

**Open Work Session  
Land Use/Tier Maps  
January 5, 2016**

Mr. Jack Lenox, Director of Planning, Zoning and Community Development, and Mr. Keith Hall, Chief of Land Use and Transportation Planning came before County Council. Mr. Cannon said this will be a review to bring the Council up to speed on the Land Use Plan and Tier Maps. We have to address the comprehensive plan in the near future, and these are the most controversial parts of it. Mr. Hall said what you will find throughout discussions on the draft comprehensive plan is that we are trying to move it forward to a level where Council feels comfortable with having a public hearing. There will be a few recurring themes. One thing you are going to hear a lot of is consistency. Mr. Hall said when looking at the comprehensive plan, as the name states, it is comprehensive, and there are a lot of companion documents; some are short-term, some are mid-term and some are long-term. As we move forward with this, we have to make sure that in the short-term, whatever we are proposing from a land use perspective is consistent with our current County zoning. The last plan update was done in 1998; once the plan is updated, the next components to update will be the Zoning Code and the Subdivision Code, or a comprehensive rezoning. The comprehensive rezoning that goes along with the 1998 plan is from 2004. Mr. Hall said when the Planning Commission began the comprehensive plan updating process their goal was to strive for consistency with the 2004 zoning, and use that outcome as the baseline for moving forward. The Planning Commission did not start from scratch and the County Council will not have to start from scratch, as we have good documents that we are building upon. Mr. Hall continued, we want to make sure that when we go to implement this plan, that the land use that we adopt through the plan becomes a part of a comprehensive zoning map amendment. The Planning Commission went to great lengths to start off at that point and serve up a plan to the Council with which the Commission was comfortable. They looked at the size of the metro core- is it too big, is it too small? They decided not to change the size of the metro core. Those discussions were vetted out in 2004 with the last zoning update. Another thing that you are going to hear as we move forward, and Councilman Kilmer has already mentioned this several times, is embracing local autonomy. Mr. Hall said we had some challenging planning legislation from the state level over the past eight years and the one we hear most of over the past three to four years is the sustainable growth in the Agriculture Preservation Act of 2012. You will hear it referenced as Senate Bill 236, the Septic Bill, the growth tier map, or just an overall nightmare for counties to try to administer and get it into their comprehensive plan. Mr. Hall said as we move forward, we will be looking at that to make sure that whatever we are doing is from a land use perspective. We want to ensure that we are taking every effort we can to bring back local autonomy as it relates to residential development. He said that is one of the big things this Council and the prior Council looked at for probably over 18 months. When looking at the

growth tier map, there were eight or nine iterations at least. We had extensive public involvement and the previous Council was very active in the discussions. At that time, however, under the then current State administration, as well as the leadership at the Maryland Department of Planning, there did not seem to be any traction moving forward in anything we did that could benefit the rural property owner who was feeling the biggest pinch or imposition with the legislation. Mr. Cannon asked Mr. Hall to provide an overview of the four tiers and what the problem was in that they could not be passed. Mr. Hall said the septic bill was adopted in 2012, and what it does is establish a four tier process that identifies where major or minor subdivisions will go and what type of sewage treatment will be on them. Mr. Hall said this was a voluntary piece of legislation. The State did not mandate the 23 counties and Baltimore City to adopt a tier map. They left it up to each county and local jurisdiction to decide. However, if counties did not adopt a tier map by December 31, 2012, the restriction was imposed on any place in the unincorporated areas of a county that are not on a public or community sewer system, regardless of the total acreage, for any more than seven total lots. This area would be Tier 4. Tier one are areas that are currently served by public water and public sewerage (public community system). Mr. Hall said relating this to Wicomico County, since the county does not have a water or sewer authority, to develop a subdivision with more than seven lots, you start looking at the urban service districts, you start looking at areas, such as behind the university that are in the County and that have sewer service. You also start looking at the schools like Mardela Middle and High School; they have community systems. You may also look at the Popular Hill Prerelease Center, or a mobile home park. They are the tier one areas. Tier one is business as usual, local zoning prevails, so there is really no impact there. The next is tier two, those are in designated growth areas and also in the 10 year water and sewer plan, which means they will be served with a public, or community sewer system within 10 years. Tier two is very restrictive. If you try to do a development in tier two, on individual septic, you are limited to a minor subdivision; you can ask for no more than seven lots. Mr. Lenox said, imagine this challenge, through a comprehensive plan and through a land use plan, for decades we have encouraged investors to look at certain parts of the County where we are trying to have growth, to have a higher residential density in an orderly and controlled manner, and now all of a sudden, you have the state imposition that regardless of how many acres you have, you are only allowed to have seven lots on individual septic systems. Mr. Matt Holloway stated no less than seven unless you hook up to a public sewer, to which Mr. Hall said that is correct, unless you hook up to a public system and, at that time, you would go from a tier two to a tier one, there is movement. Mr. Cannon asked are they down zoning the designated growth area, to which Mr. Hall said one could almost call it a down zoning of the designated growth area, especially as you get into parcels in the designated growth areas that have larger acreage, because the County was trying to encourage people to develop in those areas whether they are on an individual system or public system.

