids, he wouldn’t have to wait for an annual budget meeting to approve the purchase of a small amount such as Band-Aids. Ms. Botchie stated the Town took dollar amounts out of the Town Code and Charter because it is such a long process to amend if/when dollar amounts change, so there are resolutions, which put dollar amounts in place.

Mr. Thompson stated it looks like the agreement is drafted as being a three (3)-year contract, but the payment is remitted on an annual basis. Ms. Melson stated Ms. Faden’s recommendation is the agreement be only one (1) year, and, from Ms. Melson’s perspective, that is not feasible for the MVFC and Ms. Melson would not recommend it. Mr. Thompson stated this is a three-year contract and the only means of termination early would be if (1) the parties mutually agreed to do so, (2) the alternate funding arrangements acceptable to the MVFC, or (3) if one of the parties failed to perform their obligations following forty-five (45) days written notice. Mr. Watson stated Council has asked for a quarterly review of the MVFC financial reports and if the Town found something in a quarterly review that the MVFC was doing wrong, then Council could terminate the contract. Mr. Thompson stated there is also the forty-five (45)-day opportunity to correct any wrongs or discrepancies. Mr.

Watson asked how many currently approved properties there are in Millville. Ms. Melson stated eleven-hundred-eighteen (1118). Mr. Watson stated the sum of money from that total is about thirty-five-hundred dollars (\$3500.00), and that amount is not enough to cover one (1) month of payroll. Mr. Watson stated the MVFC has put two (2) ambulance crews on, like they promised, and have done it on time to provide for the communities and give them what the MVFC feels they deserve. Mr. Doug Scott, of the MVFC, stated they feel they've "bent over backwards to make this happen" and he feels the MVFC is "being a little beat on." Mr. Clarke Droney, of the MVFC, stated there are more financial controls in place than there ever was, and if Council could see the steps gone through when there is a purchase – this goes through about ten (10) sets of hands before a check is written. Ms. Faden stated she can appreciate that if it were in the bylaws, but they're not all in the document. Mr. Watson stated he is not seeing what Ms. Faden is not seeing in the document. Ms. Melson stated the forensic auditor and the insurance company were on board with the MVFC's policies and procedures, or the MVFC wouldn't have recovered ninety-eight-point-four percent (98.4%) of MVFC's documented loss.

Mr. Small asked if the MVFC would speculate on what its documented losses relationship is to MVFC's actual total loss. Ms. Melson stated about half. Mr. Small stated he thinks this needs to move forward but Mr. Small thinks the MVFC should be less resistant to more controls, and more welcoming to the fact more people are willing to help shoulder any problems which could come forward. Mr. Small stated he suspects in one (1) year, under the guidance of Ms. Melson and Ms. Faden, some additional progress could be made which would not unduly affect the MVFC's operations but give more cover. Mr. Small stated because the MVFC is only dealing with one (1) year, and then being able to move on to the completion of the full contract after the review, Mr. Small would say terrific progress has been made and let's get the job completed. Ms. Melson asked who will fund the MVFC's additional internal controls, because the Town itself in its audit had a lack of segregation of duties and there are other organizations which are no different. Ms. Melson stated a majority of the MVFC members are volunteers, and Council is asking a volunteer who works a full-time job or running their own business to dedicate another thirty (30) or forty (40) hours to a volunteer job for internal controls, plus fight fire and provide emergency services; and she is not sure the Town understands the ramifications of such an expectation. Ms. Faden asked if the MVFC had eight (8) administrative officers. Ms. Melson stated yes, they are all volunteers. Mr. Scott stated he finds it hard to be humbled – as Mr. Small suggested – because Mr. Scott did not commit the fraud, and Mr. Scott has taken a beating over the last couple of years, trying to represent and keep the services going. Mr. Small stated his intent was to say no one was more hurt after this incident than the MVFC, and, after a year of review, the MVFC may want to consider adding an additional employee. Mr. Small stated he understands there is a cost but, in the scheme of things, it's a minimal thing; and if Mr. Small were in Mr. Scott's place, he would want to guarantee that the MVFC has done every single thing to insure this incident doesn't happen again. Mr. Droney stated it could happen again, that's what happens when you trust others, and even though Mr. Droney and Mr. Scott are volunteers, they have taken a beating and still done what they've had to do to keep the MVFC going. Ms. Botchie stated every year, the Town is written up by its auditor as not

