

Open Work Session

Review of Zoning and Use for Storage Tank on Porter Mill Road

July 16, 2019

Mr. Weston Young, Assistant Director of Administration, came before Council along with members of the Planning, Zoning, and Community Development Department to include Ms. Lori Carter, Director; Mr. Keith Hall, Deputy Director; Mr. Clark Meadows, County Zoning Administrator; and Mr. Rick Dwyer, Code Administrator. Mr. Young said, as Mr. Cannon mentioned earlier in the meeting, they received several letters from Council regarding Porter Mill Road and the sludge tank issue, and there was a request to bring Planning and Zoning staff forward to help Council determine if a zoning code amendment is necessary. He said he will turn things over to the Department, but wants to add, as also mentioned by Mr. Cannon, they have a process in place that involves the Agricultural Reconciliation Committee. He said it is not often used, but they feel in this case it is the process to go forward when they have an agricultural operation that has a dispute with residents. Mr. Holloway asked if that Committee has power, to which Mr. Young responded, they do, and that is the reason Chapter 186 - Right to Farm was included in Council's original packet. He said, if they go specifically to 186-6B, Resolution of Disputes Regarding Agricultural Operations, Section 5, "Orders of the Agricultural Reconciliation Committee shall be binding on the parties as a matter of law." He said, again, if they wish to appeal the decision, they can go to the Circuit Court, so they have some authority, and that is why it was included in the original packet. He said he will turn it over to the Director and her staff to go over the weeds on this issue.

Ms. Carter said they are there, basically, to hear from Council how they wish for the Department to actually proceed. She said their staff did everything that was to code as far as this particular project. She said, as Council has looked at this pretty much over time, they just want to see exactly what the thoughts of Council are, so they are looking for some direction, and how they want them to proceed. She said pretty much all of the staff that is here was readily involved with this particular project, so, if there are particular questions related to that particular process, they are there to talk about that, and they are there to pretty much explain exactly how this came about. Mr. McCain said, since she brought that up, maybe starting from the beginning would help some. He said he is happy to give them some direction, but before Council gets there, maybe the staff can explain the process, the code, and so forth. He said one question that has come up, and they heard during Public Comments today, was that this was also proposed in Dorchester. He said both Counties have pretty similar AG codes in terms of their permitted uses, etc. but he thinks the big difference is that they made the determination that this was an industrial scale use, and, as a result, sent it to the Board of Zoning Appeals, and he thinks ultimately it was withdrawn, to his understanding. He said he understands the fact that was a different County, but probably the issue has come up several times in the Public Comments, and in Council's discussions as to how they determined it to be industrial in scale, but Wicomico did not. He said maybe that is a good starting point, to which Ms. Carter responded, she is going to turn this over to Mr. Meadows, who, basically, spoke with that particular County, but he can also talk from the level of Zoning.

Mr. Meadows said the initial action regarding the use of the tank for storage of this material is consistent with the County's Zoning Code definition of what is agricultural. He said, by their table of uses in the County Zoning Code, that is identified as the principal use of the property, and the tank falls in line with the related building structures and appurtenances necessary to carry out the aforementioned activities. He said that comes at the end of the definition in the County Zoning Code for what is considered agriculture or agricultural. Mr. McCain asked, hypothetically, if it was a 10-million-gallon

tank, would it still be considered a related building structure to carry out activities, to which Mr. Meadows responded, there is no specific size limitation, ceiling, or cap specified by the code.

Mr. Holloway said Council has been hearing this should be considered industrial because there is industrial waste going into it, or so it has been said. He said a few years ago someone came to him and wanted to build a garage to do mechanical work, and it was right after the zoning code was changed and they could do it with special exception, but they were in the AG district. He said they were told if they work on tractors it would be an AG issue so they could do it, but if they were going to work on cars, then no. He then asked, if this is not 100 percent an AG product going into these tanks, how can it be done as agricultural, to which Mr. Meadows responded, he has not seen a list of what is in the product. He said they do not regulate the fluids that are going into any storage tank, be it grain, feed, or wastewater. Mr. Holloway said there is not much of a question if there is a grain tank and they are putting corn or soybeans in it because they know that is AG, but there is actually a question coming from the citizens about what product is going into this tank. He then asked how they can guarantee it is only AG products going into that tank, to which Mr. Meadows responded, his knowledge is that it is an approved soil amendment by the Maryland Department of Agriculture. Mr. Young said he has been told MDA will test it once a year, which is an improvement because he was told previously they would test the material once every five years. He clarified, they do not know that is corn going into silos. Mr. Holloway said Mr. Young is getting into the weeds, but he thinks it is pretty obvious, from what they have heard about this company, that they use more product than just poultry products, and they are getting sludge or oil from restaurants and things like that, so he thinks that is a big part of it. He said, from what the folks are thinking, if it was just AG going into the tank, it would not be as much. Mr. McCain clarified, actually, when Dorchester determined it to be industrial scale, it was not actually because of what was going in it, but they determined it to be fertilizer, and they determined that storing 3 million gallons of fertilizer is a fertilizer storage facility, and by that kind of scale they determined it an industrial scope, and not agricultural. He said he remembers reading that. Mr. Young said they have also heard that there is a potential lawsuit over that determination as well, so, while they made that ruling, it has not been tested in court. Mr. Cannon said that brings another issue into play. He said they know it is not plutonium going in there, so there is some oversight.

