

Open Work Session

Recommendation from the Salisbury-Wicomico Planning & Zoning Commission Regarding Liquid Organic Fertilizer, Storage Text Amendment for County Council Consideration

July 5, 2022

Ms. Lori Carter, Director of Planning, Zoning, and Community Development; Mr. Paul Wilber, County Attorney; and Mr. Clark Meadows, Zoning Administrator, came before Council.

Ms. Carter said staff has prepared a brief presentation to provide a roadmap of where they have been and where they are now on the proposed text amendment to Chapter 225, Zoning. She said, as proposed, a potential text amendment for the storage of what is commonly referred to as DAF, which is a liquid organic fertilizer produced as a byproduct of poultry processing facilities, is being considered by the Wicomico County Council. She said this presentation will present the current code environment as well as the previous proposal provided by the Salisbury-Wicomico Planning and Zoning Commission's recommendations for the permitting of the storage of DAF on farms. She said she asks that, if Council has any questions, they would hold them towards the end once the presentation is actually done.

Ms. Carter then referred to her slide and said these are the major components for a text amendment to the zoning code that specifically apply to a new or re-defining an existing land use. She said other ones that are listed are adopted and locally adopted plans and applicable sections of the County code including zoning, building, and the Right to Farm. She said it is important to note that these are what these zoning text amendments are actually considering.

Ms. Carter said current Legislative construct includes examples of the use, zoning, setbacks, and approval by right. She said it shows anything related to the actual storage of equipment, such as a barn, fertilizer, silos for storage of soybeans and grains, and also includes a manure shed. She said currently the storage of DAF for use on the farm field is actually permitted by right in various zoning districts. She said they also look at setbacks. She said the actual prescribed distances from lot lines as well as height limits actually vary from 35 to 75 feet depending on the district, whereas the side is 10 feet and rear is 35 feet, and maximum height of 35 feet are actually consistent for all of the zoning districts where permitted. She said, as it relates to the approval, that is by right and is actually conducted at the staff level as a part of the building permit process. She said this requires no approval by the Wicomico County Board of Appeals or the Salisbury-Wicomico County Planning Commission.

Ms. Carter said the next slide shows the proposed map. She said it basically illustrates exactly the areas in which the storage of the DAF is currently permitted and not permitted. She said the majority of these areas that are in green are within the A1 zoning district; however, other districts permit ag operations. She said the areas in mauve represent zoning where it is allowed by right. She said the majority of this area is in the heavy industrial zone, and is located within designated growth areas.

Ms. Carter said, when they look at what was proposed originally, the actual definition itself is not limited to just DAF, it impacts silos and other ag storage including manure, grains, soybeans, all fertilizers and soil amendments. She said, additionally, it is only applicable to above-ground open-top storage structures, it does not address when it relates to closed-top storage, it does not address anything related to the actual temporary storage or anything related to lagoons. She said zoning, as it stands, is not actually consistent should the product come directly from a poultry processing plant and additionally it occurs prior to the distribution and use on a farm. She said, prior to land application, the

product will be treated via a mechanical process which is called the dissolved air floatation (DAF). She said then it is actually provided to the end user/farmer to apply directly on the farm.

Ms. Carter said the other part as it relates to the purpose of the zoning district, I-1, light industrial, to provide areas for light industrial development including manufacturing, wholesaling, research and development activities. She said basically the performance standards have been established to ensure that there is no use permitted which may be detrimental because of odor, smoke, dust, toxic fumes, fire, noise, and explosions, or any other hazard or chemical. She clarified, these are actually what was proposed originally when they first started. She said, as it relates to I-2 heavy industrial, to encourage industrial growth in the County by providing areas suitable for the development of heavy manufacturing, assembling, or industrial processing activities that have characteristics that are similar to any detriment to operate within these particular districts.

Ms. Carter said the standards and restrictions established for the districts are intended to protect both nearby areas and industries which propose to locate or already have located within this district. She said, as far as setbacks, all development almost triple the current requirements for the I-1 and I-2 zoning districts approval. She said, basically, that has to be done through special exception by the Wicomico County Board of Appeals. She said the open-top storage tanks erected prior to the enactment of this Legislation permitted by the County may continue as a nonconforming use.

Ms. Carter said, back to zoning on light and heavy districts, as part of the County's designated growth areas and included as an area of future annexations and considerations for development, Delmar, Salisbury, and Fruitland are also the most densely populated areas.

Ms. Carter said other areas of concern are the front on the collector roads and nonconformity use. She said they went through the definition, and zoning I-1 and I-2, setbacks as proposed, approval is less than 150,000 gallons permitted by right, and then more than 150,000 gallons permitted by special exception. She said other considerations under this proposal are direct access from a collector street and an open-top storage tank erected prior to the enactment of this Legislation.

Ms. Carter said this takes them to what the Planning Commission actually recommended. She said this particular map illustrates the first proposed text amendment in which the storage of DAF will be permitted or not. She said the majority of the areas in the mauve color are within the A-1 zoning district and other districts permitting ag operations, which would not permit the storage of DAF as part of a farming operation. She said the areas in the green represent the light and heavy industrial zoning. She said they can disregard the Airport zoning district A-2, which would be the mauve area as well. She said the light and heavy zoning districts as part of the County's designated growth areas include the areas of future annexation and are Delmar, Salisbury, and Fruitland, and also they are the most populated and dense areas of the County.

