

**Open Work Session
Comprehensive Plan, Chapter 6
August 16, 2016**

Mr. Keith Hall said with Chapter 6 of the Comprehensive Plan, the Agriculture Chapter, he is going to get into a more detailed conversation. He said Council will see all of the pieces of the puzzle coming together with regard to the Comprehensive Plan, its relationship to the County's zoning, its relationship to the septic bill, as well as its relationship to the legislation that is currently being reviewed by Council regarding poultry houses. Mr. Keith Hall said Chapter 6 contains goals, objectives, and implementation strategies that are designed to preserve the agriculture area and maintain an agriculture economy, which is very important to Wicomico County, as well as provide for a balance of compatibility of uses between agriculture and non-agriculture uses. Mr. Hall said when Council starts looking at the chapter itself, it will find information from the 2012 Ag Census, which is the most recent census of agriculture for the County. There is also information about the agriculture economy, which includes information about the number of farms, the average size of farms, the total market value of farms, and the total area being farmed in the County. He said then the chapter gets into the preservation efforts and not only that, but these are programs that are funded at various state and local levels through either administration in the Planning and Zoning Department or the administration at the appropriate state departments. Council is going to see information about the Maryland Agriculture Land Preservation Foundation. He said this is one of the big preservation tools in Wicomico County. Right now, the County does not have a Certified Ag Program, nor is there funding in place to have a robust County Ag Program to go out and purchase the development rights from rural property owners. It is one of the primary tools the County has used over the past few decades to preserve the delegate balance of agriculture land needed to sustain the industry. Mr. Hall said after that Council will see a brief discussion on land use management tools. The biggest and most important is zoning. This is what Council has been talking about over the past few months when looking at the poultry legislation and how to decrease or potentially eliminate any compatibility of agriculture uses pertaining to poultry. Council will notice that there is information about existing farming legislation. The most important piece is the Right to Farm law, which Council has heard in discussions about poultry and its proximity to residential houses. Mr. Joe Holloway asked, with what Council has experienced within the past year, are there any suggestions, or should Council relook at the Right to Farm law, in how it is written and to make sure it is administered properly? He said it seems to him that when he speaks to someone who has bought a piece of property, and you ask them about the Right to Farm law, they respond, "oh yea, well I signed something". Mr. Joe Holloway said he does not know if Council should explore some way to make the Right to Farm law more prevalent when people go to settlement. Mr. Cannon said the purchasers have to sign off that they read the Right to Farm law. Mr. Joe Holloway said he understands, but he thinks a lot of people sit at the table and just sign all the papers when they are laid out in front of them. He is wondering if the County should take it further. Mr. Lenox said it is a disclosure provision; it is not regulatory. There have been some suggestions about getting the Agriculture Reconciliation Board involved in the regulatory process, but that is not the direction the County is going right now. Mr. Lenox said the County needs to make sure that folks understand what they are getting into. He said he would be happy to do some outreach to both the Farm Bureau and the Department of Ag to find out if someone has addressed this issue or if there is a best practice. If the County has to literally make the font bigger, they can; something to let folks know. He said we do not want any surprises. Mr. Joe Holloway said the Coastal Association of Realtors is also someone Mr. Lenox could reach out to as well. Mr. Joe Holloway said he had people contact him in the past year about the poultry issue, and he asked them do you remember signing the Right to Farm bill, and some people responded that they remember signing something about that and some people do not remember it. Mr. Joe Holloway said he does know how much responsibility the County should have in