Mr. Cannon asked, when they talk about what the permitting is, and what the permitting might not be, is it true that in order for it to be an agricultural use and not an industrial use that whatever is in that tank must be applied to the soils on that same property? He clarified, in other words, if this storage tank is just a holding tank to service the entire Eastern Shore, are they still at an agricultural use, or now an industrial because that has been brought to their attention, to which Mr. Hall responded, when they look at the use and look at zoning, it is what is called a farm related use, meaning the applicant who has applied for the tank is not getting this product and subsequently selling it. He said, under their zoning, the applicant can put it on his property, he can put it on a neighboring property, or he could give it away. He said he thinks when they start looking at other uses, scale is kind of a blurred line, and they see 3 million gallons and think that is a big number. He said, however, when they are really looking at it, that is acceptable. He explained, to put it on a scale, roughly 3 million gallons is enough for 250 acres, and this stuff is being applied over various parts of the County, approximately 5,000 acres. He said one of the things the staff looks at as part of the building permit review process is if it meets all the prerequisites, and he will just take them back a little bit to give them context. He said, by prerequisites, he means whether it meets the building code, whether is it in the critical area, whether it meets the architectural and engineering standards for the tank to make sure there is not a rupture, and to make sure that normal operations at it will be safe. He said zoning is another consideration, and, as Mr. Meadows said, when looking at the zoning, they look to see whether it is or is not a permitted use. He said, under the

current code the way it is written there is not a size constraint or limitation, and part of that is because it gets into a slippery slope. He said industries and operations are always changing, and, as such, they try not to put qualifiers or quantities on them. He said also, when they are looking at this, they have been fortunate enough to work with a lot of citizens who have called and had concerns like Mr. McCain and Mr. Holloway have expressed. He said Dorchester has a process, the application went through the process, and it was determined by their staff that they would need a special exception for the storage of this material, but, ultimately, the applicant withdrew his application. He said he thinks it is important for them to understand when looking and comparing Dorchester County zoning to Wicomico that Wicomico's is not more permissive. He said the applicant came in and said he was going to store an AG product, and because it is just storing, it does not require a special exception, but if it was storing and sales, that gets into nuances of a farm related business, which would have had a special exception associated with it, and would have gone to the Board of Appeals. He said he cannot opine on why Dorchester's staff determined it was storage and sales; however, he feels it is important enough from a zoning context to know that, regulatory-wise, they are playing on the same field here. Mr. Davis asked if Mr. Hall is saying that if this farmer is paying other farmers to spread it on their field they have a different ballgame, to which Mr. Hall responded, if he is getting paid for the product. He clarified, if he is getting financial gain, that is the tipping point of it coming out of agricultural to a commercial venture. Mr. Davis said he thinks they better look at it because he believes he is getting paid. Mr. Hall said he thinks one of the things that is difficult in any of this when getting into the construct of the private sector and private business is, when they come through for the building permit, there are certain qualifiers or questions that are within their purview. He said there are other questions that are way outside of their purview, but the question here was whether he is using this on his own property, or selling it, and the answer to selling it was no, this was for his use.

Mr. Holloway asked what the difference is between the applicant getting paid from a farmer to apply it to their property, to which Mr. Hall responded, that kicks it into what is termed a farm related business, which would require special exception. Mr. Holloway asked how that does or does not relate to the fact that he is getting paid to take the product, to which Mr. Hall responded, that is a very good question. He explained, it is on the backend of that transaction, and not on the front end, and that is something he had to get a little clarification on himself. Mr. Holloway asked what the difference is, to which Mr. Hall responded, on the frontend, to the best of his understanding without trying to get into too much of private sector business outside of the authority of the zoning code but trying to understand operations, the applicant is being paid to transport this from the facility to the farms in Wicomico that he is using it on. He said, subsequently, to the best of his understanding based on the applicant's own words, he is not getting paid to go spread it on other people's farms, and that is the big difference. Mr. Davis asked, what if he is paying the other farmer to spread it on their field, to which Mr. Hall responded, they are kind of getting into a little bit of legalese, but he does not see how that would be a financial gain to the applicant himself because he would be paying someone else. He said, again, he is just trying to get through the nuances of the business. Mr. Holloway said there could be financial gain because if he does not get rid of that product he cannot get paid to take more, to which Mr. Hall responded, he thinks it is just going back to the interpretation of how they are looking at the code in a non-arbitrary way. Mr. Cannon said Mr. Hall said that is not within their purview. He then asked who is responsible for oversight on that type of distribution, to which Mr. Hall responded, he knows there is an association with the Nutrient Management Plan with the Maryland Department of Agriculture (MDA), however, he is not certain of their wide authority. He said through this entire discussion, and he appreciates the citizens' patience because he has been able to talk to a lot of them, one thing is understanding mainly the different authorities, and whose role is what in all of this, so when they talk about the dissolved air floatation, or the soil amendment, they are looking at that from a Nutrient Management Plan