Ms. Carter said, moving on to the Planning Commission recommendations, zoning is A-1, setbacks are 200 feet from all property lines or 400 feet from any residential dwelling not located in the same dwelling, schools, place of religious assembly, nursing homes, daycares, manufactured home parks, subdivisions of 10 or more lots, or an approved septic system location to serve any of those. She said approval is by special exception by Wicomico County Board of Appeals. She said other discussions included open-top storage tanks erected prior to the enactment of this Legislation are permitted by the County and may continue as a nonconforming use in its current location regardless of the zoning district.

Ms. Carter said next is a map that shows the zoning. She said, if enacted as advanced by the actual Commission, any DAF storage for use on a farm will be considered only in the A-1 zoning district, which actually appears in this area which is all white on the zoning map. She said it is important to remember that this would have to be done through the actual Board of Appeals based on achieving certain criteria on a per-site evaluation and conducted during an open process for public comment, which is what people have had concerns about. She said right now they just want to highlight, and they know that this is not anyone trying to pass any type of buck, but it is the facts. She said the appropriate authority is the State of Maryland Department of Agriculture and they are looking at everything related to the safety, use, field, and some of the actual inspections. She said, under Wicomico are, storage, zoning code, districts, setbacks and development standards. She said the building code structure includes odor, flies, dust, smoke, noise, protected in A1 by 186 – Right to Farm, and that is a fact.

Ms. Carter said she is sure the Council has had a chance to look at the recommendations from the packet submitted to them. She said this was the report that was provided to the Planning Commission on December 16, 2021 with all of the comments and concerns, but they do have next steps that are contingent upon Council's consensus of whether or not they will proceed and being able to schedule a Public Hearing so they will be able to hear the actual concerns from all of those in regards to this proposed Legislation. She said this is just the information of where they have been, what they have gone through, and where they are now. She said, if there are any questions, they are here to do the best they possibly can to answer those. She said she is very thankful for the Commission, as staff has only been assisting as they do as it relates to facts that they have as planners. She said, as it relates to their comprehensive plan, they are using those particular tools and the existing zoning code, but this is where they are at this particular time, and they are happy to entertain any questions.

Mr. Davis said, with what is being proposed, it looks like 95 percent of the County can hold one of these tanks. He said it looks like it has to be approved by the Board of Special Appeals, so that takes the Council out of the picture so they have nothing to do with it. He said this is all done without the Council doing anything. He clarified, with what was proposed, this will go by the Special Board of Appeals, which takes the Council out of the picture and 95 percent of the County can get one of those tanks.

Mr. Meadows responded, what was recommended by the Planning Commission for the Council's consideration is that the tanks would be allowed only by special exception through the process of a Public Hearing with the County Board of Appeals. Mr. Davis said that takes the County Council out of the picture, to which Mr. Meadows responded, the application or request for a tank would not be a matter for the Council if the proposed Legislation were adopted.

Mr. Wilber clarified, the only involvement by the Council is on the Legislative end of the proposed Legislation, and then it would go to the Board of Zoning Appeals.

Mr. McCain said, to feed off of Mr. Davis' comment, he thinks actually statistically it is somewhere between 70 and 75 percent of the County is zoned A-1, to which Mr. Meadows responded, yes. Mr. McCain said, essentially, what the Planning Commission is saying is that 75 percent of their County is eligible for a DAF tank by special exception, which means they have to meet that criteria, and if they can check those boxes for that criteria, they have to be approved. He said he has said from day one when they had their first work session, and he said it at the second work session, and they invited the Council to come in, and he came in and met with Mr. Hall and they had a lengthy discussion about these proposals, and he will say what he said at every one of these work sessions, this is an industrial product.

He said it is not produced on a farm, it is produced in the industrial setting, brought to these tanks, and that is why it should be in I-2, as the majority of this Council recommended. He said he knows the Planning Commission stated that is a very limited area, but exactly, it is supposed to be a limited area. He said they do not want their County to be the dumping ground for industrial waste products, but landfills and other heavy industrial uses and heavy manufacturing that goes into the heavy industrial zone is supposed to be limited because it produces odors, noise, and heavy truck traffic, which sounds like that is exactly what the people in the County are complaining about with the DAF storage tank. He said he will just repeat that it seems like a lot of the reasoning that the Planning Commission used to actually put it in A-1, the irony of that is those are exactly the reasons it should be in I-2, not in A-1.

Ms. Carter said one thing she will say publicly is she thinks there is a misunderstanding that anything that comes before the Board of Appeals is a carte blanche, and that is not true. Mr. McCain clarified, he is not saying that at all, but, if they do all the work and meet all the criteria and check the boxes for all the criteria required to receive their special exception, it has to be approved. He said it cannot legally be denied if they meet all the criteria. He clarified, that does not make it a carte blanche at all because it can be challenging to meet all of those criteria, but if they do, it has to be approved.

Ms. Carter said staff has been working with the Commission, but based upon what they saw and what they looked at as far as the maps, even staff, and she can say this, when they first looked at this after their last meeting, she and Mr. Meadows had met with the Council before and they themselves first looked at I-1 and I-2 and said it made sense. She said it was not until they started doing the planning exercise, and once they started doing that exercise is when they began to see. She said they started looking at maps and certain things, they started to see a different side of that, and that was shared with the Commission. She said all of that was just saying here is more information and that is it, but Council can make this as restrictive as they want, which is why it is here. She said, if Council wants to add to this, they can make the necessary modifications, but after the Commission looked at it and did their reviews and looked at all the info, this is what they came up with as a recommendation.