making it more obvious as to what the homeowners are getting into. Mr. Lenox said they could look at the disclosure specifically related to poultry because folks who move in across the street from a field, which has been grain, and likes the view, and then someone comes in with an agriculture use and structure, and then they say well I do not like that view. The County may need to make it a little clearer that it includes structures as well. Mr. Cannon said he thought the Right to Farm bill was initiated at the state or federal level. Mr. Lenox said there is a state Right to Farm Act, which authorizes the County to adopt a section in the County Code. Mr. Lenox said the County adopts the Right to Farm Act within the scope of the state Right to Farm Act. Mr. Lenox said he could go back and look at the Act to see how prescriptive it is and to see if it gives the County the option to be a little clearer. Mr. Keith Hall continued he said after talking about the Right to Farm Act, Council will see in Chapter 6 farming assistance programs. He said this is all readers digest material. It does not have a regulatory component. It is there for the reader to learn more about the community, such as what kind of amenities we have as well as the importance of supporting agriculture activities in Wicomico County. He said the important part of the chapter is the Priority Preservation Area Analysis and that begins on page 6-12. Mr. Hall said as Council may recall Wicomico County up to 2008 had its own certified Ag Preservation Program. He said that certification is given at the state level through the Maryland Agriculture Land Preservation Foundation. Subsequently, as a result of their evaluation during recertification, the County did not obtain the certification. Mr. Hall said he is looking to Council for direction moving forward. One of the primary components in regards to planning law is, even to be eligible to apply for recertification, you need to have the Priority Preservation Area Analysis in the adopted Comprehensive Plan. Mr. Creamer suggested that Council have significant discussion with regard to the MALPF Program and the CREEP Program. He said this is a good time to have that discussion because all of the planning issues are fresh in council members' minds now as they are reviewing the Comprehensive Plan working toward adopting the plan. The MALPF Program and the Priority Funding Preservation Areas are the two things, which are meritorious for considerable attention on Council's part. This is probably the most appropriate time in the process for Council to really make a determination if it wants to move forward. Mr. Creamer said he is not suggesting for Council to move forward or not to move forward, but this is a good time to talk about it. Mr. Lenox said staff will also expand on its relationship to the other policies or programs and regulatory tools that were previously talked about. Mr. Hall said Council may ask why should the County consider going after recertification of the County program. He said it really comes down to the different portion of agriculture transfer tax that the County gets and the allocation of it. Without a certified program, for any Ag transfers on the tax side, the County gets 33%, but if the County is certified by the state that will increase to 75%. Mr. Hall said someone may ask why is that important as there is not a lot of Ag property being transferred for non-agriculture uses. Mr. Hall said he would not dispute that, however, it is out of consideration that this is a long-term plan looking out 15 to 20 years, so it is a very important discussion for this Council to decide how they would like to proceed. When looking at the program overall, it is not really a mathematical black box, but is it formula based. It is voluntary whether or not the County wants to include this in the Comprehensive Plan. However, if Council decides to include it in the Comprehensive Plan there are certain requirements by law on what is eligible and how the County delineates the preservation goals. Mr. Hall said the goal is 80% of whatever you identified area is that is undeveloped. He said you start with that and then you start subtracting the land that is preserved and protected. Mr. Hall said there is a chart on page 6-12 showing the current status of what the program looked like at its most recent iteration, or analysis. He said he is available to answer questions about the numbers, but the more important component is, does Council want to go after recertification, or not. Mr. Keith Hall asked if Council elects to, what areas do you want to identify to preserve. He said this left off at the Planning Commission when they forwarded the draft Comprehensive Plan to Council for review and consideration. The entire A-1 zoning district should be the starting point for discussion if Council decides to approve a Priority Preservation Area as part of the

Comprehensive Plan. Mr. Hall said there is a map on the Council table to review. The area in white would be considered a Priority Preservation Priority element. He said the numbers in the table on page 6-3 are consistent with the map. However, the County is trying to afford flexibility to the rural property owner as well as the property owners that are on the cusps, on the suburban fringe. What does that mean? Mr. Hall said it goes back to the tier map discussion. The County can set a program or area today that is going to delineate where the state is going to spend their money for Ag preservation, and the County tries to include some type of provision in where that can be modified and that is where the discussion with the tier map ended. The County has added modifications so you can go from a more restrictive tier to a less restrictive tier and that provides flexibility. As a property owner, you want all options available to you. The property owner does not want to be pigeon holed into one option only and that is whether you are going to develop, or continue farming. Mr. Hall said Council should look at the areas in white as to what would be set as priority preservation, which is consistent with tier 4, which currently by law limits you to no more than 7 residential lots. However, the County is proposing a modification process that if you are in the areas of teal, and you want to modify from doing development as currently based on zoning, we do not change zoning, but you can change what the default is from an area not included in the priority preservation to an area that could come into it. They would not change zoning as a function of that because they do not want to have any unintended consequences from a person who may have enough acreage in an area say between Pittsville and Willards that is currently in green. It may make the state criteria for selling development rights at their own discretion. He said the County would not want to limit their property rights or property value by automatically including them in the preservation area. When you look at the analysis of the cost per acre, it takes into consideration your development rights. If the County unintentionally reduced their development right capacity, it is going to have a direct correlation on the property value per acre that they get when they go to negotiate an easement price. Mr. Matt Holloway clarified what the definition of a PPA is. He said just because a property owner owns a piece of land in the Priority Preservation Area does not prohibit the property owner from some types of development, to which Mr. Hall confirmed that is correct. Mr. Matt Holloway then said, but it targets where the state will spend their preservation money, to which Mr. Hall responded, yes, as the state reviews the applications that come in. Mr. Hall provided an example. He said with all things being equal, you have one property owner that is in the priority preservation area and you have another that is not in the preservation area. They have the same amount of acreage to meet the criteria, and they have excellent soils. When those applications are evaluated, one of the criteria the state looks at is if you are in a PPA. The person in the PPA is going to score better than the person who is not in the PPA. Mr. Matt Holloway asked Mr. Hall if he has done the analysis, has he added up the acreage that is in the white on the map to see if it gets the County to the acreage it needs to meet the preservation goal of that extra 31,000 acres, to which Mr. Hall responded that is correct. Mr. Matt Holloway then asked does that get the County well above that amount. Mr. Hall said he apologizes, the County would not meet its preservation goal, it will be in a deficit of 31,000 acres based on what is showing on the map in front of Council. Mr. Hall said that is a big number and the bigger your area, the bigger the goal gets. However, this is a soft goal. There are no regulatory controls associated with it and, if the County ever saw that was the direction things were trending, it would come back before the Planning Commission and, ultimately, the Council to propose amendments to the plan to evaluate what the size would actually be. Mr. Matt Holloway asked if the map will satisfy the state's requirement. Mr. Hall said the map satisfies the state in having the Priority Preservation Area element in the Comprehensive Plan. Mr. Matt Holloway then asked if that is at the 80% level, to which Mr. Hall responded, yes. Mr. Creamer said Mr. Hall mentioned 31,000 acres is a big number. He then asked if the glass is half-full or half-empty. Mr. Creamer said if we look at our percentages for the priority preservation goal, it is 94,000 acres. Mr. Hall said then you take away the 60 some thousand. Mr. Creamer said we have yet to meet our goal by 31,000 acres, and we are two thirds of the way there.

