

**Open Work Session  
Poultry Houses  
April 12, 2016**

Mr. Jack Lenox, Director of Planning, Zoning and Community Development, came before Council. Mr. Cannon said Council received a request to take property located between Pittsville and Willards out of the Designated Growth Areas. Mr. Lenox said he was aware from the property owner that he was going to be submitting the request, but he has not read the request yet. Mr. Lenox explained that taking land out of the Designated Growth Areas opens up the opportunity for land preservation money. He said everyone would like to have all of these options open but that is one that the state has not allowed the County to continue with, so the County has to make a decision. Mr. Cannon asked what is the process for someone to opt-out of the Designated Growth Area. Mr. Lenox said the Comprehensive Plan process has been underway for several years. He said when they put the first "shout out" to folks asking for them to let the County know how they feel, there were a couple of requests that came in at that time. He said the Planning Commission reviewed each of them, and they did or did not include them in the draft Comprehensive Plan that Council now has on the table. Mr. Lenox said he has spoken to the property owner, and he will bring the request before Council as part of the Comprehensive Plan review. Mr. Cannon clarified that the request would be brought to Council after the Planning Commission has reviewed it, to which Mr. Lenox responded the Planning Commission could consider it is as a very specific request. He said it is not a public hearing at this point. Mr. Cannon clarified that before Council approves the final Comprehensive Plan that any of those adjustment requests will be included in the plan, to which Mr. Lenox responded, yes, absolutely. Mr. Lenox said it is fairly open ended as to what Council would consider a significant change; lines can be adjusted. He said, if Council were to take an entire rural village and eliminate it, that is pretty significant. To change the lines, he thinks that is in Council's prevue. Mr. Lenox continued, he said zoning is a legislative function and that is the full formality. Mr. Joe Holloway said that depends on how significant the rural villages are as a couple of them are just crossroads. He said some of the rural villages that have served as a center of activity in the past, do not anymore. Mr. Lenox said a citizen used to be able to come in and apply for a special exception in the Agriculture District for a commercial use. He said that was taken out of the code in 2004, but the rural villages were strengthen to say if you want commercial use for the area that is where you go. Mr. Joe Holloway asked if the people in the Designated Growth Areas should be contacted to let them know that they have the option to opt-out or should it be left up to the property owners to follow Council's actions. Mr. Lenox said when they went through the open process, the folks knew and they came to his office. Mr. Lenox explained that when Council approves the Comprehensive Plan, a public hearing will be held at that time as well.

*Buffers*

Mr. Cannon said Council is looking to wrap up the poultry house regulations. He said there are a couple of issues on the table, one is the number of rows of trees to make buffers (three or five) and the other is making a distinction between the Designated Growth Areas and the Agriculture District in reference to setbacks. Mr. Joe Holloway

said he observed a poultry farm that is about 300 yards from his house, and he has two rows of evergreens and deciduous trees. He said that looks sufficient to him if they are done right and DPI has someone to prepare the plans. Mr. Creamer asked Mr. Joe Holloway if was he referring to three rows for a buffer, to which Mr. Joe Holloway responded, yes, two rows evergreen and one row deciduous trees. Mr. Cannon said Council has discussed five rows before, but based on the feedback he has received three is sufficient; five is an overkill and not achieving much more. Mr. Joe Holloway said the buffers need to be planted by a planner, not just someone who goes on a farm and said he planted trees. Mr. Joe Holloway asked if that language could be added, to which Mr. Lenox responded, yes, they would use the term "by a qualified professional." Mr. Creamer asked if there should a requirement as to the longevity of the buffer. Mr. Cannon said there has to be a stipulation that they are maintained for the life of the poultry house. Mr. Dodd said he had a person tell him that three miles was not good enough. Mr. Cannon said there is a huge concern over the timing of the buffers in when they are required to be put in. He said this is important because in a lot of cases money for the buffers (trees) is actually paid by grant money to the farmer, but it has been expressed to him that, if it is law that these buffers are required to be put in, then it is a good possibility that the farmer could lose the grant funding because it is now required as opposed to being voluntary. Mr. Cannon said that is what has been shared with him, but he does not know if that is a valid point or not. Mr. Joe Holloway said he spoke to one of the poultry companies, and they told him that they put in the plan for the buffers to be financed through whomever is financing the poultry houses. He said the grants that are sent out by Mr. Keenan's office are for existing houses that do not have buffers already. He said the grants cannot be obtained until there are birds in the poultry house. Mr. Joe Holloway said the lenders are lending the money to put the buffers in. Mr. Dodd asked who offers the grant, to which Mr. Cannon responded NCRS offers the grants. Mr. Cannon said grant funding is something to keep in mind. He said if Council gets any feedback that compromises grant funding, Council may want to rethink the buffers. Mr. Kilmer asked Mr. Lenox if there is some leeway so it makes sense in terms of financing, construction, and timing. Mr. Lenox said Council will want language in the regulations that indicates when the buffers have to be put in place, that they will be of a certain size and specification, and that the buffers will be meaningful. Mr. Kilmer asked Mr. Lenox what happens if an owners does not plant buffers, to which Mr. Lenox said the County would ask for a performance guarantee. Mr. Lenox said, for example, with forest conservation when you have planting requirements, you do the planting or you post a bond, letter of credit, cash or something. Then you do the work, it is inspected, and the money is released. Then they are required over time to maintain the plantings. He said when something dies, then it has to be replaced in a certain period of time. Mr. Dodd asked who would do the inspection. Mr. Lenox said the County would do the inspection in-house, such as an environmental planner, who oversees forest conservation, or a building inspector. He said he does not think this is a full-time task, so they would request someone to look at the buffers who happens to be out in the field anyway. Mr. Dodd clarified that someone with knowledge would inspect the buffers, to which Mr. Lenox responded, yes. Mr. Joe Holloway said he received a letter yesterday from a gentleman, who said he had an engineer review the plans on one of the poultry farms, and it did not meet code. Mr. Lenox said he has followed-up with Mr. Redden and there was some confusion over two different sets of plans. He said there was a plan submitted a couple