Mr. Cannon asked Ms. Carter to share with the public the reason that the industrial zone was discounted as far as what the Commission's concerns were and why that was not a suitable solution, to which Ms. Carter responded, she will ask Mr. Meadows to elaborate as it relates to zoning, but, again, when they looked at the maps, they basically saw that they are dealing with dense populations, and that was a concern. She said it was very simple when they were starting to see where this could possibly go, so it was just whether they wanted this in dense populations.

Mr. McCain said the northerly block of I-2 was a concern more because of where it backs up to. Ms. Carter said there is Target and a lot of housing. Mr. McCain said it backs up to a lot of commercial, and the other I-2 is where the landfill is and one of the primary areas, and is hardly dense with a lot of vacant land around it. Ms. Carter said that would have worked, it is just that, when they are looking at all of the areas, there are some that would work a lot better than others, to which Mr. McCain responded, that is why they have special exceptions. He clarified, they can still have their special exceptions in I-2, and that gives them the ability to deal with those more concentrated areas in that northerly block as opposed to the areas that are in and around the landfill, which is much different. He said there are still some areas closer to the railroad heading north towards Delmar that still are kind of pretty rural and agricultural.

Mr. Cannon said the real question is, in the proposal of the text amendment, they have heard the public comments tonight and they have heard them over the last couple of years, so what public assurances

are there by establishing a text amendment? He clarified, in other words, for the public in general, what does this put into play so they can be rest assured this is going to solve the problem and the public has some type of input so the process might be a better guarantee that this will not happen again to the degree it has happened today. He said he thinks that is the idea of the solution to solve the problem. He said, as Mr. Davis suggested, this takes it out of their realm entirely, but it is not in the realm of the Council anyway, but this assures that it does not fall within the Council's realm. He then asked if there are other greater assurances that they need to establish to make sure they have better guarantees and better assurances for the public as a whole if this were to be proposed six months from now.

Mr. Meadows responded, the recommendation from the Planning and Zoning Commission to be a use specifically identified being allowed by special exception opens any future tank request to go through the public hearing process, public notification, posting at the property, and notice of the meeting. He said the Board of Appeals has a Chairman who has been serving this County since the 1980s, and there have been no rubberstamping or carte blanche approvals in his 20+ years of staffing that Board, it is a strict review process. He said, as to what the deliberations were with the Commission members, what he gleaned from their discussions amongst the membership, which includes Mr. Holloway, is that the tank being located within the industrial districts was not consistent with the definition of an industrial use that is in their County's zoning code. He said it is not consistent with the intent of what the I-2 district is to include, which is also stated in their County zoning code. He said, as to specifics for other reasons, again, he is not necessarily privy to all of those discussions, but there were public hearings conducted by the Planning Commission, and Mr. Holloway participated in at least some of those, and at the end of that process, this is the recommendation of the Planning Commission.

Mr. Cannon said, getting back to the text amendment and the process, it is a public hearing where there very well will be 300 people, so if 300 people come in and say they absolutely do not want it, what kind of leeway is there? He then asked if they will come back and say it is an agricultural amendment and they may follow the exact same process that has already been followed over these last couple of years? He clarified, if there are 300 people who come in and say they do not want this, is there the leeway and the tendency for that to be understood and for them to make a decision favorable to that response, or are they going to fall back on the law? Ms. Carter asked, when Mr. Cannon says "they," who is he speaking of, to which Mr. Cannon responded, he is talking about the Board of Appeals. Ms. Carter said basically Mr. Meadows has had over 25+ years of experience and there have been nights where they have had cases come up that there may be several who show up who are not happy with a particular project being proposed, and there have been times that the Board has considered what they had to say. She said she thinks what is important here is that, if there are certain restrictions that Council wants to see added, they have a guide or recommendations that they can either add to or take away, and that is once they have scheduled the public hearing, and they have already heard from some of those who are concerned, so those are things they can take into consideration. She said they can make that a part of the Legislative process, though she does not want to speak for Mr. Wilber, as he can speak as a lawyer. Mr. Wilber said, as Council heard tonight, there are other restrictions that can be put on a special exception, and if the Council wishes to expand that list of restrictions, they can do it.

Ms. Acle said they have the Chair of the Wicomico Farm Bureau here saying this is an industrial product and needs to be in the industrial zone and is not agriculture, so they are going back to this being in the agricultural zone. She said she feels like they are on such far ends of the spectrum here, so how do they ever get to the middle?

Ms. Carter said one concern is, as the Planning Department stated, they worked with the Commission and the Commission came up with these recommendations, and this is what they felt as a Commission was important to this Legislation. She said, if there are other things the Council wants to add or take away, they can do that, but this is what is being presented based upon the existing zoning code, what is there. She said, again, if there are certain types of restrictions, such as the Commission said 300 feet, they can make it 600. She said, if there are other things they want to add, this is what the Commission, along with support of staff in helping them, felt were the best recommendations at that particular time.

