

**Open Work Session**  
**Proposed Zoning Regulations for Certain Agriculture Storage Tanks**  
**July 6, 2021**

Ms. Lori Carter, Director of Planning, Zoning and Community Development, and Mr. Clark Meadows, Zoning Administrator, came before Council. Ms. Carter said Mr. Wilber has been working on drafting proposed Legislation and she is not certain whether that has been given to Council yet or not. Several Councilmembers confirmed that they received a copy of the draft Legislation emailed to them today.

Mrs. Acle asked what type of community input they received before the Bill was drafted, to which Ms. Carter responded, Mr. Meadows and other staff members met with the agriculture community.

Mr. McCain asked, what was some of the feedback from the agriculture community as far as DAF in general? He further asked, did they seem to feel that this is something the County needs, or were they indifferent? He clarified, he is just curious as to what their input was. Mr. Meadows responded, the feedback he received is that there is a need for it. He said it has been described as being applied to the lands in excess of 30 years and farmers are not in the habit of wasting time and resources to apply something that does not have a benefit, so he would say, yes, there is a need for it and there are desired results coming from its application.

Mr. McCain said he wants to thank Mr. Meadows and Ms. Carter because Council asked them to draft Legislation and they worked with Mr. Wilber to get something in front of Council, and now it is Council's duty to figure this out. He said there certainly seems to be concern as to whether this will accomplish what the County is trying to accomplish with the whole issue with DAF tanks, and the question has been posed of whether this is something even allowed in ag districts and should this only be allowed in the industrial districts, like the I-2 zoning, and does Council make that determination to classify it as an industrial product, but he is not sure if they can even do that. He clarified, he thinks they are heading in the right direction, but they want to accomplish the concern, and the concern is the existence of these tanks in the County, so, going forward, is this something they want in the County? He said noticed that some counties do not allow it, and some counties only allow it in their industrial zone and with pretty heavy regulations.

Mr. McCain said the special exception gives him some concern. He said he has thrown out a lot of different variables, but when something is granted as a special exception, essentially all the applicant needs to prove is that it doesn't create anything other than what was already permitted within the zoning code and it would have to create a hardship other than something that is already permitted. He said most of the time, if they check off all of the boxes they are going to get the special exception, so he is not so sure a special exception would necessarily accomplish a whole lot.

Mr. Cannon said he appreciates what Mr. McCain is saying, but he thinks all of the Councilmembers, from the public's perspective, have realized the public as a whole is not interested in seeing DAF tanks in the agriculture district in their communities. He said this DAF tank, he thinks, has drawn a fine line between being agriculture and industrial and he would not have a problem with putting it in the classification as industrial as he does not think it will comprise the agriculture or poultry industries. He said, if anything, he thinks it will benefit the citizens of Wicomico County who have demonstrated more than enough that it is not very popular in those areas, not only the DAF tank itself, but what they are seeing in the transportation in and out. He said, to him, he thinks, it is almost egregious as what some people consider the DAF tank to be, and when there are people trying to jog up and down the country

roads and three or four tankers are coming down that road, even at 40 mph, it is a terrible inconvenience to the neighborhoods. He said, if it were a problem he would say maybe they should rethink it, but he thinks industrial is a perfect solution for these tanks.

Mr. Dodd said he knows some of the speakers spoke in opposition of these DAF tanks and several people brought up anaerobic versus aerobic digesters, so he thinks maybe they are going to have to consider these in the future.

Mr. Hastings asked if Council as a Body can legally prevent open-top storage tanks, or however Council wants to designate this narrow in scope, can they prevent this from happening in the agriculture district and only allow it in the industrial district? He clarified, does Council has a Body have the legal authority to do that, to which Mr. Wilber responded, an open-top storage tank can be used for multiple uses. Mr. Hastings said, assuming they would narrow it to having characteristics that are not for grain storage or manure storage, or many other particular uses, to which Mr. Wilber responded, he thinks the way Council should approach it if they want to restrict DAF tanks to the industrial district is to go at it from that angle as opposed to restricting open-top storage tanks in agriculture districts throughout the county, as that is very broad and could have unintended consequences.

Mr. McCain asked if Council can be specific and simply address the DAF tanks or similar products, to which Mr. Wilber responded, if Council wishes to have DAF tanks just in the industrial zone they can word it to fit that. Mr. McCain said they are talking about the I-2 heavy industrial zone because it is designed for heavy truck traffic and the area that surrounds the landfill.

Mr. Cannon asked Mr. Wilber to keep in mind that they have been told before that the County cannot create zones based on what is in the tank, to which Mr. Wilber responded that is correct. Mr. Cannon then asked, if Council wants to do this they want it to hold and it has to be done based on the material and tank size, so how does Council do that, to which Mr. Wilber responded, they would look at it and come back to Council for a future Work Session. He said certainly they can look at other Counties, as apparently other Counties have banned it, but some have it in the industrial zone if that is what Council would like to go with it.

Mrs. Acle said she would like to see what other Counties are doing as far as how they are handling this specifically.