of years ago that was withdrawn and that had backup specifications for the houses as well as stormwater. Those two plans got confused and the up-to-date plan, which has been approved, is correct. Mr. Joe Holloway asked if he is going to respond to the letter. Mr. Lenox said Mr. Redden will talk to Mr. Young, and they will be sending out a response letter. Mr. Lenox said the comments were correct based on an old plan. Mr. Lenox said, as he recalls from the last discussion, there would be reference in the legislation to a separate document for best management practice standards that could vary from time to time. Mr. Lenox said with Council concurrence, they will prepare the document so Council can see what it looks like and over time it can be changed by resolution. Mr. Creamer clarified that Mr. Lenox is preparing a draft of best management practices, to which Mr. Lenox responded, yes. He said it will include such things as the number of buffer rows and the types of species. He said the document will be reviewed through the public process and by Mr. Passwaters as well. Mr. Lenox said it is better to have it as a separate document from the legislation. Mr. Creamer confirmed that the Best Management Practices would be approved and amended by the County Council, to which Mr. Lenox responded, yes, by resolution, not by legislation.

### *Reverse Setbacks*

Mr. Cannon asked how did the discussion end with regards to reverse setbacks. Mr. Lenox said that was not tied down last time. Mr. Lenox asked if Council wishes to apply restrictions to adjacent properties, which may become developed in the future and would involve a required setback from existing poultry houses. Mr. Kilmer said it makes sense to put more restrictions on the homebuilders or developers in the Agriculture District. Mr. Lenox asked if the reverse setback is the same setback as it is for the poultry house. Mr. Matt Holloway said he thinks that would be the simplest way, to just mimic what it is then in place for poultry houses, just in reverse. Mr. Lenox said the distance from a school, daycare, nursing home is the larger one. Mr. Joe Holloway said he thinks that should be subject to appeal if they want to. He said if a father gives property to his son, and the son wants to build on the property next to a chicken house, he could appeal the reverse setback. Mr. Creamer asked if there are other situations in the code where families are recognized as special situations. Mr. Lenox said not in the zoning code, but by special exception you are in the public process, family relationships like other issues related to the land could be evaluated by the Board. He said there are some provisions like that in some of the Agriculture Preservation Districts for interfamily transfers. He said it does get a little messy over time. Mr. Creamer asked if the last time the Council spoke of special exceptions was only in the Growth Areas or was it countywide. Mr. Creamer said he thought the discussion was only about having a special exception by the Board of Zoning Appeals in the Growth Areas. Mr. Lenox said the special exception was in two parts, one having to do with setbacks and separations, and the other was for the use itself in the Designated Growth Areas. Mr. Lenox said right now Council is just talking about the setbacks and separations. Mr. Creamer asked if the special exceptions for setbacks go through the Board of Zoning Appeals, to which Mr. Lenox responded, yes. Mr. Creamer then said Mr. Lenox explained to Council last time that in granting a special exception there are certain requirements that are imposed on the Board to assure conditions are being met by the proponent. He then asked Mr. Lenox if that is correct, to which Mr. Lenox responded, yes. Mr. Creamer then asked how the reverse setback distance would be applied. He

asked would it be added to the list of requirements applicable to poultry houses. Mr. Lenox said there would be a separate section under poultry houses that would say these standards could be modified by special exception. He said in the format of the code, there would be reference over to the findings. Mr. Lenox said in addition to the standard findings, Council has talked about an additional finding that deals with soils, land cover, ownership relations, or property restrictions of record that warrant the requested modification. Mr. Lenox reiterated it is all the standard findings, plus the one he just read.