Mr. Hastings said, with what has been put before them and with their current zoning, he guesses theoretically he is aware that there is a tank on Porter Mill Road, so could there be a second one put at that facility under the current proposed rules and regulations, to which Mr. Meadows responded, he believes there is a moratorium in place. Mr. Hastings clarified, from day one of the moratorium being done, could they theoretically put a twin tank on that property, to which Mr. Meadows responded, yes. Mr. Hastings said then they did not really address anything. He said, if the public has basically said this is an issue, and they have mentioned the smell, the road traffic, and they can go down the list of issues, then the current proposed regulations are not really addressing what they said they wanted addressed.

Mr. Hastings said, just so it is said, there are a number of things they mentioned tonight that they should consider, and that means not being over the paleo channel overlay or the critical area. He said the current regulations do not go into the size of the tank, the setbacks could also be addressed, and he does not know how they will address the issue of smell. He said they have folks who have been reaching out to the Council nonstop for three years, but even in these last couple of weeks when it got pretty hot they had folks reaching out who said they live one mile away from the tank and they are complaining. He said he does not know how they address that with a 300 or 400 foot setback. He said, as he has said before, he thinks open tanks are not the future, from what he sees in his daily work, and obviously the closed tank systems are more the way to go, but that is a different situation.

Mr. Hastings said the question in his mind is still process. He then asked if the Council is supposed to take things they have heard folks say and then give them to Mr. Wilber or others to then try to figure out how to further narrow? He said he would love to finally bring all of this together and to come up with something, and he feels like they are close.

Mrs. Hurley said she thinks Council needs to decide whether or not they want to have a separate public hearing from the Legislative process, so that would be step one. She said then they could have Mr. Mitchell and Mr. Wilber work together based on the feedback they have received from the citizens, and then put something in written form ready for introduction.

Mr. Hastings said he will go on record saying he would love to see the Council hold their own public hearing on the issue just to take information in so they then could give substantial specific regulations to then go to legal to take that next step.

Mr. Davis asked if it is correct that Planning and Zoning can approve any kind of tank, to which Mr. Meadows responded, by zoning, tanks generally are not considered a use, it is a pertinence attached to another yet to be identified. Mr. Davis said he thinks the problem is what is in the tank, not that the tank was approved by Planning and Zoning. He said he thinks the problem is the definition of what is in that tank, is it a soil amendment or is it industrial use. Ms. Carter responded, according to the State, it is a soil amendment. Mr. Davis said he thinks that might be the problem they are having because the State is

saying one thing and the public and some of the Council are saying this is not a soil amendment because it is being produced in an industry.

Mr. Meadows said the issue from day one has been the product, not the storage tank itself, a product which is approved by a State chemist to be included with an approved nutrient management plan. Mr. Davis said he has no problem with that, but it seems like the problem is that people have been saying from the start that it is not a soil amendment, it is an industrial product not coming from the chicken plants. He said, if it was coming from the chicken plants to the soil, that would be fine, but when it is going from the chicken plant to Valley Proteins and then whatever they do to it, to him it is now industrial waste. Mr. Meadows said that sounds like an issue to be addressed with the Maryland Department of Environment and the Maryland Department of Agriculture, not Wicomico County Planning and Zoning. Mr. Davis clarified, that is right, it is not Planning and Zoning because all they did was approve the tank, it is what is in the tank that is the problem and who approved that.

Mr. Mitchell said, when Ms. Carter was talking about the authority levels, she said the State does safety, use, application, and inspection, but the County does storage. He then suggested the County could say they can use it here under the Maryland State regulations but they cannot store it here, so they could bring it in from Valley Protein for their own farm, but they could not keep it here. He said he wishes he knew the answer.

Mr. Davis said Mr. Mitchell is saying that trucks come straight from the plant to the farm instead of bringing it from the plant and putting it in a storage tank in Wicomico. Mr. Mitchell said they just heard that there are only two or three farmers using it now.

Mr. Cannon said it sounds like what Mr. Mitchell is suggesting is that it be banned entirely, to which Mr. Mitchell responded, storage tanks, not the use. Mr. Cannon asked if Mr. Mitchell is talking about banning the tanks, period, to which Mr. Mitchell responded, the storage. He clarified, he is not sure they can do that, but it seems like that is really the appropriate authority. He said he has not looked that up because he did not think of it until he saw that. Mr. Cannon said they have that authority in zoning regulations, to which Mr. Meadows responded, he is not aware of a chemist or biologist on staff with Planning and Zoning. He said, with the exception of the tank located on Porter Mill Road, he has not looked into a single storage tank across Wicomico County.

Mr. Cannon asked if they are saying the Council would still have to abide by State Law if they were to specifically target banning DAF tanks because they could say they could not have storage tanks in Wicomico County, but that is not practical. Mr. Mitchell clarified, he meant storage of DAF. Mr. Cannon said he understands, he is just saying that they are limited to tanks or no tanks and he is guessing that Mr. Meadows is trying to tell them that because of the State of Maryland they cannot isolate it saying they do not want DAF tanks here because their zoning issues are in regards to tanks period, not the substance that goes in the tank.

Mr. McCain said he thinks they can Legislate that if the desire was there if they wanted to get that specific. Mr. Cannon clarified, that is what he is asking. He then asked if that is something the Council as a local jurisdiction has the authority to do, to which Mr. Wilber responded, as they have this discussion, the State is classifying it as an agricultural soil amendment. He said that would be a research thing, but would they be getting into where, if they are going to start banning that, then what else are they going

to ban or are they even permitted to ban an agricultural soil amendment. Ms. Carter said that always comes down to, if they stop something here, how is that going to impact something else.