We have densities that are in excess of two lots per acre, so it does not take many acres to achieve seven. Hypothetically, if you have eight areas, essentially, you could be imposed on losing some residential density unless you look at the option of annexation or urban service district. Mr. Creamer asked, in what is now a rural area, if a developer wanted to build a subdivision with more than seven lots but wanted to incorporate that project as a municipality, similar to the Village Down River Project, where the developer included the community water and sewer system, how does that fit and what is the current landscape. Mr. Hall responded that really has not been worked out at the State level, however, if we have a tier map, predicating on that assumption, as a property is looking at doing a private or community system, they would be allowed to ask for the more than seven lots, and, if they were in a tier two, for this example restrictive, and they did not want to annex, but they had enough acreage that they could exceed in the minor subdivision of over seven lots, that is the option for the developer to look at. However, as part of this regulation, any community or share facilities now have to be under the control of the governing body, which is a significant change as well. Mr. Cannon asked if MES would be a governing body, to which Mr. Hall responded, yes, it could be with a partnership with Wicomico County. Mr. Hall stated, if you recall that is a similar conversation we were having five years ago, so planning is very circular. Tier three is business as usual; local zoning prevail. What you will achieve ultimately is going to be a function of the Health Department and how many perk tests you can get approved, so we like tier three. Mr. Cannon asked if tier three is outside the designated growth area, to which Mr. Hall said it is inside the designated growth area, but outside the 10 year water and sewer area. Mr. Lenox said but that is what you control. Mr. Hall said all of these things come in front of the Council. Mr. Creamer asked what would be the reason for a developer to build a development with a community system in a tier two area, because a tier two area is in the 10 year water and sewer plan, correct. Mr. Hall responded, yes. Mr. Creamer continued, as the cost of building a community water and sewer combined system or even one or the other is rather large, it might be considerably less expensive to annex into the municipality and be served by their water and sewer system. Mr. Hall said the intent of two tier is, these are areas that are anticipated to be annexed. When you start looking at a community system, this is something we have not seen yet in Wicomico County, which could have been a function of the recession. A comment was made about Village Down River, to which Mr. Hall said Village Down River is a community water treatment system. Mr. Lenox said they do both, water and sewer. Mr. Hall said giving that example, they are too far out from public services, so it will come to a tipping point when you look at the cost per service of doing your own package treatment plant or community system, versus doing an annexation or urban service district. Mr. Hall said he does not think we are going to see a proliferation of community or private treatment plants coming up, however, there will be the rare exception to the business model. Mr. Creamer then asked if we would be looking at developments with

community service system(s) most likely in a tier three or tier four, to which Mr. Hall said, no, let me back-up. Tier one is served by a public system. In tier two, you can do a minor subdivision with no more seven lots on an individual septic. If you want to do a major subdivision, you are asking for more than seven lots, so you have to be on a community or shared system or tie into a public system. Mr. Creamer asked if the public system expects to expand to that area within 10 years, to which Mr. Hall said that is correct. Mr. Creamer said, so, next year, if that is the case, it would meet the 10 year water and sewer plan criteria, to which Mr. Hall responded that is correct. The areas in tier three, which are also designated as growth areas, are outside that 10 year water and sewer service, so the likelihood of their annexation within that 10 year window is less probable than those areas designated as a tier two. Mr. Lenox said in tier four, you cannot do packaged treatment plants. Mr. Lenox said Village Down River is the best example we have, it is before the tier maps, it is a designated growth area, not within 10 years, so how are they going to get water and sewer; Fruitland and Salisbury did not want them, so they did it on their own. They could not do that today because the County does not have a tier map. If the County did have a tier map and it was designated as anything but tier four, then they could go ahead and do that, but anything in tier four cannot have a package plant. Mr. Creamer said suppose an individual or entity went about to create a new municipality in Wicomico County, asking could they do it? Mr. Hall said that is when you will see an amendment to the tier map that would take them from a tier four, or an area that could not use a community or package treatment plant, to a tier that could do that, which is ideally tier one. Mr. Creamer then said instead of becoming a municipality, they become some other entity that is recognized by State law. Mr. Hall said it could be unincorporated Wicomico County in an urban service district or it could be unincorporated Wicomico County getting into the public sewer business. Tier three is designated as a growth area, major and minor subdivisions are allowed. Business is as usual meaning there are no restrictions other than the local Health Department and local zoning, so there is no imposition from this legislation to what is a tier three. Mr. Matt Holloway asked if there is a seven lot maximum. Mr. Hall there is not a seven lot maximum, you can go with a major or minor subdivision on private individual systems. Mr. Matt Holloway asked what about current zoning. Mr. Hall said the idea is that it does follow current zoning. We are trying to limit impacts and afford property owners with as many options as possible. Tier four is, essentially, the areas that are protected; your agriculture zoned areas, rural legacy program and areas outside the designated growth areas as well as not incorporated in the 10 year water and sewer plan. Mr. Matt Holloway asked what is allowed in a tier four, to which Mr. Hall responded, in a tier four, you are allowed a minor subdivision in asking for nothing more than seven lots and there is a provision in State law, as written, that you can go up to 15 lots with the use of transfer development rights. Mr. Hall said that is another piece we have talked about in the last six to seven years in that how do you prime that program. Mr. Cannon said they primed it by down