Mr. Hall said that is true. He prefers the half-full analogy. Mr. Creamer said he wonders how many of the other counties are anywhere near two-thirds of the way there. Mr. Hall said probably not as close and, if we can keep getting the state to purchase land, then maybe we will get even closer. Mr. Hall continued, he said there are many moving pieces to this chapter, and he does not want to over simplify, but it is important to play this out. He said, hypothetically, if you were in a teal colored area, as you look at a tier map, you are probably going to be in a tier 2 or 3. You are not going to be in a tier 4; you are not going to be in the most restive tier. Then all of a sudden, you decide for whatever personal reason, you would like to sell your developments. What they do, from a modification standpoint, is go ahead and change your tier to a tier 4 because you are selling your development rights. You are voluntarily exhausting them yourself and, subsequently, the County would add you to the Priority Preservation Area. Mr. Matt Holloway asked if that is an administrative function, to which Mr. Hall responded, yes. Mr. John Hall asked if that process just happened. Mr. Keith Hall responded that is the proposal that is consistent with the tier map. Mr. Keith Hall said all of this would be moving concurrently as an administrative housekeeping function until the next time the Comprehensive Plan is updated. Mr. John Hall said his question is did the County have an individual who tried to do this or has already done this, change tiers. Mr. Lenox said there is a request pending to take some property out of the teal and make it white. Council will see that at a future meeting when it looks at some of the changes that may occur to the plan. He said this is the current zoning. Council will be considering a handful of other changes, but they will be explained. Mr. John Hall then asked how long does the process normally take. Mr. Lenox said, at this point, it is part of the Comprehensive Plan update so that schedule is really in Council's hands at this point. The zoning should follow the Comprehensive Plan. Mr. Matt Holloway said it is amazing how 10 years can make a difference. Mr. Hall said everyone flocked for development style or intensity of zoning and now they are trying to keep both options, but from a mapping perspective and from a problematic perspective, the County has to pick one or the other as a default. So, in Ag, the default is Ag use and, therefore, the consideration as being presented is that they would automatically be included in this area. In the teal areas, the default is residential, even if it is being used for Ag today, residential is going to be in the intense use and probably have the best value per acre. These defaults can change just like the tiers can change. Mr. Matt Holloway asked if there is anything that prohibits the state from purchasing development rights within the non-PPA area, to which Mr. Hall responded, not at all, which is kind of an interesting discussion into itself. Mr. Hall said if the state was going to look in the green areas, and they were not included as part of the preservation area, they would be looking for large contiguous tracks where they already invested money, so they are increasing the portfolio versus an piecemeal easement purchase here and there even if it met the criteria. Mr. Cannon said we seem to keep interchanging the terminology between PPA and tier map. He asked if Mr. Keith Hall is suggesting in the Comprehensive Plan that the PPA map will replace the tier map, to which Mr. Hall responded, no, not whatsoever. Mr. Cannon then asked how this particular map would be introduced. Mr. Hall said the map would be folded into the Comprehensive Plan as the priority preservation map. He said the reason he keeps going back to the tiers is because of its direct relationship. In addition, a lot of the discussion about the poultry he would almost refer to it as a poultry tier map of where you can, where you cannot, and where you can have poultry houses by special exception. He said it seems like it is easier to work at that scale than 20 different zoning districts. Mr. Lenox said when you have a series of different overlays, such as zoning, tier map, comprehensive plan, priority preservation, when you overlay them, they should look pretty much the same. He said, frankly, in all of our discussions, they have gone back and forth, all the moving pieces are lining back up. Mr. Hall said it is the consistency among all the various maps that have either some type of policy or regulatory imposition to them that they are trying to strive for with having the ability to make movements whether from a more restrictive area to a less restrictive area or vice versa depending on what the market is and what the property owner's interest is. Mr. Matt Holloway said going back to Mr. John Hall's question on how long this process takes. He asked once this