Mr. Meadows said DAF is a process for creating this product, DAF is not a specific item, so he is not sure what Council would consider banning. He said the storage of any soil amendment, such as the piling of chicken litter on fields, is an approved soil amendment. He clarified, DAF is a process to produce this material, it is not a specific product in and of itself.

Mr. Cannon asked how Dorchester managed to push it down the road, to which Ms. Carter responded, she is not sure about that and she does not try to speak to those things. She said there were many discussions on that, and she is not going to speak to that per se, but there is more than one side to that story. Mr. Cannon said he should already know that from the time they have had to do this, and he does not know if someone in the industry can help them with this, but as long as this has been on the table, they should know that. He clarified, what has Dorchester done that Wicomico County has not done.

Mr. McCain responded, if he remembers right, they just simply classified it as an industrial use and said it was not permitted.

Mr. Meadows clarified, the request for the storage tank in Dorchester County was withdrawn by the applicant, so there was no action by the County.

Mr. Cannon said his question is what Dorchester County did as a Body to create such a deterrent so that it was withdrawn, and what was it they were proposing, to which Mr. Meadows responded, he does not believe that is for them to answer.

Mr. Holloway said they actually really have three big issues here. He said one thing is that the tank that is there is not going to go away. He said they cannot come along and pass a law now to make that tank go away, so that is the first issue. He said the second thing is that Ms. Kenney has submitted about three pages of suggestions that he thinks they should probably take home with them and look over because there are some workable things in there that he thinks would make this whole process seem better. He said the last thing, and the thing that really concerns him the most, is, if they go passing laws that ban something, as they all brought up, whether it be a tank or a product, is somebody going to twist that and is a farmer not going to be able to put something on their property, or is someone not going to be able to sell something out of their store, or will the next thing be, if a farmer is cutting wheat and somebody rides down the road and the dust comes in their car and causes their asthma to flare up. He said they are walking a real fine line. He said they know the problem with the tank, they know the problem the folks have had with the tank, but they need to find a solution for anything that comes along after. He said, according to what Mr. Wilber says, there is nothing they can do about the tank that is there, that has pretty much been decided by the Law Department. He said he does not know if they decided to go to court again and do whatever they had to do, that is for legal minds to figure out. He said he thinks the list Ms. Kenney gave has some excellent suggestions in there that they should review. He said he also has a fear of what they pass that will have an ill-effect on some other form of agriculture in Wicomico County, and he knows this probably seems to be the most invasive thing they have come up with, but he heard somebody say that these folks were here before the DAF tank, and that is very true, but farming was here before a lot of folks moved into the neighborhood and folks get upset about combines driving too slow down the road or dust or chicken manure, so they need to be cautious.

Mr. McCain said the Right to Farm would protect a lot of those issues Mr. Holloway just brought up, to which Mr. Holloway responded, but they can challenge that too, and it has been challenged. Mr. McCain said that can always happen, but he wanted to try to bring a little summation to this. He said he thinks where they stand is they need to address the restrictions as what has been proposed by the Planning Commission does not address near enough the restrictions getting back to the example of what Ms. Kenney proposed. He said a lot of those things were basically things that should be addressed with this, everything from either classifying the road or the size of the site, or limiting it to one tank, site inspections, security, and fencing. He said Council can add all of those things if they wish, and he thinks something they need to figure out is how much more they want to add to that. He said he thinks if they add those the choice they have to make is do they want this in the I-2 or are they going to allow this in A-1 as they proposed with a special exception. He said the Council needs to decide that. He said, whether it is in the I-2 or whether it is in the A-1 with special exception, those same restrictions will be similar. He clarified, they might vary a little bit, but, for the most part, they are still similar. He said, before they get to Mr. Hastings' suggestion of a public hearing, he thinks they need to have Legislation crafted and they need to put in there what restrictions they want, but then they have to decide if they are going to propose this in I-2 or are they going to propose this in A-1 with special exception.

Mr. Holloway said there is one question he may have missed. He said they have the industrial zone. He then asked how much of that is actually in the County and not in the City because a lot of that industrial zone is in the City, so, to Mr. McCain's suggestion, if they move this to I-1, is there even hardly any industrial area that is outside the City. He said the City could come along and say they are not going to allow it in the City, to which Mr. Meadows responded, the industrial zoning districts shown on the zoning map are County zoning, but what is in gray on the map are the incorporated towns. He said the heavy industrial is in purple, and that is all County zoning. He said only the areas in the gray are the incorporated towns.

Mr. Cannon clarified, they are telling the Council that it cannot be put in the industrial zone because it is too close to congested areas, is that right, to which Mr. Meadows responded, he believes that was one of the determinations of the Planning Commission. Mr. Cannon then asked, if they are going to put it in A-1, then they are also saying that they could take this entire list Ms. Kenney has presented to the Council and they could turn this into the entire list of special exceptions that they would like to see established, is that correct, to which Mr. Meadows responded, they are here tonight at Council's request forwarding the Planning and Zoning Commission's recommendations, and the ball is in Council's court, and that would be under the authority of the Council to modify what has been submitted, or reject, and it is now in the Council's hands to craft what they see appropriate.