perspective. He said, when they are looking at the public health and safety of it, that will fall under the Maryland Department of Agriculture. He said any time fertilizer is being applied to a piece of property, they have to have an approved plan by the Maryland Department of Agriculture, but when they are talking about zoning and whether it is a permitted use, that starts getting into the authority of Wicomico County. He said, when they are talking about potential concerns of water bodies or the environment, that starts getting into the Maryland Department of Environment (MDE), so they can see there is a lot of complexity, and a lot of moving pieces to this one operation.

Mr. Dodd said Mr. Cannon asked a couple things, and Mr. Hall touched on some of it, but he really did not give an answer. He said he thought he read about them being allowed to spread it on their property. He clarified, he thought there was Legislation saying they can spread it on their property, and their property only, and he knows some of the citizens out there made the same statement and he can guarantee they have done their homework to find some of that information to be fact. He said his question is who allows them to spread it, where are they allowed to spread it, and, with the same question, who else is spreading this other than this farmer, to which Mr. Hall responded, to the best of his ability, he knows there is one other tank in the northwest part of the County that is a 1-million-gallon storage tank, but he does not know who Valley Protein's vendors are in Wicomico County. He said he knows it has been stated that approximately 5,000 acres are being treated. He said there are 185,000 acres in one zoning district, and there are 100,000 acres of farm in Wicomico County. Mr. Dodd asked if the County permitted the other tank, to which Mr. Hall responded, that would have had to have gone through Planning and Zoning. Mr. Dodd asked who regulates where it can be spread, and who follows up to make sure it is being done legally, to which Mr. Hall responded, a lot of that is the Maryland Department of Agriculture because it is tied to that Nutrient Management Plan. He said, however, Mr. Dodd got into one nuance that he wants to bring up because he said the word accessory, and he thinks that was in some of the responses going back and forth between Council as well as the Department in trying to figure all of this out. He said, not to get too clinical, but when they look at the definitions of 225 of the zoning code, which is the construct they are under, so it is not arbitrary, it has the definition of agriculture, and it even states supporting structures and buildings, and so forth, so, therefore, it is not an accessory use. He said, if it were an accessory use as defined by 225 then, yes, that would be limited to the property that it was on and the adjoining properties under the same ownership because that is the AG structure. He said he knows it is very similar, and they could say that is semantics, but that is the interpretation the Department has used when reviewing this application.

Mr. Dodd said, with this particular 3-million-gallon tank, Mr. Hall said they got a permit for storage. He then asked if there was any discussion about what they were going to do with it, to which Ms. Carter responded, that is not their purview. Mr. Hall said he will defer to Mr. Dwyer as he did the intake, but, again, when they are looking at it, they are looking at it solely from the structure. He said, however, if they were going to put a hazardous chemical in there, of course there are other regulatory bodies they would be working with. He said everything that zoning is about is protecting public health, safety, and general welfare. Mr. Dodd asked if this farmer told them what he was storing, to which Mr. Dwyer responded, yes. Mr. Dodd asked if Mr. Dwyer asked the farmer what he was going to do with it, to which Mr. Dwyer responded, no because it is a permitted agricultural product, and they reviewed it under the building code as an agricultural structure or agricultural tank. He said, when they go through the building code and the plan review criteria, which meets all of the bullet points on the attachment, they are looking at the structural integrity of the tank, the structural integrity of the property, and those types of things. He said the actual product that is in the tank is, as has been stated, regulated by a different authority, which is MDA. Mr. Dodd said that brings them to why they are there now.