### *800' Setback Suggestion*

Mr. Hall said regarding the setback and reverse setbacks, he asked if Council is agreeable to a 400' reverse setback, why would Council have a problem with an 800' setback for building a chicken house next to an established community or next to a church. He said there is only a 400' setback if it is next to an established school, church, nursing home, daycare center, mobile home park, or subdivision of 10 or more homes or planned subdivision. Mr. Hall then asked why would there not be an 800' setback from an established one when they put in a new poultry house. Mr. Cannon said the reverse setback allows everyone to share the responsibility. Mr. Hall said it does not. It only allows the person who is building a new school, church, nursing home, daycare center, etc. ; it does not include the established chicken house. Mr. Joe Holloway said if it is a 400' setback and the poultry house is a 400' setback, you have an 800' setback. Mr. Hall said that is an 800' setback if you have 400' reverse setback, but if the property is already established with a nursing home, but not a poultry house, and a poultry house is being built, you only have to be 400' from the poultry house, so should it not be 800'. Mr. Joe Holloway said because you would be taking up a lot more land than what is necessary. It would probably zero out the project in some cases. Mr. Hall said that may happen. He then asked would it be fair to the person who had the school, church, nursing home, daycare, mobile home park or established residence. Mr. Lenox said he would like to clarify something on the measurements. He said a setback is generally measured from a property line. He said 200' is from a property line, then you are talking about how far away must you be from one of the other uses. He said so it is not that you are saying, if there is a school on the next property, my property setback is 400' and their setback is 400', which makes it 800'. Mr. Lenox said it is more of a separation. He said the poultry house has to be 400' from the school; it is not 400' plus 400', unless Council wants it that way. He said right now it is building to building. Mr. Cannon said an 800' setback would require 130 acres on the farmer just to build a chicken house there. Mr. Hall said he thought it was much less than that. Mr. Joe Holloway said they are giving the benefit to the nursing home that if someone wants to build a poultry house next to it, they have to be 400' from the structure. Mr. Joe Holloway said we are basically giving the poultry farmer that same benefit if a nursing home wants to build next to it. Mr. Hall said he understands, but the concern is that, if it is already established, then the setback may not be great enough. Mr. Creamer clarified that a poultry house only has to be 200' from a property line, to which Mr. Lenox responded that is what Council is currently discussing. He said currently it is 100' and Council is talking about doubling it to 200' and then impose a separation if someone else is nearby. Mr. Creamer then asked what is the minimum distance from subdivisions of 10 or more homes, to which Mr. Lenox responded 400'. Mr. Hall clarified if the subdivision is

planned or existing, to which Mr. Lenox responded, correct. He said that is defined by having septic system approval by the Health Department. Mr. Hall clarified that this setback also takes into account property that is across the road, to which Mr. Lenox responded, yes. Mr. Hall said even though the regulations say 200' from a property line, if the property is on the other side of the road, which is 60' to 70' wide, they need to have another 100' setback. Mr. Lenox said they have to either have a development in place or planned. Mr. Cannon said his reference to the 130 acres he mentioned earlier was not just for the square footage of the setback itself, he was talking about the entire property, including the chicken houses. He said in order to make the 800' feasible, it would include the setbacks and the property for the houses themselves. Mr. Kilmer clarified that Council is talking about the Agriculture District, which is where farming is supposed to exist. Mr. Hall said if he moved to the County before a chicken house was built, he would not want a large chicken operation next to his residential area. Mr. Kilmer said he understands the concern. Mr. Hall said the only way to take care of that is to increase the setback. Mr. Cannon said there are a couple of things to keep in mind, one is they are in an Agriculture District and there is a Right to Farm Act that is associated with their deeds. Mr. Hall said this does not restrict them from farming, it restricts the poultry operation. He asked when you have large corporations come in that build CAFOs is that still farming or is it a corporation. You have not preserved the family farm way of life. Mr. Kilmer said this applies to one chicken house or 10 chicken houses, so, if the family farmer wants one chicken house this applies. He said this legislation is affecting the family farmer so that is why Council has to be careful. The discussion is about the big CAFOs, and he thinks that has been addressed in the Designated Growth Areas, but these rules apply to one chicken house, two chicken houses, and the corporate farmers. Mr. Hall said one of the things mentioned in the proposed legislation is that he can replace a chicken house and add 10%. He said the County has a lot of unused poultry houses, which should be replaced or torn down. He said if Council increases the setback and these houses were grandfathered in, there would be an incentive to tear them down. Mr. Joe Holloway said a 10% increase on the size of the chicken houses that are not being used is insufficient because most of them are 10,000 to 12,000 capacity, at the most 20,000. Mr. Hall said Council could increase the capacity over 10%. Mr. Joe Holloway said grandfathering only allows for 10% and to go over that you have to meet all the setback regulations. Mr. Hall said there is no incentive to revitalize the current chicken houses that are in disrepair and not being used anymore. Mr. Kilmer said some of these chicken houses are owned by people who are older and do not want to be in business anymore. Mr. Matt Holloway said if Council increases the setback to 800', it would not affect the property on N. West Road as that property is a mile away from most of the citizens who are concerned about that project. Mr. Hall said he was not thinking about just that project, he is thinking about existing residential areas that have the potential to put these types of operations in their backyards. Mr. Joe Holloway said it is not the backyard they own. Mr. Hall said it is not the backyard they own, but these developments were built before major chicken operations were considered. Mr. Joe Holloway said the subdivisions were not here longer than the poultry industry. Mr. Creamer said you can have an established subdivision of 100 homes with homes valued at \$300,000 with land valued at \$50,000. You are talking about millions of dollars worth of investment on the books. Mr. Joe Holloway said the Kilbirnie subdivision has two large poultry houses 200 yards from the house in the back of the neighborhood. Mr. Creamer said that would be 600',