Mr. Cannon said what concerns him really a lot is the traffic. He said he really is concerned about that, but they do not want to compromise the poultry industry. He said he is getting the impression that the number of trucks going in and out of these places is of much greater volume than what they would see with the poultry industry, so how are they going to regulate that? He said are they going to say three trucks in an hour? He clarified, he is not being cynical, but how are they going to be able to do that?

Mr. Holloway said, at their last Planning and Zoning Commission meeting they approved a residential area in the industrial zone at the suggestion of the City, so the City is putting residential areas in I-1, so that creates a conflict when they get down to it.

Mr. Cannon said, to try to bring some focus to this, he recognizes Mr. Hastings' request, but, again, it appears to him that putting it in the industrial zone is not going to work just because of the dense population. He said they have to follow Planning and Zoning's lead because they are the staff, to which Ms. Carter responded, the Planning Commission made recommendations and these are what it is.

Mr. Cannon said Mr. McCain has a concern and says there is not a dense population by the landfill, so do they create an I-3 and say this is an area where there is not a dense population and maybe that is where they can put a DAF tank? Ms. Carter said she does not know about creating an I-3, to which Mr. Cannon responded, it is all hypothetical. Ms. Carter said, as Mr. Meadows said, the Council has the opportunity to add as many restrictions as they choose. She said this is the framework that the Planning Commission started and what they felt based upon the information they had. She said, if Council wants to add, that is what they can do, it is just what they decide. She said she does not know if it is going to be a list of 100 or whatever it is, but they have that right to do that. Mr. Cannon said that would keep it within the realm of text amendment Legislation, to which Ms. Carter responded, it is going to be a text amendment anyway. Mr. Wilber confirmed, that is correct. Mr. Cannon said then they are talking text amendment more so than they are changing the zoning, to which Ms. Carter responded, this is a text amendment.

Mr. Hastings said, just so they are stating the obvious, Wicomico County has a very strong growing population and many, many years ago it decided that residential homes were more important than agriculture. He said he used to ride down the Athol Autobahn at 16 years old at 90 miles an hour because on Athol Road he could look as far as he could see and he could not see anything but fields and ag. He said now there are a good 150 homes there. He said, stating the obvious, it is going to be very hard to find a place even in the agricultural district where something like this could be accepted and he would love for the County to be able to say no. He said, obviously, agriculture and rural conservation is much more important, which they still do to some degree, but they are going to run into that issue just because their County is a place where folks want to live. He said he thinks either way they go about this it is going to be a very narrow few couple of spots where something like this could occur, and maybe it is slightly in an agriculture zone in a very, very limited capacity, and maybe it is also in the I-2 in a very limited capacity. He said, just so it is said, they are a growing County, and this is going to be an issue.

Ms. Acle asked if legal is going to pursue the question on whether or not they can ban the storage of the product, to which Mr. Wilber responded, he can take a look at that.

Mr. Cannon said what they have put in place is buffers and setbacks, but what if they made it much larger than what is in here, to which Ms. Carter responded, they have that option. Mr. Cannon said the Council could create a huge buffer if they really wanted to. He then asked, when looking at the agricultural district, is there any idea of recognizing areas where the population is so miniscule that this would be a better location for storage and they could isolate it to different locations that they know are isolated areas, to which Mr. Meadows responded, those are all questions that are part and parcel of a special exception where they consider these standards that are proposed by the Planning Commission, and he thinks it would be rare that they could be identified as standards in the Legislation, but the Board of Appeals could increase those depending on a specific property. He clarified, they are not bound by that being a carte blanche standard. He said they would not be allowed to go below that standard, but they could certainly have a higher standard or a greater setback.

Mr. Cannon said Mr. McCain has talked about having multiple ag districts, so could there be an ag district created with the recommendation through Planning and Zoning to say this is an area that would

suffice and be acceptable, to which Mr. McCain responded, he has always said that. He said they have industrial with I-1 and I-2, and with residential they have R-20, R-30, village, so they have four or five different classifications, and with commercial they have four or five different classifications, but then when they get to ag they have A-1. He said most Counties have different ones, to which Mr. Meadows responded, that is not entirely accurate as agricultural activities are allowed in all residential districts. He clarified, there are different levels and intensities of agricultural activities that can occur in those depending on whether it is R-20 or R-8, so they do have multiple districts that allow agricultural uses. Mr. McCain clarified, they have one ag zoning district, they do not have A-1, A-2, or A-3, to which Mr. Meadows responded, they do have an A-2. Mr. Hastings said they would have to go through comprehensive rezoning if they want that. Mr. McCain said they are not going to solve that tonight.

Mr. McCain said he thinks they have two steps in this. He said step one is the Council needs to decide I-2 or A-1 with special exception, and he does not think they can do anything until they decide that. He said, once they decide that, then he thinks step two is to look at the restrictions and what they want to add to that list in terms of further restrictions.

Mr. Meadows said Council is not limited to an either or, it can be an "and," but what is recommended by the Planning Commission is A-1.

Mr. Holloway said they have the Right to Farm Act. He then asked, due to the fact that this is designated by the State as a soil amendment, was this considered when it was brought to the County to be approved that this was a farming type operation and this would fall under the Right to Farm Act, to which Mr. Meadows responded, the request for a tank was considered to fall under what is defined as agriculture or agricultural as a storage facility for an approved agricultural product, and it is no different than if someone had asked what they need to do to build a grain silo. Mr. Holloway said then it falls under the Right to Farm the way it is written right now, to which Mr. Meadows responded, that is correct.