Mr. Hastings said there has been a bigger issue the last five years with Nutrient Management Specialists not being funded at the State level, so they might have a lot of Nutrient Management Plans, but they do not have individuals coming out to actually write those plans, or to go check what is actually happening there. He said, from what he is hearing, the frontend versus the backend is the question, to which Mr. Hall responded, when they are looking at financial gain. Mr. Hastings asked if they do not have regulations on the frontend side, to which Mr. Hall responded, correct. He said, again, interpretation of the code today about financial gain that is in this application is whether the applicant would be taking the soil amendment and having financial gain by selling it and the like. Mr. Hastings asked when the last time was that they reviewed what is a permitted AG product, and does that happen every time they have a Comp Plan, to which Mr. Hall responded, they have no authority to get into the review of the actual fertilizers, the soil amendments that may be used, and things of that nature, so that is where they rely on their coordination with their State agencies.

Mr. Hall said one thing briefly touched on today, and he knows these are difficult conversations as they go through this, but supposedly the difference between a soil amendment and fertilizer is that a soil amendment does not have truly measurable nitrogen and phosphorus. He said, as they can imagine, as the State is trying to meet its nutrient quality targets associated with WIP or the MS4 phase 2, this product is preferred to some degree over the traditional fertilizer of chicken manure and the like because of that. He said, however, it seems that quantity might be a question. He said, through his discussions with the citizens on Porter Mill, and even as he heard in an interview last night, they try to synthesize down what the issue is here, and really there are two issues that are being talked about in different capacities, one being the tank, and the other being the soil amendment. He said the tank is clearly within the authority of the zoning code, which is, ultimately, under the Legislative authority of the County Council. He said, when they start talking specifically about a soil amendment or a fertilizer, that is outside of the authority of the County Council, or any part of the applicable code. He said he has come to the conclusion that he thinks it really comes down to the perception of the nuisance of looking or smelling this product, and he is not saying it smells or does not smell, as well as the flies, and he is not saying it is causing flies or not causing flies. He said one thing to try to provide Council some construct is, when looking at this, they can definitely assist with trying to look at zoning and what zoning might look like. He said one of the things he cautions them about is that trying to zone on a sense of temperature, a sense of smell, or a sense of sight is very challenging and a very slippery slope, to which Mr. McCain responded, he does not think anybody is suggesting that. He said he does not want them to get ahead of themselves, but he knows the statement up front from Ms. Carter was they were looking for direction from Council, so he will just make this comment because he knows they are not going to talk too much about this today, but he said since the day he started running for Office that their AG code is archaic. He said it has been around for a long time, and is a 20-some year-old code. He said Mr. Meadows mentioned the reading, and it lacks any specificity, and it is very generalistic, as most codes are, but the big thing he always addresses is that almost every County in the State of Maryland has different levels of AG, whether it is A1, A2, A3 and what those means, and they do that with every other classification. He said in their residential zoning they have R15, R20, R30, and in commercial they have C1, C2, C3, and in industry they have light industrial, heavy industry, and so forth and so on, but then when they get to AG, they just have AG, and AG makes up most of their County. He said AG zoning is, obviously, very different. He clarified, one mile outside City limits on Nanticoke Road in the middle of 20 subdivisions where there happens to be at an AG field in between is very different than an AG field that might be in the very most eastern part of the County in Willards. He said those are very different locations, but they have the same classification, and this is one thing he has always suggested. He said they do not have to reinvent the wheel because everybody else already does it, and every County pretty much across the Shore has different classifications in their AG district. He said they are having lots of examples popping

up, storage tanks being one of them, where something could be implemented into their new AG zoning code, such as how far they should be from dwellings and things of that nature, and not a sight or smell thing because that is pretty standard zoning.

Mr. McCain said another thing that is going to pop up is industrial scale solar. He said, in fact, Mrs. Hurley provided Council with information from a meeting with MACO, and he has been talking about the need to address industrial scale solar because most Counties have already done that. He said he knows Queen Anne's County has a certain corridor, and they have to be in that corridor, but Mrs. Hurley stated that at her last MACO meeting one of the things they suggested to the Counties was that they need to address industrial scale solar, so they need to get out in front of some of these things.

Mr. McCain said the endgame of all of this is they need to start working on that, and it is a win-win for everyone, and not about winners and losers in the AG district. He said they want to make sure they are protecting their best farmland, and that farmers are able to farm the most productive soil. He said they have other tracts of land in the County that have very poor soils, so they need to look at what kind of uses are permitted on those versus the ones with the different soils. He said they have other AG areas that are located over top of their main sources of water, such as the paleo channel or the Manokin aquifer, so they should look at what kind of zoning they have compared to other parts of the County. He said those are just pretty basic things, but it is a win-win for everybody. He said consistency of use is the main variable for property values, and that is why in the residential area they cannot build light industrial use, but in the AG district, when he reads the permitted uses, the better question is what is not permitted because pretty much anything goes, for the most part. He said, in general, they need to address their very outdated AG district zoning code.