having sufficient staff to follow the GAAP rules, and it was suggested the Town should have eleven (11) people on staff, which makes no sense to anyone, and Ms. Botchie understands the MVFC's predicament because if someone wants to embezzle money, they will do it. Ms. Botchie further stated she knows how it is to do ordinances here and the long process it entails; and with all due respect, Ms. Botchie forwarded these bylaws to Council on November 10, 2016, so if the Town or Council had more information before today, the Town could have worked closer with the MVFC to address any concerns or make any major amendments. Ms. Botchie stated the deadline of December was given to the MVFC because, internally, Ms. Botchie has to work with the Town's software company and she has got to know by the end of December. Ms. Botchie stated she understands Ms. Faden's concerns, but Ms. Botchie thinks the one (1) year is wrong and the Town should go with the three (3) years and the Town works to tweak what is insufficient. Mayor Gordon stated he agrees with the three (3) years and this is a living document so if the Town is going to review this on a quarterly basis, any tweaks or issues can be picked up during that time. Mayor Gordon stated the residents also fully aware this is coming and are totally supportive of it, and it is the Town's duty to watch out for the residents. Ms. Brewer stated she hopes the MVFC understands Council's concerns and its attempts of trying to protect the community. Mr. Watson stated yes, which is why the MVFC has agreed to the quarterly review by the Town, as well as the annual financials. Mr. Small asked Ms. Faden if she has a lesser suggestion which might satisfy Ms. Faden and what the MVFC would find less obtrusive. Ms. Faden stated she doesn't know if there is anything else, and it is up to her colleagues to take a vote however they wish. Deputy Mayor Steve Maneri recused himself from the dais.

Mr. Maneri asked if he could make comment as a resident. Mayor Gordon stated yes. Mr. Maneri thanked MVFC for all they do. Mr. Maneri stated there is something in the contract to protect the Town so if any discrepancy is noticed, the Town can back out as there are checks and balances; but the Town residents also need the protection of the safety services. Mr. Scott stated before the vote, Mr. Scott wanted to comment on number eight (8) regarding the verbage of if someone got a bill from another fire department, the MVFC would cover it – the MVFC does not have jurisdiction with other fire departments, so if someone got a bill from another fire company, the MVFC does not have the authority to resolve it. Mr. Scott stated the MVFC will do the best to its ability to take care of the bill. Mr. Watson stated, as he told Council in September, the MVFC doesn't have a written contract with other fire companies but the MVFC can contact the other fire companies to notify them a resident is covered under the subscription service and ask the other fire company to honor that agreement. Mayor Gordon stated he understands and if any issues from this arise during the quarterly meetings, there is the option to pull the plug. Mr. Scott asked to add language at the end of number eight (8) to read, "make a good faith effort."

Mayor Gordon motioned to approve the MVFC Ambulance Agreement with the addition of language to the end of number eight (8), reading, "the bill may be forwarded to the Millville Volunteer Fire Company Inc. Ambulance Service for it to make a good faith effort to resolve." Ms. Brewer seconded the motion. Mr. Maneri recused himself. Ms. Faden abstained. Ms. Brewer voted yes. Mr. Small voted no. Mayor Gordon voted yes. Motion carried 2-1-1 abstention-1 recusal.

## **7. NEW BUSINESS**

**A.** Discuss and possible vote on Millville Volunteer Fire Company (MVFC) request for grant funds in the sum of \$82,000, based on the amount the Town has collected during this period. *Synopsis:* On June 9, 2015, Town Council approved Resolution 16-01, which added an impact fee of \$500 per any new commercial and residential construction within the Town. These monies are put into a grant for the MVFC's fire/ambulance services. The funds are to only be used for outdated capital items used in the MVFC's daily operations or to purchase capital items which enhance operations. The funds shall not be used for salary expenses, including budgeted base salaries, overtime and bonuses. On December 8, 2015, Town Council voted 3-0 to approve the MVFC's grant request in the sum of \$26,500, based on the amount the fund had accrued since its June 2015 approval.

Ms. Botchie stated she sent a letter to the MVFC saying the Town had collected a full year sum of eighty-two-thousand dollars (\$82,000.00) from the impact fees, and Mr. Scott submitted the application with the description and history of what the MVFC wanted to purchase, which will be a command vehicle.

Ms. Faden asked about the replacement list, specifically items one (1) and two (2), if they have been replaced. Mr. Scott stated yes, the rescue truck under item two (2) has been liquidated and the MVFC have got ninety-eight-thousand dollars (\$98,000.00) for it, and the MVFC will move the residual monies over to a rescue truck. Ms. Faden asked what other capital improvements were considered. Mr. Scott stated the MVFC would use it for one of two things: either pay off the loan on a fire truck, or buy a new command truck. Ms. Faden asked if the MVFC considered improving its communications systems. Mr. Scott stated there was no consideration because the MVFC's system works well the way it is. Mayor Gordon stated he thinks the communication system should be put onto a future Council agenda.