Council is talking about 400'. Mr. Joe Holloway said he has never heard a complaint about those houses and down the road, they have poultry houses even closer. He said they used to build chicken houses right at the end of the road. Mr. Hall said they did not have CAFOs then. Mr. Cannon said a poultry house is a CAFO whether it is a small one or a big one. Mr. Kilmer said Mr. Hall may have more of a point in the Designated Growth Areas. There is consideration of requiring a special exception for concentration of five or more chicken houses in the Designated Growth Areas. He said that may be a way to address Mr. Hall's concerns partially in the areas that are supposed to be residential growth but not overly burdening farmers in the Agriculture District. Mr. Kilmer said "Mega CAFO" is not a legal term. A chicken house is a chicken house. These regulations apply to one chicken house or 10 chicken houses. Mr. Kilmer said we should concentrate on where the people live, in the Designated Growth Areas. Mr. Creamer said people live in large subdivisions in the Agriculture District as well.

#### *Best Management Practices – Wicomico County Poultry House Standards*

Mr. Cannon asked Mr. Lenox to go over the proposed standards, step-by-step so everyone is on the same page. Mr. Cannon asked Mr. Lenox what Council has defined as setbacks. Mr. Lenox said the poultry house standards discussion draft dated March 28, 2016, has the vegetative buffer, which will be defined as a separate document. Mr. Cannon asked if they could name the separate document. Mr. Lenox said how about Wicomico County Poultry House Standards. Mr. Joe Holloway said Number 1, indicates "A vegetative buffer, as defined as attached, around all active portions of the poultry operation." He then asked if that should be changed to indicate, "where needed" because in some situations they have woodland. Mr. Lenox explained that it says "as attached" which means you need to go to the document, which then has the escape clause. Mr. Cannon then asked if the buffers would be established in the Wicomico County Poultry House Standards, to which Mr. Lenox responded, yes, the planting of the buffers. He said the setbacks will be in the code. Mr. Cannon clarified that there will be three rows of buffers, to which Mr. Lenox responded, yes. Mr. Cannon then asked if Council would keep the recommendation on the trees. Mr. Kilmer said he does not want to micromanage. He said the last row should just be evergreens. Mr. Cannon said there should be some stipulation on the evergreens as the key is to make sure the poultry houses are hidden from the neighbors. Mr. Kilmer said he thought it was decided last time that the furthest row would be evergreens. Mr. Joe Holloway said the one he looked at had two rows of evergreens. Mr. Cannon clarified that there will be three rows of buffers with evergreens on the outermost row. Mr. Cannon then asked Mr. Lenox if he could bring the outline back in the form of a legislative bill with an addendum for the Wicomico County Poultry House Standards. Mr. Lenox said he will be supporting Law in that effort.