Mr. Holloway said there is no doubt that the applicant knows there are issues with this and people are upset. He then asked if anybody reached out to the applicant within the Planning and Zoning Department to tell him people are upset, and ask if he has a better place for this than where it is going. He again asked if anybody has tried to talk the applicant into that, to which Mr. Dwyer responded, he does not think they addressed it in that light. He said, essentially, he made the application, and they looked at the information submitted. Mr. Holloway asked if that is something they ought to do, to which Mr. Young responded, that is a good point. He said, when they had the CAFO issues, they had DPI as the good neighbor pushing the good neighbor policy, and even before the law went into place they had voluntary efforts made by some of the farms. He said they did not change their location, but they put additional measures in. He said they could put in spill containment, such as a berm or a concrete pad that could hold 3 million gallons should it spill. He said he thinks the takeaway is that the Planning and Zoning Department has followed the current code, to which Mr. Holloway responded, he realizes that, and that is what he is getting at. He clarified, he understands the County followed the law, and followed the rules, but has anybody used enough common sense to go out there and tell the applicant that the people are upset about this, and he has a bunch of mad neighbors, so he might end up with people filing suit, and he should look for another place to put this. He then asked if anybody has done that, to which Mr. Hall responded, no one to date through the Department has done that. He said, however, he thinks Mr. Holloway is touching on a very good point, and he also thinks this came up during Public Comments as well. He said, typically, when one neighbor has a problem with another neighbor, they look for them to resolve it through whatever good neighbor policy they can instead of creating regulations. He said he thinks they could get Delmarva Poultry Industry involved and use their expertise in helping them, as well as looking at other alternatives, as has been suggested as far as reaching out to the applicant. Mr. Holloway said he is just really surprised they have not done that, to which Mr. Cannon responded, he thinks that is a measure that needs to be done through the AG Reconciliation Group, which is what they

are doing, or even through Elected Officials, but he does not think that is a staff responsibility. Ms. Carter said she would not look at that as being her Department's responsibility, and she thinks they have to be very careful with that. She said, again, they are dealing with the private sector, but she will say, as far as the staff, they took it upon themselves to go out to look at the property. She said they have been out there several times to pretty much see exactly what the citizens are talking about, so it is not like they just sat back. She said she just wanted to say that they have gone out there, they have smelled, they have looked at everything that everyone has talked about, and they have acknowledged that, but she thinks it would not be wise for the staff to take Mr. Holloway's approach. Mr. Hall added, there is a level of sensitivity here, as seen in the letter dated July 15 from the Executive. He said due process now has been initiated specifically about the use of the soil amendment. He said, therefore, when they get into discussions about this it is very limited because they do not want to undermine the process or do anything that is not beneficial to either party or the AG Reconciliation Committee. He clarified, due process has not been initiated yet on the building permit, however, that is something the County could still be subject to, so anything they do they will continue to work with legal to make sure they are well within their authority, and there are no ramifications or liability coming to the County.

Mr. Cannon said he recognizes very clearly what Mr. Hall and Mr. Young touched on about the fact that they cannot have this conflation where people are associating one issue with another. He said the odor is a totally separate issue than it is from the actual unit itself, and they ran into that with the poultry where people were always complaining about poultry houses, and a lot of them were talking about the spreading of manure, which is related, but not 100 percent. He said his question is on the permitting process. He then asked, when they do this, do they take into consideration what might come into play with unloading and offloading the product as far as transportation hazards. He said a gentleman who spoke to Council at one meeting said the trucks come in and out, so what happens if one of them turns over on this road that could possibly be in a very populated area. He then asked, when they issued the permit, is this part of the restriction that goes with it, to which Mr. Dwyer responded, the permit process is basically Chapter 117 addressing the development of the site, the property itself. He said, as was mentioned earlier, they send out an umbrella to a lot of different agencies, Departments of the County, and the State, and there are a lot of different hands that take a look at every project that comes through. He said prior to the County issuing the permit, they wait for the sign off, or the okay or approval from those various agencies. He said some are County Departments, and some are State agencies, like Soil Conservation, so there is quite an umbrella that goes out to ask folks for input and comments. He said, generally, they are looking at the development of the site, and the impacts of infrastructure are taken into account as far as the umbrella that is put out there, such as culverts put in County ditches for access to the property. He said, on the building code side, they are looking at the site analysis part, the turning radius of the tractor trailers in this case, the farm equipment, or what have you, but, again, they look to the experts in their particular field or Department to tell them the condition of that permit. Mr. Cannon asked if it would compromise the permit if they knew that in order for this tank to exist and function on a regular basis that, hypothetically, they would have to have 16 tractor trailers delivering this product, driving right down in front of an elementary school, putting it into this tank, and then coming back. He clarified, he said hypothetical because that is an extreme, but they realize that because he thinks they need to know whether or not these trucks that may be coming in and out are actually creating a greater hazard than the 3 million gallon tank itself. Mr. Young said, historically, using CAFO as an example, there were some locations where the tractor trailers to either bring the feed or pick up chickens were all on County roads that were not accustomed to that level of traffic, but they did not require them to then upgrade miles and miles of roads to put in their chicken houses. He said that is something they could consider, but he thinks that would greatly limit most practices. He said every year the Roads Division analyzes all of the roads as they drive. He said they see