Comprehensive Plan is adopted, if someone comes in the area between Willards and Pittsville and wants to change to join the PPA with his acreage, is it an administrative function. Is it a matter of just filling out a form? Mr. Keith Hall said the administrative component would be changing to what would ultimately become a priority preservation area map and the tier map. Mr. Hall said there are regulatory correlations between the tier map and the PPA. For example, to be in a tier 4, you should be in the PPA. Therefore, if you are in the PPA, and you sold your development rights, when the time comes into play the property needs rezoning. However, rezoning would not have to take place until the next Comprehensive Plan update. Mr. Lenox said he agrees unless the property owner develops. Mr. Matt Holloway then asked if you can sell your redevelopment rights before a rezoning. Mr. Keith Hall said he would recommend that you sell your development rights before your rezoning because your development rights are going to look at what your development capacity is of your current zoning, which would be a more intensive use, than once you go to an A-1 zoning district. Mr. Lenox said, as he understands it, Ag prices are higher than development prices right now. Mr. John Hall asked if they have tax implementations too. Mr. Lenox said he thinks it is the use. The only way to get the tax implementations is if you were to submit a subdivision plan, get an approved subdivision plan and try to hold it in your back pocket; the assessor is going to come down on you. Mr. Keith Hall said they want to be very careful in what staff is presenting to Council in that it does not have any of those unintended consequences. Mr. Hall said he knows this sounds like a lot of moving pieces but, again, this is all of the pieces coming together. When Council has a public hearing; when we look at priority preservation areas, when we are looking at all this being based off zoning, when you are looking at your tier map and ultimately the adoption of this plan. Mr. Hall said in looking at the map that Council is familiar with, if you are in the white area, you are in the PPA, if you are in the teal or yellow, you are not in the PPA. If you want to move in or out or vice versa, there is a program that allows for that, which is easy to administer. It is going to be very timely and efficient and a lot of the administrative function will be housekeeping until the next Comprehensive Plan update. Mr. Matt Holloway said, in looking at the map, if you are in the white area, you are in a tier 4, you are in a PPA, and you can build as many chicken houses as you want. Mr. Hall confirmed he is correct. Mr. Hall said if you are not in the white, you are not in the PPA, you may be able to build as many chicken houses as you want whether you are in teal or yellow, and the zoning is going to be more intense in A-1. Mr. Hall said it is a lot to take in, however, everything is aligning itself, and they are reducing any inconsistency that may come about. Mr. Hall said they are doing their best in the restrictive nature that they are working with in the environment of planning. Mr. Cannon said there was a ton of debate regarding the tier maps. He asked has that ever come full circle. Mr. Hall said it is coming full circle today. Mr. Cannon asked if the tier maps are in the Comprehensive Plan. Mr. Matt Holloway said there is a draft tier map but it has not been submitted to the state for comments yet. Mr. Hall said because of the connectivity between the two documents, it would be premature for the County to send the tier map and more importantly the tier map program to the state for review. Mr. Cannon said it appears that there is a lot of flexibility, but he does not see as much flexibility in the tier map. Mr. Lenox said the same flexibility will be in the tier map. Mr. Matt Holloway said that is the flexibility to switch between tiers. Mr. Keith Hall said that will be on the map as supplemental text. Mr. Cannon asked where is the verbiage included. Mr. Hall said a little bit of formatting opportunities presents itself as they roll the draft tier map into the Comprehensive Plan. The map will be an appendix item and there will be connections to it, or at least discussion linking land use and the map together. The full tier map program will be laid out in the appendix. The full program for moving from whether or not you are not in the PPA will be included in the appendix as well as the Ag chapter. Mr. Cannon asked when will that formatting come back before Council. Mr. Hall said that will come back when the final document is scrubbed with all the numbers updated. Mr. Cannon said he does not understand all the controversy with the tier maps and now all of sudden it just goes away. Mr. Lenox said the controversy, in its basic form, was there was an election. He does not think with the