#### *400' Setback from Property Line Suggestion*

Mr. Lenox said on the list, in the Agriculture District, it was decided there would be a setback of 200' from all property lines. Mr. Hall said he would like to see that increased to 400'. He said 200' is 75 yards and that is not a very far setback. Mr. Cannon said it does say for item Number 2, 400' from any legally established residential dwelling. Mr. Hall said he knows about that setback. Mr. Cannon said we are talking about

Agriculture District. Mr. Hall said he understands. Mr. Joe Holloway asked what everybody thinks. Mr. Joe Holloway asked Mr. Hall if he visited the farm on the left just before you get to Powellville. He said it has two Poultry Houses surrounded by swamp. He said they could never build a chicken house there because of the lay of the land that would zero them out of the business. He said the chicken houses are not bothering anyone because they do not have any neighbors close by other than the muskrats and beavers. Mr. Hall said he did not visit that location. Mr. Joe Holloway said if Council has a 400' setback, it is taking up a lot of land, so he does not agree to the 400' setback. Mr. Cannon said by doing a 400' minimum setback from a residential dwelling and 200' from property, you will get a 400' setback if someone wants to build there. Mr. Hall said he just does not think 75 yards is sufficient.

### *300' Setback from Property Line Suggestion*

He then asked about a 300' setback. Mr. Cannon said there is a request that the minimum setback from a property line be 300'. Mr. Davis said if you put a 300' setback from the property line, you do not have to worry about the 400' from the dwelling. Mr. Hall said that is completely different. Mr. Cannon asked Mr. Davis if he is referring to the reverse setback, so the 400' would not be in effect, to which Mr. Davis responded, yes. Mr. Joe Holloway asked how much more land would that take up. Mr. Hall asked how much land will 25 yards take up. Mr. Matt Holloway said it depends on the size of the property. Mr. Joe Holloway said a poultry house is 600' long and then you have another 100'. Mr. Cannon asked Council if anyone wanted to change the setback from 200' to 300'. There was not a consensus. Mr. Cannon said the setback from a property line is 200'.

### *Minimum 600' Setback from Adjoining Uses Suggestion and 400' Reverse Setback*

Mr. Lenox said once you get past the 200' setback from the property line, you look at the adjoining uses as they exist, such as residential dwellings, schools, churches, nursing homes, daycare centers, mobile home parks, subdivisions of 10 or more homes; or an approved Health Department septic system to serve any of the those uses. Mr. Hall asked if this includes planned subdivisions, to which Mr. Lenox responded it includes planned subdivisions depending on how far along are you in the process of the getting the Health Department approvals. Mr. Hall said he has a citizen that keeps coming back every four or five years asking for an extension on his planning. Mr. Lenox said that counts. Mr. Hall clarified that is considered existing and is covered, to which Mr. Lenox responded, yes. Mr. Matt Holloway asked how many of those do they have, something like 14, to which Mr. Lenox said something like that, but not as many as you would expect because a number of those have expired. He said that difficulty has been compounded with the state with stormwater design standards, which are less protected than the Council's standards. Mr. Hall said he would like to see the minimum standard changed to 600'. He said he is willing to compromise. Mr. Kilmer said they are willing to comprise in the Designated Growth Areas. Mr. Cannon asked Mr. Lenox if reverse setbacks have been covered. Mr. Lenox said he would add an item number 4, in the A-1 Agriculture-Rural District that establishes a 400' reverse setback on future development of property near poultry houses. Mr. Joe Holloway confirmed that all of

this is subject to special exception, to which Mr. Lenox responded, yes. Mr. Cannon asked what if a developer wants to build a development next to property that does not have any poultry houses there. Mr. Lenox said there would not be any requirements. Mr. Lenox said there has been previous discussion about reverse setbacks in Agriculture in general, but that is not on the table. Mr. Lenox asked if the reverse setback is from active poultry houses. Mr. Cannon said those can be expanded. He then asked what defines an old poultry house. Mr. Cannon said he would like to have the reserve setback from all poultry houses and then they can ask for a special exception if the poultry house is dilapidated that no one is going to rebuild. Mr. Hall asked if it has to be a recorded existing chicken house. Mr. Cannon said the chicken houses are not recorded. Mr. Lenox said planning staff can see them from the arials. He suggests that the language "active or in-active" be used.

#### *60' Minimum Road Access*

Mr. Lenox continued, he said he included language in the outline that new and expanded poultry house developments directly accessing a County Road are required to have an access opening of between 50-60 feet. Mr. Lenox said he has been advised by Public Works that some of the plans have larger openings. Mr. Cannon said it can be a minimum of between 50-60 feet. Mr. Joe Holloway asked if it is a minimum of 50' or 60'. Mr. Hall said minimum of 60'. Mr. Lenox clarified that the road access will be a minimum of 60', subject to special exception.