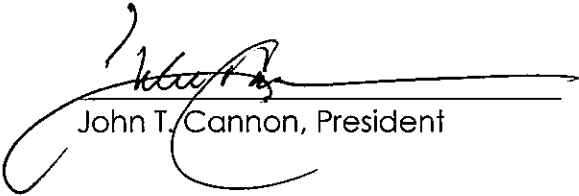
zoning tier two. Mr. Hall said providing we have incentives, a TDR program will allow the rural property owner to essentially transfer development rights even to rural to rural, not just rural to designated growth areas. Mr. Lenox said the down zoning in tier two is really sort of an interim thing. If the value of property in tier two is higher than the value of property elsewhere, it is because it is within the 10 year water and sewer plan and they know it will be annexed into the city, or they are going to put in a package system, or other community system. He would not think of that as down zoning. Mr. Lenox said there are State programs, such as the agriculture preservation money that they do not allow to be spent in a designated growth area. Therefore, the idea of making the entire County a designated growth area does not work if you intend to apply for other programs. Mr. Hall said if all of a sudden starts limiting options to property owners. Mr. Cannon said the problem we had last year is that the tier two map is not what the State wanted. Mr. Hall said they started with a tier four because tier four is going to be the majority of the County. We looked at it as how do we move forward with a tier four that does not start restricting people's options. The County during this discussion could not come to a conclusive path to make sure the unintended consequences associated with tier four were not going to play out and those were limiting development extensively for property owners that potentially have 24 acres or more. There is a threshold in acreage because of that maximum number of seven lots. Also, at that time, the administration, at the State level, as well as the department level had definitely shown their interpretation of Senate Bill 236 to be very prescriptive. It was, if you do not follow what they thought the intent of the law was, there are other checks and balances they can do that even though it is a county's decision to decide if it wants tier a map, and also to decide to be in a map, the county ultimately controls what will be approved as a function of a subdivision though the Health Department, the Maryland Department of Environment, and anywhere we feel there is a disparity between what you have and the State feels it should be with respect to a tier, there is the ability to not approve it locally. There was always that concern and, as it played out, as they were getting in the comprehensive plan, it got closer to the mid-term elections and, at that point, everybody was like lets package this together with the comprehensive plan. We know where we are going, so lets see what happens with the elections, and see if we come up with something that compromises with the intent of the law, it looks to protect local autonomy and is consistent with zoning and our land use. Mr. Hall said land use should be consistent with zoning, and both of them should be consistent with what the State expectations are for a tier map. Mr. Hall said our challenge is how we make the tier map more favorable for our local residents. Mr. Cannon said it is going to be very difficult for the Council to individually draw the Wicomico County map. Mr. Hall said you will not have to worry about that as they will bring it to the table as a function of the combined land use and tier map discussion. Mr. Hall said he brought with him a zoning map, which will drive the discussion. He said a lot of the work was done in 2004, and what we now have to do is translate that into a

