

**Open Work Session
Land Use/Tier Maps/Community Sewer Systems
February 2, 2016**

Mr. Jack Lenox and Mr. Keith Hall came before Council. Mr. Hall said this is the third work session with Council. During the first two meetings, he provided an overview of sustainable growth and discussed what the Agriculture Preservation Growth Act of 2012 is or some people refer to it as Growth Tier Map. He then discussed how it relates to our local zoning and local land use. They prepared maps and showed a draft assessment on what the Growth Tier Map should look like with our current situation. At the last meeting, it was discussed how to find ways to increase our local autonomy and flexibility within this program, or state law. He then said he discussed with Council how to make this a hybrid or program, instead of just a tier map to submit to the state for their review and comments. When we started looking at the amendments one of the most concerning things was the restrictive nature of Tier IV of being limited to minor subdivisions. We are trying to find a happy medium so the County has the ability to advance subdivisions consistent with our zoning, but mold it in a framework of what the state's expectations are. Mr. Hall said we talked about, with the hybrid, the ability to amend a tier map purely as a result of two functions, (1) A development proposal for review by the Planning Commission as well as the Health Department (2) an existing development that might be served right now with individual septic systems but because of certain health concerns, may need to go to a public community or shared systems. Mr. Hall said those are the big amendments that we talked about at the last work session and the conversation ended talking about the process. What do we do? How do we make this work? What are the administrative components behind it? Mr. Hall said they recommended that Council submit a Growth Tier Map for the review to the Maryland Department of Planning. He said the Maryland Department of Planning does not adopt or approve; that is a function of the County Council if they want to adopt a Growth Tier Map as part of the Comprehensive Plan or not. When looking at the process, a property owner would have to go through the Planning Commission to get preliminary plan approval, would have to get preliminary approval from the Health Department that one can exceed over the minor subdivision or over eight perks, and then there is the question of what would be the role of the County Council. One council member remarked, he did not want the planning component to become so political that it was purely controlled by Council. Mr. Hall said they took the instructions to come back and try to formulate a process that may be amendable for the Council's consideration. It is the recommendation of staff that we still consider the first two caveats to get the process moving if an amendment is needed. It comes down to what is the function of the Council. One of the discussions of tonight is the consideration of if you can achieve preliminary approvals from the four mentioned bodies that we talked about, then there would be a notice to the Council, and it could be for a prescribed certain number of days, such as 60 days. Once the subdivision plan has been approved by the Planning Commission and by the Health Department, the Council would be given a 60-day notice to act upon it, not on the subdivision, but act on the amendment to the growth tier. If there was no action within 60 days, the action to the growth tier would occur, and it would be handled administratively. Mr. Cannon asked if every development would have to become a legislative process to which Mr. Hall said every development would not become a legislative process, the only developments that

would necessitate a legislative process are those that require a tier change to achieve more density. Mr. Creamer asked as part of the approval process, if it would change the development area from Tier IV to a Tier I, to which Mr. Hall said that could be one consideration, but it could also be a Tier IV to a Tier III, a more restrictive tier. Mr. Creamer asked if that would require an amendment to the Comprehensive Plan, to which Mr. Hall responded, no. They do not think it was Maryland Department of Planning's intent that every time there is a change to a tier map that it will require the plan to be opened up to make that amendment. A case in point is when areas in the County get annexed into the City; we designated a land use for the property in the County plan. However, just because a function of annexation occurs, we do not go back into the plan and automatically remove that land use designation. Mr. Creamer then asked, under the same scenario, would it require an amendment to the County's water and sewer plan, to which Mr. Hall responded there will be situations where that is accurate. Mr. Creamer then asked if that process will fit into a 60 day window. Mr. Hall said going back to the example on what would necessitate a water and sewer plan amendment, if you go from a more restrictive tier to a less restrictive tier using a public or community shared sewer system that will necessitate a water and sewer plan amendment, and MDE approval as well as the Council serving as the Urban Service Commission. Therefore, we may have to fine-tune the notice to Council based on each application or situation. Mr. Creamer said his concern is that all that may not fit within a 60-day window. Mr. Hall said giving that example, it would be very challenging. Mr. Hall said in the example of going from a more restrictive tier to a less restrictive tier without the need for public service, he thinks the 60 days is achievable to get it in front of Council. Mr. Creamer then asked how likely is that to occur going from a more restrictive to a less restrictive tier, as he is trying to think of circumstances where that might occur. Mr. Kilmer asked if it would be like if someone wanted to put in a development on Athol Road, which is in a Tier IV. Mr. Hall said, yes, putting in a development out in an agriculture zone in Wicomico County. Mr. Lenox said if the property had good soils, ratified by the Health Department, and it could meet the County's zoning and subdivision rules, otherwise, that is an example of a Tier IV to a Tier III. Mr. Lenox said you will need the Planning Commission's approval, Health Department approval and Council approval if a central sewer system is required. Mr. Joe Holloway said in the reverse situation, when you take a development that has already been approved, say from a Tier IV to a Tier III, and then we have another downturn when the taxes are increased and the owner wants to turn the property back to agriculture, it would go back to a Tier IV. Mr. Creamer said when a property is moved from an agriculture zone, it is not a simple process to go back. Mr. Lenox said it has been done before, but the individual initiates it. What Keith is talking about is trying to come up with a system that is as automatic as possible. Mr. Hall said language needs to be in the program for those types of exceptions that will occur. Mr. Lenox said we are talking about language that is in the Comprehensive Plan that is linked to the tier map that provides for an automatic revision when they meet certain criteria. Mr. Kilmer then asked for clarification that there is still a way for Council to get involved, to which Mr. Hall and Mr. Lenox responded, yes, if you choose. Mr. Kilmer said as you can see from current events, there is a call for Council to get involved in approving or not approving certain businesspersons' actions. Right now the system is set up that if you meet certain criteria, you get it automatically. Mr. Kilmer said Council sets laws, but we do not get to stand in judgment of what one person gets to do. Mr. Kilmer said we are a nation of