#### *Designated Growth Areas*

Mr. Lenox continued, he said in discussing the Designated Growth Areas, when you see the legislation the wording will be different as there are various zoning districts in the Designated Growth Areas. He said it is not as easy as the earlier discussion on A-1 Agriculture District, so he recommends to think of it as just everything else. Mr. Lenox said the Designated Growth Areas is defined to include all other base Zoning Districts of the County, where Poultry Houses may otherwise be permitted, as well as incorporated municipalities. Mr. Hall asked if it would be better to tie this to the Tier Maps, to which Mr. Lenox responded, no, the Tier Maps are tied to zoning. Mr. Lenox said Council will not be adopting Tier Maps in the zoning code. He said Item 1, indicates that the Designated Growth Areas has to adhere to the standards prescribed within the Agriculture-Rural District. He said Item 2 talks about the 500' or 600' setback tied to the exhaust fans. Mr. Matt Holloway clarified that this is not a property setback, it is a structure to structure setback, to which Mr. Lenox responded, yes, the property setback is still 200'. Mr. Creamer said if we are talking about zoning districts that generally provides for higher residential development than what can occur in the A-1 District, he said it seems because of that, there would need to be more stringent restrictions on developing poultry houses in those residential districts than there would be in the A-1 District. Mr. Matt Holloway said one of the considerations was that all poultry houses would be allowed in the Designated Growth Areas through special exception. Mr. Kilmer said he has heard people suggest that but the issue with all poultry houses in the Designated Growth Areas is that we are also talking about Designated Growth Areas around Willards or down Pemberton Road.



### *5 or More Poultry Houses by Special Exception*

Mr. Kilmer said if we go down that road, which he might support, is that Council should say any concentration of five or more, which is what he thinks Mr. Hall is really getting at, as he is talking about the concentration of poultry houses, not just one or two. Mr. Hall asked what designates heavy concentration, to which Mr. Kilmer responded, the Council does, at five or more. He then asked Mr. Lenox if that is legally enforceable. Mr. Lenox said Council should pick the best number it can. He said he would like Council to consider if that is five new poultry houses or five total. Mr. Kilmer said he thinks it should be five new ones. Mr. Lenox clarified that if you already have four chicken houses, you can now add five more. Mr. Creamer said or you have two chicken houses and then add three more. Mr. Cannon said he thinks the intent is five or more. Mr. Hall said this is a residential growth area, but Agriculture does abut against residential. Mr. Joe Holloway said residential is in the Agriculture District. Mr. Kilmer said in looking at the zoning map, there is a lot of farmland around Willards that is not heavy populated. Mr. Joe Holloway said another one that is interesting is Powellville. He said Powellville is just like crossroads, yet there are a couple thousand of acres. Mr. Matt Holloway clarified that if one of those property owners, in the Designated Growth Areas, wants to build six chicken houses they would to go through the special exception process, to which Mr. Lenox confirmed that is correct. Mr. Matt Holloway asked what are the chances of one of the property owners being rejected if they are in one of the large tracts. Mr. Matt Holloway asked if their chances are pretty good at getting it. Mr. Lenox said the chances are a lot better. Mr. Joe Holloway asked if Council could just have the special exception with Salisbury without the other Growth Areas. Mr. Lenox said they do not have a separate zoning category for just around Salisbury.

### *Municipal Growth Areas*

Mr. Kilmer asked how complicated would it be to have each municipality to ask the County if they want their Designated Growth Areas to have the restriction. Mr. Lenox explained that there are two different things. You start out with the County having its Comprehensive Plan and zoning that has Designated Growth Areas. Then in 2007-2008 each of the municipalities defined a Municipal Growth Area in their own Municipal Plan. He said Salisbury did not take all of the metro core; their growth area is still relatively modest for their size. He said Fruitland took some, Delmar took some, Willards took very little. He said Willards has a growth area, they chose for it not to be big. Pittsville does not currently have a Comprehensive Plan; they have chosen not participate, so they do not have a Municipal Growth Plan. Mr. Lenox corrected himself, he said Pittsville does have a Comprehensive Plan that goes back to the 90s. They do not, however, have a Municipal Growth Area. The land in this case between Willards and Pittsville is entirely County; is it not being claimed by either or both jurisdictions. Mr. Creamer asked what year were the Growth Areas defined, to which Mr. Lenox said they were defined by the last Comprehensive Plan in 1998 and expanded somewhat during the zoning in 2004. Mr. Creamer then clarified that both of which were before the crest of development, to which Mr. Lenox responded, yes. Mr. Creamer said since the Great Recession it seems that everyone has reset the bar to a lower expectation in

terms of expansion or growth within multiple planning periods, so maybe more of the landowners around some of the Growth Areas might want to do what the landowner between Pittsville and Willards has asked to do and that is return to agriculture. Mr. Lenox said that is very possible. Mr. Creamer said Council should take that into consideration in the discussion of large poultry houses where they would be required to have a special exception and where they would not be required to have a special exception. Mr. Lenox said he would have to think about that because you are crossing over between zoning and local comprehensive plans. The County does not generally give municipalities any control over unincorporated county in regards to zoning. Mr. Lenox said there were thoughts that there would be Growth Areas outside of the municipalities.