Mr. Dodd said, by listening to all of the comments, he does not think Council is prepared to move forward to put this into a Legislative Bill, and Mr. Wilber mentioned another Work Session. Mrs. Hurley said the Bill is in draft form, but it is going to need some work done to it, so perhaps they can do some additional research and then come back. Ms. Carter clarified, the draft Bill was something for Council to start looking at.

Mr. Davis said he wants to make it clear that this Legislation being proposed is not going to have an effect on the two DAF tanks already in the County. He clarified, the Legislation is not going to require the current DAF storage tank owner to take the DAF out of the tanks, to which Mr. Wilber responded, it will in the future. Mr. Davis clarified, he wants the public to know that this Legislation is not going to affect the two DAF tanks in the County. Ms. Carter confirmed there are two DAF tanks in the County, not one. Mr. Davis said a lot of people only think there is one, but there are two. Mr. Dodd said someone mentioned earlier that there is just one, but there are actually two.

Mr. Dodd said this Council appreciates Ms. Carter's and Mr. Meadows' work. He thanked them for bringing the proposed Bill to Council to consider. He also thanked Mr. Wilber for his work on the Bill.

Mrs. Hurley said she noticed that the setback is 200 feet and she recalls a Councilmember mentioning that they thought that was too little of a setback. She then asked if that is something Council is interested in having Planning and Zoning look at as well before they come back for the next work session, to which Mr. Dodd responded, he knows it was brought up before that it was too short of a distance and even some citizens mentioned it as well.

Mr. Cannon said that is a very good point, but it is up to Planning and Zoning's guidance as they are now looking at an industrial zone, so the setback may be different as well as the acres. He said the draft Bill says five acres, but he does not think it is necessary to have five acres if it is going to be relegated to an industrial area, to which Mr. Meadows responded, there are uses that designate a five acre minimum for certain uses, so it is not uncommon to have a five acre standard in an industrial district. Mr. Cannon Council would defer that to him. Ms. Carter said, at the last meeting they talked about the actual capacity, so that is in number 1 of the draft Legislation because she made a note that Mr. Cannon mentioned that. Mr. Cannon said he appreciates that, and however they may choose to bring the Bill back that they think is the most effective in the industrial area, that would be great.

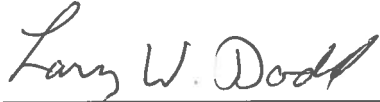
Mr. Dodd said someone mentioned earlier tonight and it has been discussed numerous times whether there is a way to make these DAF tanks have a lid on them. He said he knows it forms a crust that acts as a lid, but there are still a lot of complaints about the smell. Ms. Carter responded, she is not the expert when it comes to that, but it is her understanding that would only occur if there was an eruption. Mr. Dodd asked if there is gas build up, to which Ms. Carter responded, yes, that is her understanding.

Mr. Hastings said he is a member of the Delmarva Land and Litter Collaborative, which is a Delmarva-wide collaborative with environmental, conservation, and agriculture leaders all on one board together who try to find common sense solutions. He said the DAF issue has been an issue for many Counties and across the Delmarva Peninsula for a while, and he asks them to look up the Delmarva Land and Litter Collaborative. He said about a year and a half ago they toured what was then the incoming Perdue facility. He explained, the use of DAF in an anaerobic digestion compared to the current plan, which is an open system compared to a closed system. He said the future is definitely going to be the closed systems, where there is further breakdown of the nutrients and it can potentially be used for energy and other kinds of things. He said this is where they are going as an industry as a whole, so the DAF itself is an outdated approach. He said, if anyone in the audience who spoke on this matter wants to send comments to the Council President and Mrs. Hurley, the Council is taking suggestions, which will be helpful. He then thanked Ms. Carter and Mr. Meadows for the work they are doing and said they recognize this is an issue and want to do something about it, so he does not want the public to think that they are not doing a good job now or in the past, so he thanks them both.

Mr. Dodd said, when there is a tank that has a pressure buildup due to gases, there is usually a built in valve to allow the gas to vent. He said the gas company over by Main Street always has a flame out because it is venting. He said that is probably something to consider, and Mr. Hastings mentioned taking comments from the citizens, and he knows that there are some residents who have expertise, so they are always willing to listen to comments. There was no further discussion.

*Signatures on next page.*

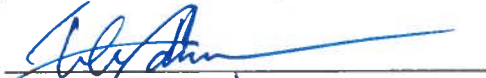
**Open Work Session  
Proposed Zoning Regulations for Certain Agriculture Storage Tanks  
July 6, 2021**



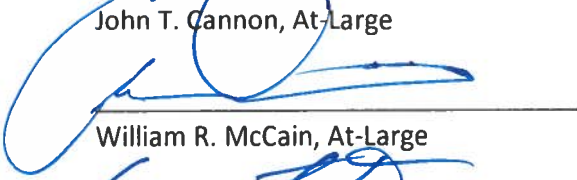
Larry W. Dodd, President, District 3



Joe Holloway, Vice President, District 5



John T. Cannon, At-Large



William R. McCain, At-Large

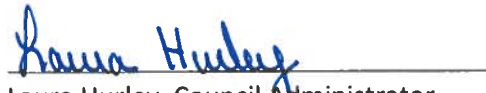


Ernest F. Davis, District 1



Nicole Acle, District 2

Josh Hastings, District 4



Laura Hurley, Council Administrator