that, if driveways are too narrow, the turning radius for trucks will then start damaging the shoulders of the roads, so they will then say the driveway needs to be twice as wide to handle the trucks they have coming in because they are damaging the County road. He said they also make them pay for that specific repair. He said, when they get to intersections that are not accustomed to big trucks, it gets a lot harder to pinpoint who is causing the damage. He said that is something they can consider, and he knows Mr. McCain has thrown out a lot of ideas as well. He said what he was trying to say earlier is, based on their current code, everything the applicant did was okay. He said it sounds like there are changes Council wishes to make, and they will gladly give their staff's opinion on what those changes may or may not do. He said Mr. Hall is trying to say if they go after structures, they have grain bins and swimming pools to worry about as well. He said then there is MDA, so maybe they need to reach out to the State and ask them to ban this application because there are 5,000 acres that are no longer using it, so what would the farming community think of that. He said it is really tricky, and, as the staff has tried to explain, it is not all in their wheelhouse, but they are open to whatever Council wants to propose to change, and they will look at what they think the ramifications will be, for better or for worse. Mr. Cannon said what they want to change is a lot of what they have talked about today, but also what the public has been talking about during Public Comments. He said Council hopes that commonsense prevails, and they will recognize what the concerns might be, and know how to adjust. He said, again, he does not bring up the issue of the transportation because he is telling them he wants them to limit transportation, but it is because he needs them to see whether or not that needs to be taken into consideration. He said, if by having this particular tank in place where it is they are inviting other hazardous circumstances to develop, and whether they have thought that through.

Mr. Cannon said Mr. Hall touched earlier on the fact that it was not in his purview as far as the spreading of the sludge, so this is another area. He clarified, he recognizes that, and this is a completely separate section of what happens with the sludge unless it comes into play with what the permit allows, as in selling it to other locations, to which Mr. Hall responded, correct. He said he understands MDA oversees this, but when they are talking about nutrient management, and they are talking about phosphorus management tools, he is concerned that they are only looking very narrowly, whereas they are looking at what that farmer is putting on that property, but he is not so convinced that MDA is tracking where that sludge comes from and adding up points. He said he does not know that they have that assurance, so he is not quite so sure that will solve that problem. Mr. Young said Mr. Hall touched on it, but if they are not involved in the TMDL and the Bay cleanup effort, they are focusing on nitrogen phosphorus and sediment. He said they can apply things to fields that are not nitrogen and phosphorus, and that is sort of what this product is. He said, if it had restaurant grease, he does not think that helps any plants or anything for that matter, but he knows there are ground-up oyster shells that can be applied to fields, but he is not a farmer. He said, from a Nutrient Management Plan, they are looking at the nitrogen being applied, the phosphorus being applied, and the amounts. He said, when they are applying something like oyster shells, he does not think they have to report that necessarily, so this may be a friendlier product for farmers to put on where they get benefits, and do not get as much hassle from the State, but the State may need to regulate this. Mr. Cannon said his point was, in trying to track where this sludge is going to be dispersed, and whether they stay within the guidelines of the permit, they need to know what is happening, and he does not think the answer is suggesting MDA would know in their oversight capacity through phosphorus management tools, etc. Mr. Hall said he does not think MDA would know. He said he thinks there are questions Council has to where it would probably be advantageous to reach out to the Maryland Department of Agriculture to see if they can have a similar discussion with them as they are having with his Department. He said, again, it is the slippery slope of looking at how much government gets into private business, and he will be honest with them, he tries to lean on the less regulatory side because he does not know where it ends, but he thinks their concerns

are very valid. He said a permit has been issued based on a good faith statement that the product that is going in the tank has not been sold or being sold, or there is not financial gain, but there are not systems in place today on how they try to monitor that. He clarified, he is not saying there should or should not be systems, but he is just giving Council the current lay of the land. He said there are not provisions of anything he really understands that is a commercial or AG activity where County staff is tracking the operations so diligently. He said he thinks it goes back to checks and balances to make sure about the product that is coming in, and they have heard there is potentially cooking fat in it. He said they have reached out to the vendor, and through discussions with them, they do take in grease from restaurants, cooking fat, but that is a completely separate operation that is going on, and it is not being infused into the soil amendment, simply put, because grease and cooking fat will burn up a crop really quick. He said, however, he thinks the more they can continue to learn about what it is they are talking about, whether it is Dorchester County, or what the soil amendment is, he thinks it will help them come to those decisions.