### *Assemblage of Contiguous Properties*

Mr. Strausburg asked when the County establishes a threshold of five poultry houses, how do you address what he refers to as an assemblage of contiguous properties, which is what has happened on N. West Road. Mr. Lenox said the lots are existing as of the date of the adoption of the code. Mr. Cannon said that means you cannot divide one property three times and put 12 or 15 houses there. Mr. Lenox said the way Mr. Strausburg used the word "assemblage" he is thinking in terms of you can divide a large piece of property so you can get 5, 5, 5. Mr. Strausburg said his concern is, if you have vacant land contiguous to a residential area, and you are establishing a threshold of five houses, in our thinking we should consider if you have 5 houses here, 5 houses here and 5 houses here, now you have 15 houses. Mr. Strausburg said he has not thought it through other than to say it could quite possibly happen. Mr. Kilmer said he thinks Mr. Lenox's solution is probably the most workable. Mr. Lenox asked if Council is talking about the same property or neighboring farms each getting their five. Mr. Strausburg said the N. West Road property has two separate and distinct owners with contiguous parcels each of whom are developing five houses, so now you have ten houses within four-tenth of a mile of the Fox Meadows subdivision. Mr. Strausburg said you now have ten houses on two contiguous parcels. Mr. Cannon asked if he talking about restricting density between parcels. Mr. Strausburg said if Council establishes a threshold of five houses that does not preclude high density contiguous to residential concentrations. Mr. Lenox said Council could put in a separation requirement like it was discussed with the others. Mr. Joe Holloway said another example is someone builds five houses and someone has property next door and decides to sell the property to someone to put chicken houses on it, so then you could have 10 houses. Mr. Hall said he thinks this is what Accomack County came up with when they had the idea of one house per five acres. Mr. Strausburg said he is just pointing out that if the County is going to hang their hat on five houses as the threshold that does not necessarily always work. Mr. Matt Holloway asked if it was just a special exception, would the Board of Appeals look at it, to which Mr. Lenox responded, yes. Mr. Creamer said if the concern is number or density there would have to be something in what the Board of Appeals would have required for them to have met before they even take that into consideration. Mr. Matt Holloway reminded everyone that Council is talking about five houses as a threshold in the Designated Growth Areas. Mr. Kilmer said there is a lot of Agriculture land in the Designated Growth Areas, especially outside Salisbury. Mr. Kilmer said if a farmer has to get a special exception to get one more chicken house that is a lot of bureaucratic

procedure. Mr. Kilmer said coming up with this balance is tough. He said Pemberton Road is not Willards. There are a lot of houses down Pemberton Road and in Willards there is not. Mr. Matt Holloway asked if the Board of Appeals would look at that. Mr. Cannon said just calling it a special exception does not give the Board of Appeals that much discretion. Mr. Lenox said Council would have to put some guidance into the code. Mr. Kilmer said it is a bit of a laborious process to have to go through all of those things. He said the concern he has heard is not about one or two chicken houses, it is about the concentration of chicken houses. Mr. Kilmer said if Council is going to legislate based on public concern, then Council needs to narrow it to meet public concern and not burden the farmers who have been playing by the rules all along. Mr. Cannon said Council has to be careful in limiting the number of houses through density because what Council is really saying is one farmer can put four houses on his property, but the guy next door cannot do that. He said he does not think that is fair to the person next door because he did not get there first. Mr. Strausburg said he is not advocating a position, he is just saying that Council should consider what the threshold is and think it through. Mr. Cannon said that is a valid point. He thinks Council may only be able to go so far without encroaching upon property rights of individuals. Mr. Cannon said Council may find out that an amendment may be necessary to make it more restrictive but, with the initial stage, Council may only be able to go so far. Mr. Kilmer said if Council is going to have a special exception in the Designated Growth Areas, it should be only for five or more chicken houses on a plot of land. Mr. Matt Holloway asked if Mr. Kilmer is talking about new chicken houses or total. Mr. Strausburg said if Council's concern is concentration in close proximity to residential concentrations, then somehow the County has to define what is an unacceptable concentration. Mr. Matt Holloway said he agrees that there is a lot of agriculture land in the Designated Growth Areas, but that can be changed. He said there is also a lot of land in the A-1 Agriculture District and prior Councils have said that is where they want agriculture to occur. Mr. Cannon said what is on the table is five or more total chicken houses in the Designated Growth Areas by special exception. Mr. Dodd clarified that the limit would be four chicken houses, to which Mr. Cannon responded, yes. There was Council consensus.