Mr. Cannon said, in light of what Mr. McCain has said, the recommendation they are getting from Planning and Zoning is that industrial is not going to work, so that only leaves them with the idea of the special exceptions the Council creates in an A-1 district, to which Mr. McCain responded, that is dead wrong. He clarified, that is a recommendation, and Council makes the decision as they are the County Council. Ms. Carter agreed, it is a recommendation. Mr. Holloway said the Planning and Zoning Commission wrestled with this. Ms. Carter clarified, Mr. McCain is actually correct that it is a recommendation.

Mr. Cannon said he gets that, but their recommendation is that industrial is not going to work, so what are they going to make their decision based on? Mr. Hastings said he thinks it is going to have to be an "and". He clarified, he thinks they are going to have to look at both of them and it would have to be just very restrictive. He said it may not leave them with many options, but they could still, at the end of the day, have options. He said, as Mr. Holloway mentioned, they do not want to be a County that says no to anything, so he thinks they just have to find the right way, even if it is hard.

Mr. Cannon said, as Mr. McCain said, the first decision is whether it is either A-1 or industrial, to which Mr. Hastings responded, or both. Mr. Cannon then asked who feels comfortable with the recommendation from the Planning and Zoning Commission that it is not going to work in an industrial zone? He said they have recommended that it is not going to work in industrial, so are they going to still

sit here and debate industrial versus ag, or are they going to try to accept that recommendation? He said, if they do not, he does not know what they would go back to, and they are going to be chasing their tails, or do they take a hard look at A-1?

Mr. McCain said they are the County Council, they are the Legislative Body. Mr. Cannon said he is asking what this Council wants to do, do they want to take the recommendation, to which Mr. McCain responded, they do not have to accept the recommendation. He said, if they want to say I-2, it is I-2, or if they want to say a special exception, they say A-1 with special exception as they are the Legislative Body. Mr. Cannon said that is why he is asking the Legislative Body tonight.

Ms. Acle said she would like to hear the response from legal on whether or not they can legislate so the storage cannot be here. Mr. Cannon asked if she means completely, to which Ms. Acle responded, completely remove the storage of it, not the application, but the storage.

Mrs. Hurley said she wants to remind Council that they have the moratorium in place, but that will expire at the end of this year. She said, if they are going to move forward with Legislation, they are going to need to start that process pretty soon.

Mr. Cannon asked if that is a solution they already have had over the last two years, to which Mr. Wilber responded, he will look at it, but the concern is that the State is calling this a soil amendment, which is in the agricultural area, so are they going to start banning agricultural products? Mr. Mitchell said they could still use it, just not store it. He clarified, he may be totally off base, but it just occurred to him that, if the State is not regulating the storage and the County is, then they can just bring it in.

Mr. Cannon said the Council needs to come to some type of a consensus as to whether or not they would take the recommendation from the Commission in regard to not putting it in an industrial area, to which Mr. Holloway responded, he thinks it is premature to have that consensus until they get more information. Mr. Cannon then asked what the Council needs for more information, to which Mr. Wilber responded, he is going to look at the idea of whether they can ban the storage of this agricultural soil amendment, as the State calls it. Mr. Cannon asked, if Mr. Wilber finds out that they cannot, what would they decide as far as industrial, to which Mr. Holloway responded, it is premature to ask that question. Mr. Cannon said he just feels like they are kicking the can down the road.

Mr. Dodd asked if they can ban the application, to which Mr. Wilber responded, the Maryland Department of Agriculture says that is strictly up to the State.

Mr. Cannon said Mr. Hastings mentioned a public hearing, and he appreciates that, but they have had so many public discussions so they know the ins and outs of what every single citizen in this County does or does not want, and a lot of it is what they have in front of them today, so he can appreciate that. He said there will be a public hearing, but he thinks they still need to come to more decisions.

Ms. Carter said these are just some other things that Council can actually consider. She said, again, as a Council, they have the ability to make recommendations, add, take away, and add more, and take away more if they choose, but these are just some things if they were even to look at it that they might want to consider as well, so they have that.

Mr. Cannon said that is very helpful and those are the kinds of things they have to note because they are not in this on a regular basis to know how many ways they want to skin a cat.

Mr. Hastings said he could easily come back with recommendations and send them to Council and be as public and open about it as possible with things that he thinks could be a better path forward. He said he does not think the Planning Commission's recommendations are enough, he thinks it has to be both agriculture and industrial, and they just need to highly limit it. Mr. Cannon asked, how can it be both, to which Mr. Hastings responded, it is up to the Council, so it can be both. He said they could say by exception or both in either area under certain circumstances, certain setbacks, so they can do both. Ms. Carter confirmed that Council can do both. Mr. Hastings said he thinks that would give them the most options. Ms. Carter said it has been a long time but she knows one of the things that the community said over and over again in regards to transparency, and they have that by doing the special exception. She said giving the Zoning Board the opportunity, there is a list of things that they can add as well to this whole process because that is what they do.

Mr. Hastings said he wants to be clear that the Council should set the floor and feel good about it. He said folks these days generally do not have a lot of trust in government, so to be able to say that some other folks who are not elected could make a decision that they may not like does not fly as well these days, no matter if someone has been there for 25 years.