Mr. Hall said, going back to transportation, no use that he is aware of via zoning has any type of transportation component considered. He clarified, when someone goes to the Planning Commission and wants to have a commercial use, an industrial use, or a residential use, while the trips generated might be known, there has never been an impact statement about how that is going to impact local, County, or State roads. He said, again, he is just trying to lay the context of the current environment, and he is not saying that is the way to move forward, but it is something that can be considered. He said they gladly have a lot to work on with Mr. McCain and his discussion and opinion, and seeing where Council falls on this about looking at opening up the zoning code. He said one thing he will recommend is, they updated the Comprehensive Plan in March 2017, and he thinks any time they crack open the zoning code it is a very difficult task, but they are willing to take it on, and they will be there to guide the County, which is the Executive and Council. He said his recommendation is, before they go in and crack the zoning code open for creating a new district, maybe they incrementally look at cracking the zoning code open and implementing the Comprehensive Plan, and that might be a good start to get everybody acclimated to it. He said, however, he thinks it is upon them now, based on Council's requests, to go out and look at what other Counties are doing, especially with the AG district to start with, and report back to Council, and they can all come to some type of conclusion. Mr. McCain said there are a lot of good ideas out there, and he is all about taking other people's ideas so they do not have to be the ones being creative, to which Mr. Hall responded, he agrees.

Mr. McCain said something else has come up in discussions that no one has had an answer to is the education process. He said there does not appear to be anything they have been able to determine that addresses the issue of what is to prevent someone who is storing this product from simply using the field as a disposal site. He said they have to dispose of this product, so what keeps them from just simply disposing of it, and does anything require them to harvest a crop, for example. He said he mentions this because, as he said earlier, he lives across from a field where this product is delivered. He said it comes every year around the end of June into the first of July, and they are actually disking the field as he speaks now. He said there is nothing in the ground, and they tend to plant usually around the first of August, but there has never been a combine in that field, and they have never harvested a crop from that field. Mr. Hall said there is nothing to the best of his abilities, speaking from a legal sense, that would prohibit someone from disposing of a product that they are allowed to put on their field as long as it was associated with an approved Nutrient Management Plan, but, if they are applying this on a field without an approved Nutrient Management Plan, he thinks that is a good question for the Maryland Department of Agriculture. He said what Mr. McCain is seeing as it is being applied in June and July is for a different crop, and not for soybeans or corn, but looking for the grass seed that is getting ready to be

planted, to which Mr. McCain responded, they actually plant soybeans every year. Mr. Hall said then they are planting late, to which Mr. McCain responded, but they do not ever harvest it. Mr. Hall said then that is a different sphere. Mr. McCain said he has always been curious about it, and just cannot quite figure it out. Mr. Hall said it is the same with chicken manure or any fertilizer where, as long as it is part of an approved Nutrient Management Plan tied to a piece of property, if they want to just dispose of it within the construct of that plan, he does not see any preventative measure at this time.

Mr. Taylor said he would like to offer a suggestion. He said, as they know, he wrote a memo on zoning, and would like to get back to the zoning aspect of this, and particularly this tank and the use of it. He said he thinks as far as the use is concerned, zoning regulates use, basically, and that is the nature of why they have zoning, but if the applicant is getting paid in any manner to apply this product anywhere other than his own land, that would be a farm business and would require a special exception, and he thinks about 15 minutes ago Mr. Hall more or less said the same thing. He said they were talking about frontend payments and backend payments, but he does not think it makes any difference if he is getting paid at either end to do that if it is not going on his own land, and that would be a farm business just like if he set up a Southern States store and sold fertilizer. He said that is one point, but his other suggestion is why not ask the Planning Commission to look into this. He said that is how zoning changes begin, and is the genesis of zoning changes. He said the Planning Commission can hold hearings, get information from staff, and come up with recommendations after holding Public Hearings and getting information. He said that, to him, would be the logical way to go about this rather than have Council suggest something about what they think, and that is one reason why they have a Planning Commission. Mr. McCain said it is not Council's role to be making those suggestions, but they are the end product of this. Mr. Hall said that has already somewhat been said. He said the staff and the Planning Commission's expectations are that it would be similar to how the poultry legislation came out in which Council was the front end, and was the face of it, and made the regulatory recommended changes that subsequently have to go to the Planning Commission because it is Chapter 225. He said, even though Council is the authority to make the legislative changes, the Planning Commission is still part of that due process, and has to hold a Public Hearing. Mr. Taylor said, in the past they started stuff at the Planning Commission, and not the Council. He said they can do it either way, but, essentially, they have a Commission, and that is part of their charge, so why not use it.