Mr. Small motioned to approve adoption of the grant. Ms. Brewer seconded the motion. Mayor Gordon voted yes. Ms. Brewer voted yes. Mr. Small voted yes. Ms. Faden voted yes. Mr. Maneri recused. Motion carried 4-0, with Mr. Maneri recusing. Mr. Maneri rejoined the dais.

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

Ms. Maureen McCollum, of Longs Chapel Lane, asked, based on tonight's denial of Dove Landing's eighteen (18)-month extension, if the former site plan approved in 2007 will be void after January 14, 2017. Mr. Thompson stated yes. Ms. McCollum asked if the revised site plan presented to P&Z on November 22, 2016, still exists. Mr. Thompson stated that plan still has to go through the rest of the approval process, and, from a practical perspective, you're not going to really see much of a difference. Ms. McCollum asked if the development is still in existence and the site plan is still expiring on January 14. Ms. Botchie stated not the current plan reviewed in November 2016, but just the plan approved in 2007. Mayor Gordon stated Beazer has to again go through all of the approval and preliminary process. Ms. McCollum asked if the HOA covenants from the development plan from 2007 will also expire on January 14. Mr. Thompson stated the

covenants are still attached to that land (Dove Landing) and is not under the Town's purview. Ms. McCollum asked if Beazer could come back two (2) years from now and approach with a new site plan, and asked if there is no time limit of when Beazer could come back to the Town. Mr. Thompson stated yes, Beazer has already submitted its concept and the measurements for the sunset are for the lapsing, and those are based on the final approved plans. Mr. Thompson stated Beazer can't build anything until they have the final plan approved by Council. Ms. McCollum asked if, conceivably, this process could be extended several years. Mr. Thompson stated yes, but the way the process works is if someone achieves substantial construction, the project could sit there but the owner would have to pay on bonds. Mr. Small asked if there is an end to this and if there is nothing that can be done to "slam the door on this?" Town Code & Building Administrator Eric Evans stated once Council grants final plan approval, and they record the plans, the builder/developer has two (2) years to commence construction. Mr. Evans stated the Town has a bond on infrastructure which will go in and, if after the two (2) years, they do not perform on that infrastructure, the Town has the right to cash the bond and finish the infrastructure from there out, which is why the bond is in place. Mr. Thompson stated it is just the infrastructure but they have the lots. Mr. Evans stated Beazer owns the property so, if they sell the property to another development, that development could come in, which is their right to develop the land. Mr. Evans further stated he sat here and listened to everything, and he doesn't know what Beazer's time frame is, but Beazer put out for an eighteen (18)-month extension and all of their outside agency approvals were going to go on modification so the "best guess scenario" is it's extended out twenty-four (24) to thirty-two (32) months to seek final approval because Beazer has to do the entire site all over again; so it could be anywhere between twenty-four (24) to thirty-two (32) months before Beazer breaks ground, based on the information which has been provided so far. Mr. Evans stated Beazer's deadline has been extended by tonight's denial of the eighteen (18)-month extension. Mr. Small stated his one concern is the outside approvals were done so under the 2007 regulations and, therefore, before the DUCIOA was passed, so now these approvals will be done DUCIOA compliant.

Mr. Ron Recko, of Drum Creek Lane, stated Mr. Ed Gold was being disingenuous with a lot of his comments tonight, especially when he mentioned Beazer was running out of lots in Bishop's Landing, because Beazer was really selling lots to Insight Homes.

- 9. ANNOUNCEMENT OF NEXT MEETING** – The next meeting will be the Town Council meeting on January 10, 2017, and the Town wishes everyone a Merry Christmas and Happy New Year!

**MOTION TO GO INTO EXECUTIVE SESSION**

Ms. Brewer motioned to go into Executive Session at 9:07 p.m. Mr. Small seconded the motion. Motion carried 5-0.

- 10. EXECUTIVE SESSION** – Discussion of strategy sessions, including those involving legal advice or opinion from an attorney-at-law, when an open meeting would have an adverse effect on the bargaining or litigation position of the public body.

**MOTION TO COME OUT OF EXECUTIVE SESSION AND RECONVENE OPEN MEETING.**

Ms. Brewer motioned to come out of Executive Session at 10:00 p.m. Ms. Faden seconded the motion. Motion carried 5-0.

**11. NEW BUSINESS**

A. Discussion and possible vote on Executive Session matters.

Mayor Gordon motioned to authorize the Town Solicitor as discussed during the Executive Session. Mr. Small seconded the motion. Motion carried 4-0-1 abstention.

**12. ADJOURNMENT**

Ms. Faden motioned to adjourn the meeting at 10:01 p.m. Mr. Small seconded the motion. Motion carried 5-0.

Respectfully submitted,  
Matt Amerling, Executive Assistant