growth tier map, but it is not as simple as transferring properties to a tier one, two, three, four, or whatever combination of those as that is the easy part. He said the challenge is coming up with a program that is implementable and retains as much local autonomy as possible without trying to skirt around State law. We need a process for moving from a restrictive tier to a less restrictive tier, specifically, we need to have more flexibility in how you go from a tier four to a tier three. Mr. Hall said tier four, by all intent of the law is supposed to be all agriculture areas. Mr. Hall explained, on the zoning map, the area shown in white is the agriculture zoned area, but said we all know there will be development that will take place out there. We are not going to see it run rampant with major subdivisions, but the market will come back. Right now as the law reads you can go up to 15 lots. Mr. Hall said we could see if we can exceed that based on what our local density will already allow and try to get us back to where we were. Residential development in an agriculture zoned area is not the norm, it is the exception. More development is going to the municipalities because they have public sewer as that is where you are going to get your density. You might have the highest land cost, but you are also going to see your biggest return on the value of your investment. Mr. Hall said developing in the County is very difficult and it is not because of the cost of land, it is because we are down to the point now where we are seeing marginal soils. We will also be talking about the soils, not from a quantitative perspective, we are going to be looking at it from a 30,000 foot approach. Mr. Joe Holloway said we have added cost now for sprinklers, because it will cost less in a municipality. Mr. Hall said it will be more expensive to do it in a single-family home. Mr. Lenox said there has been one zoning text amendment change since 2004, and one map change. We had an agreement and it seems to have worked, the planning commission gave them a lot of direction. They said they do not want to open up the zoning code, land use, and they do not want to get involved in significant up zoning or down zoning. There are some small changes you will see along the edge as they open up the comprehensive plan, but they want to work off the 2004 document, it will make life easier as we get into the public hearing process. Mr. Lenox said that it is not as easy as getting the maps out and drawing the lines. The way we see it, is how do you structure the program. The State came in with septic controls and overlaid it in a way that impacted the Council's ability to define acceptable development, so we need to work in that context. Mr. Lenox said the State law has not changed since we have a new governor. They are implementing the same law, literally, the same words, it is how much will they lean toward us on this. Mr. Lenox said they will come back with a tier map program that will be consistent with the comprehensive plan, but will give some flexibility to rural property owners. Mr. Lenox said a lot of them could not develop even if they want to, so why fight that battle. Mr. Hall said that is what they saw with the "opt out" analysis, there are a lot of people that could not develop, however, the development was submitted. Mr. Hall said we need to have a program across the board that is going to provide the options for development even if property cannot be developed because of other limitations. Mr.

Lenox said when we looked at the "opt out", that was how property owners felt at that time under certain circumstances. What about next year, or 10 years from now. We want to have a program that makes sense for them as well. Mr. Hall said what if Mr. Joe Holloway sold him property that could be subdivided after the tier map had already been approved and it was in a tier four and there was restrictive development, how do I know that, or vice versa I could have been in tier three, in a more permissible zone, but now it is in perpetuity, I could never change that. The State is administrating programs that seem, at one point in time, if you are not in a tier that is favorable, you are never going to get in that tier. Mr. Hall said we are trying to work within the constraints of the State legislation to say we can have an amendable plan that is long term that is stainable and is consistent with our growth management tools. Mr. Matt Holloway clarified that they will be coming back with not only a map but with a program, to which Mr. Hall responded we will be coming back with a program that just happens to have a map attached to it. Mr. Hall said as of right now Wicomico County is in the most restrictive position it can possibly be in regards to this legislation. As long as we do nothing, you can ask for no more than seven lots, growth area or non-growth areas, good soils or bad soils, that does not make a difference. Mr. Kilmer said the last time there was some disagreements between the Council and Executive, asking what role does the Executive play in all of this? Do the Council and the Executive have to agree? Mr. Hall said the interpretation the Attorney General for the Maryland Department of Planning, at that time, was that they wanted the County to figure that out. The Maryland Department of Planning does not want to get one tier map from the County Executive and another tier map from the County Council. Mr. Hall said as they move forward, the recommendation for the consideration of the Council, is that the Executive plays a similar role as we are going forward with the review of the draft plan. Mr. Hall continued, he said we ideally want a plan that is endorsed by the Planning Commission and the County, the County being the County Executive and the County Council. Mr. Cannon said he thinks before, the State of Maryland said your plan, your tier map, is going to be exactly what we want it to be, but we are going to give you the option to do what you like, but if we don't like it, it does not exist, and that was the hold up. Mr. Hall said the legislation was originally written as the Maryland Department of Planning was going to have approval authority over your growth tier map, so you could have submitted whatever you wanted, but it was going to be what they thought it was. Mr. Creamer said this is the reason why we are asking for some relief on the BAT technology for residential septic systems to be limited to the Critical Areas, as it was intended originally. Mr. Lenox said the State said they did not have to approve it, but what they found out over time from the experience of some other communities is that they could oppose it. Mr. Lenox said they will keep in the mind the target, in that we want to come up with something that will suit the County's interest the best we can, and the State will not oppose.

*Signatures on the next page.*

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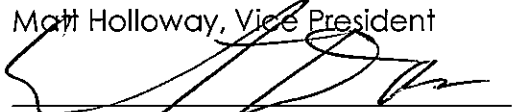


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Matt Holloway, Vice President



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Marc Kilmer, District 2



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Larry W. Dodd, District 3



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John B. Hall, District 4



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Joe Holloway, District 5



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Matthew E. Creamer, Council Administrator