Mr. Cannon said, similar to what Mr. Taylor suggested, he would like to see some conclusive results as far as how the spreading of the sludge is being tracked, even if it requires contacting MDA, or whoever because he does not know who to call. He said it would be good if they could do that for Council to find out how it might be tracked, but not to add an additional regulation as Mr. Hall suggested, but just to make sure this individual is following the law.

Ms. Carter asked Mr. McCain if there was any particular County he has studied or knows of that he likes as it relates to zoning, to which Mr. McCain responded, he knows a lot of them have made recent changes, and Dorchester is one of those, but he knows Queen Anne's has made several changes that are pretty recent. He said Talbot has made changes recently as well, so he thinks those are three that he is definitely aware of that have made some pretty recent changes. He said they have different AG zoning classifications in their AG districts, but the intensity is certainly different in some districts than other districts, and so forth, even though they are all AG zoning districts. Mr. Hastings said it is at the level of resource conservation or what areas are priority preservation areas. He said he is looking at Dorchester County's right now, and he knows they are about to go through a Comp Plan update, but that might be a good one. He said he has worked with all of those Counties on their Comp Plans. He said Mr. Hall mentioned Wicomico County just updated their Comp Plan, and this came from their updated Comp

Plans, but now they have to make sure that matches their zoning codes. He said all their zoning codes are really a work in progress all the time in reality, even though they create them and keep them, but the reality is that things change, so they can adjust it either via amendments or other ways. Mr. Hastings said it might be good to have MDA come down and do an information session, or maybe they would host something to talk about this issue. He said he definitely agrees that they do not know enough as far as what is being transported, and how much they are using the roads, so there is a whole lot of information they do not know that would be good to know, and maybe the State would benefit from knowing in order to put in future regulations. He then said he has a question of a moratorium, and would something like that be helpful. He said, for example, if the applicant decides to find another spot in San Domingo and it is a different community, would they go through this process again, or would it be helpful to put a pause on things like this and then think things through a little bit. He clarified, he is just throwing that out there, but he does not have any strong feelings on it one way or the other per se.

Mrs. Hurley said, just for everyone's knowledge, she reached out to the Maryland Department of Agriculture and invited them to the Work Session today, but there was a conflict. She said the gentleman she spoke to emailed her a fact sheet, which she will send to Councilmembers later. She said he just emailed it this morning, but they are talking about a future Work Session with them.

Mr. Cannon said the two primary things they can take from this today is that the public really wants to know where they are on a regular basis. He said, again, they know it is in reconciliation right now, but somehow or another there should be an avenue where they can update the public on a regular basis. He said he knows Council is trying to do that, and Mrs. Hurley is sending information to the community members as Council receives it, but it would be nice to do it as a County. He said not only that, but maybe what recommendations there might be for future guarantees to see how they can tighten down on this. He said he does not know if it is their responsibility to simply eliminate something because maybe they have concerns about it, but if there are ways to see how they can work with it, which he does not know. Mr. Hall said he thinks they will be sensitive because he wants to be certain they understand the charge of staff that is coming from Council, and whether they are looking for regulations that are going to be more restrictive to farming. He said that is the process of where they are, and that is why there needs to be a high degree of sensitivity and reasonableness of looking at it comprehensively, ultimately understanding that when they talk about regulating, the perception is that it would be more restrictive. Mr. McCain said he totally disagrees with Mr. Hall on that. He said they are not looking to regulate farming in any way, but just looking for common sense. He said they have people parading up to this podium at every meeting they have, so obviously there is an issue, and they want to address that issue. He clarified, it is not about "regulating farming". He said there is a certain use here of something that is not specifically classified in their zoning code, and things like that need to be addressed. He said they are not trying to regulate farming because these are AG districts, and this is about promoting farming, and about promoting good land use, and he just wants to make that clear. Mr. Cannon clarified, not the regulation, but the proper placement. Mr. McCain said they have no parameters around usage, and there are common sense parameters.

Ms. Carter said this is a good start, and that is why they wanted to meet with Council. She said, when she began, she said she wanted to hear from Council because they have been talking about this for some time, and it has been out, so they wanted to get to the crux of it in regards to what was on Council's mind. Mr. McCain said Council appreciates her Department being with them. There was no further discussion.

Signatures on next page

**Open Work Session
Review of Zoning and Use for Storage Tank on Porter Mill Road
July 16, 2019**




John T. Cannon, President



Larry W. Dodd, Vice President, District 3



Ernest F. Davis, District 1



Josh Hastings, District 4



Joe Holloway, District 5



William R. McCain, At-Large



Laura Hurley, Council Administrator