Mr. Mitchell said Council can set different restrictions in different zones, so they could restrict differently in ag than they do in industrial if they so choose.

Mr. Cannon said first of all he certainly wants to see larger maps of the industrial zones they have. He then asked if there is a PDF file they can expand to give them a better understanding of how congested these areas might be? He said Mr. McCain is suggesting there is not a problem over by the landfill, so maybe they would restrict it to that one area perhaps. He said he would like to have that so the Council can work with it.

Mr. Cannon said the second thing he recommends to the Council is that they review this and just consider that they are going to consider the text amendment option and, if they accept that, how do they integrate these recommendations because he guarantees that the recommendations from Ms. Kenney are no different than every recommendation of the people who have stood up here over the last two years in public comments. He then asked, how are they going to incorporate this to a degree in order to create what they are talking about with the special exceptions, to which Ms. Carter responded, she thinks it was stated that maybe both of the lawyers would be able to take whatever Council has and be able to provide that.

Mr. Wilber said maybe one approach would be they take Ms. Kenney's ideas and produce a big piece of text amendment that has a lot in it, and then they can pare it down from there. He said they can start big and then eliminate.

Mr. Meadows said Zoning also includes enforcement, so he is not trying to make Council's job harder to identify what this product is, but, if one compound changes, then it is a different product. He said, what if a product comes out and smells like roses? He said, if there is Legislation created that eliminates something with a generic or general definition, that may be disallowed. He said that is the problem that is inherent with what is before the Council now to decide how they identify a product that is basically unidentifiable. He said, specifically, they have attempted or proposed a definition that it is a liquid organic fertilizer, and they cannot get any more specific than that as far as he is aware. He said it does not have a product name, it is not a named fertilizer, it is generically a soil amendment. He said he thinks

the Council will struggle to identify what this product is. He said, again, if one thing changes, that has an impact on how he would be able to enforce what is or is not ultimately adopted.

Mr. McCain said they defined it and they also talked about the size of the tank, so, with those two things combined, are they sort of generally addressing that issue for enforcement to some degree, to which Mr. Meadows responded, if the Council tries to ban or they ultimately adopt something that restricts its storage in the County, if one thing is different in that material in the tank, it is not what has been banned, and he thinks that is where the struggle would lie. Mr. Cannon said Mr. Meadows told Council they could do anything they wanted because they were the County Council, to which Mr. Meadows responded, if one product, however that is identified, is banned, if it is a different product, that is the problem.

Mr. Cannon said they will start with what they have before them and they will certainly have more work sessions. He said they will have a work session at their next meeting and then they will look to the Planning and Zoning staff to give them guidance as to whether or not they have crossed the line or not in practical purposes in the execution of their jobs.

Mr. Meadows said the Planning Commission has forwarded their recommendation, and the ball has certainly been handed off to Council.

Mr. Holloway said he thinks the Commission knew that this was just a starting point. He said they did not set this in stone, which they could not do. He said, when they talked about putting it in the industrial zone, one of the suggestions here is tanks or lagoons must be constructed on the property where the DAF waste will be applied, so, if they go to I-1 or I-2, they automatically mark that one out because they are not going to apply it in the industrial zone because there is no farm there. He said there are so many things that are great ideas, and he thinks it is a good idea to put it on the property where it is going to be applied because that eliminates truck traffic.

Mr. Cannon said he has had farmers say to him that, if they want to put a DAF tank up, even a limited one, they would have to buy land in the industrial area and could not put it on their own farm, and they are concerned about that, so he gets it.

Mr. McCain said, as Mr. Mitchell said, that is why they might have different restrictions if they did a hybrid of both. He said there might not be a restriction in I-2.

Mr. Mitchell said what Mr. Holloway just said eliminates a lot of those issues. He said, if the farm that is using it has to have it on his property and there is only a handful of people using it, nobody has built a 3 million gallon tank. Mr. McCain said that appears to be one of the main issues right now. Mr. Mitchell said that could solve a lot of problems.

Ms. Carter asked if Council wants the maps, to which Mr. McCain responded, Mr. Keith Hall printed all of them for him. Mr. Cannon said he does not want paper maps, he wants PDFs so he can zoom in. Ms. Carter said those are a little bit smaller, but they can provide those.

Mr. Hastings said he will sketch up his thoughts and send them to law, to which Mr. Cannon responded, no, he thinks they have to come in here in two weeks with some recommendations based on the information they have tonight. He said they have input from the public, they have input from the

Planning and Zoning Department and the Commission, so in two weeks they need to move further ahead and do some substantive conclusions.

Mr. Hastings thanked and gave public recognition to Ms. Holly Porter with the Delmarva Chicken Association in the audience. He said Ms. Porter also helped to set up the tour that a couple Councilmembers went on, and he did appreciate that.

There was no further discussion.



John T. Cannon, President, At-Large



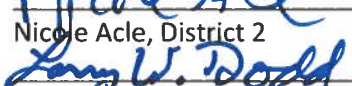
Ernest F. Davis, Vice President, District 1



William R. McCain, At-Large



Nicole Acle, District 2




Larry W. Dodd, District 3



Josh Hastings, District 4



Joe Holloway, District 5



Laura Hurley, Council Administrator