laws and that is the way it should be. We are not a third world country where we get to pick the winners or losers. He said it makes him nervous when we talk about any way Council can inject politics into the system. The Planning Commission is there to follow the law, the members do not inject personal feelings into the process. Council members can do whatever they want based on a whim which makes him uncomfortable. Mr. Hall said it is a very delicate balancing act in the role of the Planning Commission relating to the Comprehensive Plan as they are responsible for preparing it and forwarding it to Council to adopt and legislate. They are aware of that and they are trying to develop provisions so, if there were actions of the Council, there would be a failsafe. Council would have the opportunity to opine, whether it be a Growth Tier designation change or water and sewer plan amendment to provide for public service of an area that is currently on individual septic systems. Mr. Lenox said it seems as Council's options have been narrowed to two alternatives, (1) you want Council to act as a failsafe or (2) keep Council out of it and let the system work. Mr. Cannon said the tier maps have been portrayed so negatively through the State of Maryland, it has given this process somewhat of a bad name; it is over regulations. Mr. Cannon said he does not look at tier maps as that process. The purpose of the tier maps is not to restrict and create more regulations, it is to create guarantees, so when someone buys or owns a piece of property, they know what to expect around them. Mr. Cannon said we are seeing the surprises from people who live in the agriculture district because they are shocked they have chicken houses next door. Mr. Cannon said he sees the tier maps as establishing something more definite that says you live in this part of the County, so this is what you can expect. Mr. Cannon said he appreciates the wiggle room, but he is concerned that we will be changing the dynamics of something that was not anticipated by those who could be mostly impacted. Mr. Hall said that could be one unintended consequence that Council will have to consider. It is balancing the unknown of the future versus trying to provide flexibility because nothing lasts forever. We are just trying to find a starting point. Mr. Hall said if we go forward with a tier map that is adopted and becomes part of the Comprehensive Plan, it can be amended within the process and abilities we have provided by the Charter. Mr. Cannon said technology changes, so those stand alone facilities will become less expensive and more feasible. Mr. Cannon said in some cases the individual septic systems are not working. Mr. Creamer said the package systems are probably the only options for putting community systems outside of municipalities, that is, having that density of development and not be annexed. The difficulty in trying to build a conventional waste water plant and have an outfall in the unincorporated areas of Wicomico County would be very difficult to achieve. Mr. Joe Holloway said during public comments tonight, a lady said the poultry operation is a mile and half from the City of Salisbury limit. What do you do when you strike this line between Tier III and Tier IV or between Tier II and Tier III, say you use Mt. Hermon Road and Old Ocean City Road or Naylor Mill Road as an example, what do you do when you have someone living on the south side of that road but across that road it is entirely different, asking is that when Council gets involved. Mr. Hall said with what they are proposing, that is the level Council could get involved and there would be the Planning Commission as well. Mr. Hall said those hard lines that Mr. Joe Holloway is referring to exist in the County's zoning as well as the water and sewer plan and sometimes the boundary will be a physical boundary, such as infrastructure, a road. Mr. Cannon then asked where should we go from here. Mr. Hall said Mr. Creamer brought up a good point and Mr. Lenox brought up we have three

fail-safes now that we are looking at for the various scenarios. If Council is comfortable with the process, it is up to the Planning Department to work with the Legal Department to go back and draft the program language and then it will be at the direction of the Council if we want to review it in its entirety. If the review goes well, we should consider sending something to the Maryland Department of Planning for an informal review of the program, not just the map. They have already reviewed the draft Comprehensive Plan. Mr. Cannon asked if this will require public hearings before it goes to the state for their review. Mr. Hall said there is not a legal requirement for a public hearing, so it would be at the discretion of Council. Mr. Lenox said Council will have a better understanding of their comfort level once they unfold some of the Comprehensive Plan. Mr. Lenox said they would like to get into the Comprehensive Plan with Council so you can see how everything connects. Mr. Lenox asked Council if they would like to be potentially involved after the changes take effect, or does Council just want to sit back and let the system run administratively, unless it is a water and sewer plan amendment in which Council would have to be involved. Mr. Creamer said if something were to occur like tonight with the discussion on the chicken houses, there is only one legislative body in Wicomico County and that is the County Council. If something occurs that requires a legislative remedy, Council has to have a way to get to it. Mr. Lenox said that is what they presented this evening. Mr. Cannon said there has to be some avenue for recourse. Mr. Lenox said you can choose not to take advantage of that recourse. Council will get the notice, have the option to hear from folks and decide if they want to take action. Mr. Kilmer said either way Council is making a choice. Mr. Hall responded that is correct, taking no action is a choice. Mr. Lenox said they will be ready to review the Comprehensive Plan whenever Council is ready. Mr. Cannon said he would sit down with Mr. Lenox to go over some deadlines.

Signatures are on the next page.

**Open Work Session
Land Use/Tier Maps/Community Sewer Systems
February 2, 2016**



John T. Cannon, President



Matt Holloway, Vice President



Ernest F. Davis, District 1



Marc Kilmer, District 2



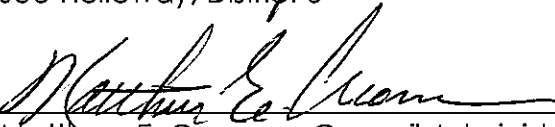
Larry W. Dodd, District 3



John B. Hall, District 4



Joe Holloway, District 5



Matthew E. Creamer, Council Administrator