

The Wicomico County Council met in Legislative Session on Tuesday, January 7, 2020 at 6:00 p.m. in Council Chambers, Government Office Building, Salisbury, Maryland.

In attendance: Larry Dodd, President; John T. Cannon, Vice President; Ernest F. Davis, Joe Holloway, William R. McCain, Josh Hastings, and Nicole Acle.

Present: Laura Hurley, Council Administrator; Lynn Sande, Executive Office Associate; Levin Hitchens, Assistant Internal Auditor; and Robert Taylor, Council Attorney.

On motion by Mr. McCain and seconded by Mr. Davis, the Consent Agenda consisting of the following items was unanimously approved:

- Legislative Minutes from December 17, 2019
- Open Work Session Minutes from November 19, 2019 – Discussion on Process to Fill a Vacancy on the Wicomico County Board of Education
- Open Work Session Minutes from November 19, 2019 – Legal Services for Wicomico County
- Open Work Session Minutes from December 3, 2019 – Deed of Easement to Delmarva Power & Light Company for Property Located on the East Side of Walston Switch Road

A Proclamation was presented to J. Stephen Roser in recognition of his retirement.

Certificates of Appreciation were presented to Perdue Associates for participating in Wreaths Across America.

An award was presented to John Cannon in recognition of his five years of service as the Wicomico County Council President.

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#### **Bob Taylor, Council Attorney**

**Public Hearing:** Legislative Bill No. 2019-04, Amendment No. 1 – An Emergency Act to amend and transfer an appropriation from the Use of Prior Year Funds Account in the amount of \$2,427,463.88 in the Annual Budget for the fiscal year ending June 30, 2020 to the Morris Mill Additional Construction Costs Account in the amount of \$1,192,599.88; to the Morris Mill Additional Construction Inspection Services Account in the amount of \$100,000.00; to the Airport Water Main Construction Inspection Services Account in the amount of \$119,000.00; and to the Wicomico County Detention Center Roof Replacement Account in the amount of \$1,015,864.00. Mr. Dodd opened the Public Hearing. There were no public comments. Mr. Dodd closed the Public Hearing. There being no discussion, on motion by Mr. Hastings, seconded by Mr. McCain, and by roll call vote, Mr. Cannon, aye; Mr. Hastings, aye; Mrs. Acle, aye; Mr. McCain, aye; Mr. Davis, aye; Mr. Holloway, aye; and Mr. Dodd, aye, Legislative Bill No. 2019-04, Amendment No. 1, was unanimously approved.

**Introduction:** Legislative Bill No. 2019-04, Amendment No. 2 – an Act to amend the Capital Budget for the fiscal year ending June 30, 2020 to include a project for renovation of a bathroom facility at the Cedar Hill Marina, and appropriate therefore \$125,000 from the County's Recreation Fund Pursuant to Section 704G of the Wicomico County Charter. On motion by Mr. McCain and seconded by Mr. Holloway, Legislative Bill No. 2019-04, Amendment No. 2, was introduced for discussion.

Mr. Cannon said he has a concern on this introduction mainly because it is part of what Council has faced quite a bit in the past, and what they certainly are going to have to address in the future. He

explained, this is a Legislative Bill that states very clearly, whereas, the Director of Finance has certified that the unencumbered funds are available in the Recreation Fund for such appropriation. He said, due to the fact that Wicomico County does not have a certified Director of Finance, he does not see how the Council is at liberty to simply pass this Legislation when they do not have an accredited Director of Finance in this County. He clarified, again, he does not see how this can be a valid document for this Legislative Body to approve if they know for a fact that there is inconsistency in the Legislation. Mr. Dodd said Mr. Cannon makes a good point.

Mr. Cannon made a motion to table Legislative Bill No. 2019-4, which was seconded by Mr. Holloway. By roll call vote, Mr. McCain, opposed; Mr. Davis, aye; Mr. Holloway, aye; Mr. Cannon, aye; Mr. Hastings, aye; Mrs. Acle, opposed; and Mr. Dodd, aye, Legislative Bill 2019-04, Amendment No. 2 was tabled.

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**Laura Hurley, Council Administrator**

**Resolution No. 01-2020** – Confirming the Appointment of Jaclyn Curry as the Director for the Department of Human Resources. On motion by Mr. McCain and seconded by Mr. Hastings, Resolution No. 01-2020 was introduced for discussion.