#### *Direction of Fans and Grasses*

Mr. Strausburg said there was a discussion at the last work session about the direction of the fans and buffering the fans. Mr. Cannon said in the Designated Growth Areas, it is 500' setback for fans faced away and 600' setback for fans facing toward residential dwellings. Mr. Strausburg said he was talking about the grasses and the direction because it all comes back to the airborne particulates. Mr. Joe Holloway said there is also noise from fans too. Mr. Joe Holloway said it would be good to have all fans pointed away from residential homes. Mr. Lenox said he has some good details about the planting of grasses at each of the tunnel fans. Mr. Lenox said Council has not seen the details yet. He has the information in some notes that he got from Mr. Passwaters. Mr. Cannon said the only reference Council has regarding the direction of the fans away from residences is in the Designated Growth Areas. Mr. Joe Holloway asked Mr. Strausburg if he wanted that restriction in the Agriculture District too. Mr. Strausburg responded, no, he was just mentioning that it was a discussion that Council previously had that he wanted to make sure whatever was decided was going to be included in


the legislation. Mr. Joe Holloway asked if Council should consider having the restriction on the direction of the fans in the Agriculture District. Mr. Hall said it comes down to best practices. Mr. Joe Holloway said that may not work in all situations, but it would be ideal to have the fans facing away from residences. Mr. Cannon said he has seen the fans face each other between the houses. He said when the fans are facing each other, he does not think the fans are propelling too much of the particulate outward because they are facing each other. Mr. Strausburg said it is the outer most houses you have to be concerned with. Mr. Cannon said even then the dust, particulates, feathers, etc. are not blowing out a great distance because if they were they would be compromising each other. Mr. Cannon said there are some houses where the fans are facing each other with a distance of 50' between the two fans. He said that led him to believe that the large fans are not blowing out as far as a lot of people think they do, and Council is requiring three rows of buffers. Mr. Creamer said what Council has read regarding the great distances has taken wind into consideration, but he does not know how Council can legislate wind. Mr. Joe Holloway asked what Council has decided regarding the direction of the fans in the Agriculture District, to which Mr. Cannon said Council is not going to make any changes to the Agriculture District at this time. Mr. Lenox said the specifications on the grasses are warm season grasses planted at each bank of tunnel fans; should be planted within 20' of the fans when possible; grasses used have a mature height of at least 5'; planted 3' apart in a double row; rows extend 10' past the fans when possible; they should apply to all banks of fans even between the houses. Establishment of these grasses greatly reduces odors and dusts from spreading. Mr. Cannon asked if all Council members agreed with the language. There was a consensus among the Council members. Mr. Lenox said he would include the grasses in the best practices.

#### *Legislative Bill*

Mr. Lenox said he would have a draft legislative bill prepared and ready for Council to review at the first meeting in May. Mr. Kilmer clarified that Council will review the legislative bill and then refer the legislation to the Planning Commission for them to review. He then asked if the Planning Commission will have a public hearing on the legislative bill, to which Mr. Lenox responded, if they so chose to. Mr. Cannon said Council will not be introducing the bill at the first meeting in May. The Council will just be looking at the first draft of the bill. Mr. Matt Holloway asked if the Planning and Zoning Commission will also be reviewing the best management document, to which Mr. Lenox responded, yes. Mr. Cannon said the trickiest part is going to be the definitions. Mr. Cannon said Mrs. Harris was very rushed in putting together the legislation that was originally presented, but the some of the definitions read like statutes rather than definitions. He told Mrs. Harris that she could request a work session between this meeting and the first meeting in May to go over the definitions, as he would be glad to schedule one. Mrs. Harris said she would be in contact with him.

*Signatures are on the next page.*

Open Work Session  
Poultry Houses  
April 12, 2016




---

John T. Cannon, President



---

Matt Holloway, Vice President



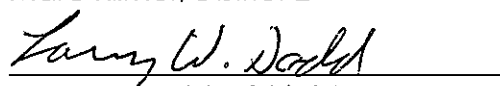
---

Ernest F. Davis, District 1



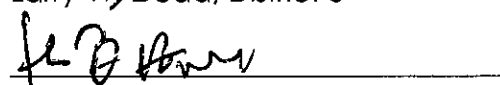
---

Marc Kilmer, District 2




---

Larry W. Dodd, District 3




---

John B. Hall, District 4



---

Joe Holloway, District 5



---

Matthew E. Creamer, Council Administrator