flexibility that the Comprehensive Plan has now, it would have gotten through the previous state administration. Mr. Hall said the previous council decided to stop the discussions until the elections were over. Mr. Hall said they understand there is no certainty in getting this all through the state. Mr. Cannon asked if this Comprehensive Plan is going to comprise any property of the citizens of Wicomico County. Mr. Lenox said they are giving the citizens flexibility, which they do not think the County would have been allowed to give them under the previous administration. Mr. Hall said if the Council elects to do nothing with regard to a tier map, then the property owners are in the most restrictive situation that they can possibly be in. Mr. Cannon clarified that the County is currently accepting the state restriction as a default. He then asked when the state does approve the Comprehensive Plan, does the Comprehensive Plan almost immediately have to be changed to allow for growth. Mr. Lenox explained that the Comprehensive Plan is not changing. Council is still following what has been its land use plan and zoning. They are trying to set up some caveats along the way to lessen the burden that the state put on all of us in the previous administration. Mr. Hall said, if Council decides to move forward with a tier map, that verbiage will be struck from the document that states until such time Wicomico County adopts a tier map they are restricted to ask for residential subdivisions of no more than 7 lots. Mr. Cannon asked if that was changed in zoning as well. Mr. Hall said there is no change to zoning. The zoning has been the foundation for the entire plan. The zoning is in excellent shape. Zoning was done over 10 years ago and since that time there has only been one map change. Mr. Matt Holloway asked, if the tier map will be sent to the state to review before the passage of the Comprehensive Plan. Mr. Hall said the tier map has to be sent out for review before any official action. However, this is where they are looking for direction from Council. If there is a consensus, they will immediately send the tier map to the state for review and comments. If the state has any comments on the tier map, then the County has to have a public hearing before any action can be taken. Mr. Cannon asked when is that time appropriate. Once they see the addendum? Mr. Hall said the addendum is more of a housekeeping issue that will take place with the final review of the document, before it goes to public hearing. He thinks because it could be a 60-day review period or somewhere around there, that as soon as Council comes to some consensus, the tier map should be immediately sent off. Mr. Cannon asked Mr. Keith Hall what does he need from Council to send the tier map to the state. Mr. Hall said they need some type of direction in if Council agrees with the priority map, which is consistent with the tier map. Mr. Joe Holloway said he thought staff was going to contact some of the property owners first. Mr. Hall said that probably would not hurt. It probably would not hurt if today is nothing more than just an overview. They need to make sure they have mitigated any unintended consequences. They know everybody wants all options available, but they are at the juncture now where you have to pick one and this is where contacting some individual property owners may give them a better gauge. Mr. Cannon then asked if Mr. Hall would like another work session to finalize it. Mr. Hall said that would be great. They can come back and brief Council on what they heard from the property owners. Mr. Cannon asked if he needs two weeks or a month, to which Mr. Hall said two weeks. Mr. Joe Holloway asked if he really thinks he can get all the property owners together in two weeks. Mr. Lenox clarified that they will not be getting all the property owners together. They will be having discussions with some members of the community. Mr. Hall said his recommendation is to keep the discussions moving forward in two weeks. Mr. Matt Holloway asked, if at that time Council could have a finalized tier map and PPA map with the verbiage on it. Mr. Lenox said the tier map with the language already exists. Mr. Hall said, until this section is finalized, we should not get into the discussion on land use, which is the last piece to the puzzle that everyone will see.

Signatures are on the following page.

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August 16, 2016



John T. Cannon, President

Absent

Matt Holloway, Vice President



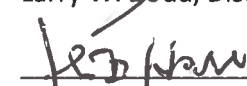
Ernest F. Davis, District 1



Marc Kilmer, District 2



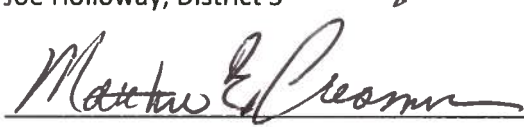
Larry W. Dodd, District 3



John B. Hall, District 4



Joe Holloway, District 5



Matthew E. Creamer, Council Administrator