Mr. Cannon said, again, he thinks Council is at an impasse, to a certain degree. He explained, this confirmation has never been submitted formally to Council, as the process has been since 2006 since they have had an Executive-Legislative form of Government. He said it is the responsibility of the Executive Branch to formally submit the application of any Department Head to the County Council, but no submission has ever been made. He said he is certainly aware of the fact that, as stated in the Resolution, Council has been made aware of this, but, by law, it is required it be submitted, and that has not been done. He said, that being the case, he would simply say it is the obligation of Council not to take action on this, and he would make a motion to table this. Mr. McCain said he would disagree with that, to which Mr. Cannon responded, he made a motion to table, which requires a second. Mr. McCain said they are still in discussion, to which Mr. Cannon responded, there is a motion to table, so there is no discussion on the table. Mr. McCain clarified, there was a motion to accept the Resolution, and they are still discussing it. Mr. Cannon addressed Mr. Dodd and said he made a motion to table, to which Mr. Dodd responded, Mr. Cannon made a motion to table. Mr. Holloway said he will second that motion, and this is in no way a reflection on the applicant. He said, when Council gets elected, they stand up at that podium and raise their right hand and say they are going to uphold the laws of the State.

Mr. Cannon then said he would like to make a point of order. He said he will withdraw his motion to table because, once the motion to table has been recognized and a second has been made, there is no discussion. He said he will withdraw his motion, and he will assume whoever made the second will withdraw their second, to which Mr. Holloway responded, he will do that. Mr. Cannon clarified, they will stay in discussion, so Mr. McCain can have his say, and Mr. Holloway can have his say.

Mr. Holloway said Council stands at the podium like any Elected Official does, and swear they are going to uphold the laws of the County. He said their Charter is not a real complicated document. He said it is pretty easy to read, and this old country boy can understand it most of the time. He said, for the County Executive to keep snubbing his nose at the Charter, it has got to end, but it cannot end if Council condones it. He said they cannot keep condoning acts that are, basically, illegal under their Charter rule of Government, so he is going to support tabling this until this problem can be rectified.

Mr. McCain said the points made are well taken, and Council knows they have the issues regarding the Charter, and even the wording regarding this Resolution. He clarified, however, their job is to do what is best for the public, which is they need to move this forward, and, frankly, they should have moved the last issue forward. He said these are pretty routine issues, and Council has to continue to do the business of the County, and he wants to see them approve this individual. He said it is not the individual's fault, and she should not be caught in the middle of this. He said it is the same thing with Recreation and Parks where it is not their fault, and they should not be caught in the middle of the issue they are currently having with the Executive. He said that is going to continue, but needs to get resolved, and he understands their point wholly, but Council needs to continue to do the business of the County and keep the County moving forward.

Mr. Cannon said it is very simple, and is very cut and dry, similar to what Mr. Holloway said. He said it is the law, and the process has to be followed by the law. He said they have the privilege of having the Sheriff and the State's Attorney here at the meeting, and they deal with legal matters constantly. He said drifting through a stop sign is drifting through a stop sign, and is not stopping, but drifting through a stop sign, and is illegal. He said that is pretty much what they are doing now, just drifting through this, and not really stopping to take a look at what the true law is and what it states very clearly for all of them, which is that it has to be submitted. He said Council cannot act as a Body unless it is formally submitted to this Council, and, again, he would certainly suggest this be tabled tonight.

Mr. Hastings said they have a couple of folks at the meeting who are in law enforcement, and Council has an enforcement issue when it comes to a lot of their disagreements, which are not even really disagreements because the difference between what the Charter says the Legislative Branch is supposed to do compared to what the Executive Branch is supposed to do is pretty much clear, cut and dry. He said Council as a group has been kind of shouting this to the wind to no avail for quite some time, and he is not really sure how they really progress on all of this, but he agrees that the business of Government has to continue. He said they need to get clarity on this as soon as humanly possible, and he is not sure if anyone is even listening, but it is pretty important. He said, regardless, for this individual, she is well qualified, and she should continue to be in this position, but Council needs to get clarity when it comes to the difference between what the Charter says Council's role is compared to the actions of the Executive Branch, and he is just putting that out there.

Mr. Cannon said it should be noted one more time that this is not just something Council decided was their position independently. He said the matter of the law was confirmed by not only the County Attorney at the time, Mr. Paul Wilber, but also the Council Attorney, Mr. Taylor, and both have agreed without question that the process has to be followed, the submissions have to be made, and the Council has to approve the Department Heads in order for them to be qualified.

Mr. McCain said the last comment he will make is that tabling these issues is not going to resolve the problems they have, to which Mr. Holloway asked, but breaking the law is? Mr. McCain said Council is not breaking the law, to which Mr. Holloway responded, yes, they are. Mr. McCain then asked Mr. Taylor to answer that question, to which Mr. Taylor responded, he does not think it would be breaking the law. He said Mr. Cannon is absolutely correct, and it is very clear that there is a process for submitting to Council the appointment of Department Heads for confirmation by Council. He clarified, he does not think, however, that it not being formally submitted means Council cannot confirm it. He said Council does not have to confirm it, and he certainly recognizes that, but he does not believe that

because it has not been formally submitted that prevents Council from confirming, if they want to do that. Mr. Holloway asked if Mr. Taylor, as their legal counsel, is saying they can ignore the Charter, to which Mr. Taylor responded, no, they are not ignoring the Charter because he does not think the Charter absolutely says they cannot confirm someone if he or she has not been submitted. He reiterated, it does not say that. He clarified, they do not have to, and they could insist upon a formal submittal, certainly, if that is their pleasure, but he does not think it prevents Council from going ahead and confirming the person. Mr. Dodd said, according to legal counsel, Council has been made aware of her employment, to which Mr. Taylor responded, she was presented at the last meeting by the County Executive. He clarified, it was not a formal submittal because he did not present it that way, but he thinks Council is certainly aware of the fact that she has been appointed to that position.

Mr. Cannon said the Charter states, if Council fails to act to confirm or reject any appointment within 45 days of its submission to the County Council by the County Executive, the appointment shall stand approved, so the Charter itself specifically says 45 days from its submission. He said Council should not try to say whether the 45 days started when they came to the table two weeks ago, or whether it was when they met her at MACO a month ago because formal submission is a written document. Mr. Taylor said he agrees that, if it is formally submitted, the 45 days would begin to run, but he does not think the Charter language prevents Council from confirming her even though it has not been submitted.

There being no further discussion, on motion by Mr. Cannon and seconded by Mr. Holloway, Resolution No. 01-2020 was tabled. Mr. McCain, Mr. Hastings, and Mrs. Acle were opposed to tabling.

Mr. Dodd said he agrees with what everybody is saying, and Council needs to conduct their business every day, and they need to follow the Charter. He said they need to find out what they are doing right, and what they are doing wrong, and from this point he hopes this Council gets together and finds out the right direction to move. He said he hopes everyone is in agreement.

**Resolution No. 02-2020** – Confirming the appointment of David A. Fitzgerald as Deputy Director of the Wicomico County Department of Emergency Services. Mr. Dodd said it should be noted that this appointment was submitted. No motions were made. Resolution No. 02-2020 failed for lack of a motion.

**Resolution No. 03-2020** – Authorizing the County Executive to accept two grant awards from the Maryland Department of Natural Resources for the purchase of marine sewage pump-out systems to be used at the Cedar Hill Marina and Nanticoke Harbor in the total amount of \$29,165.00.

Mr. Cannon said this is referred to as grants, but maybe they should amend this to be referenced as reimbursement grants. He said it is a small issue. He then made a motion to amend the terminology that references grants to be referred to as a reimbursement grant. Mrs. Acle asked, for clarification, is this reimbursement for something that was already done, to which Mr. Cannon responded, once they do the work, they turn the invoices in, and then the grant is awarded. He then asked Mrs. Oland if that is correct. Mrs. Oland, Deputy Director of Recreation, Parks and Tourism then came to the podium, and said most of the grants they receive from the State of Maryland are reimbursement grants. She said they are required to complete the work by either purchasing what they need to do, or have a contractor come out and do the work, and then they submit the invoices for reimbursement. She said the County is fronting the cash on this, but then will get reimbursed for it. She said, again, most of the grants for her Department work in that fashion, and this one happens to be a 100 percent reimbursement grant, so there is no match for the County. She said, if they can accomplish these jobs for the amount they were

awarded, and they submitted them in the amounts they believe they will cost, 100 percent of the cost of the pump-out station upgrades will be covered by the State. Mrs. Acle thanked Mrs. Oland for clarifying.

On motion by Mr. Cannon and seconded by Mr. Davis, Resolution No. 03-2020 was unanimously amended. There being no further discussion, on motion by Mr. McCain and seconded by Mr. Hastings, Resolution No. 03-2020 was unanimously approved as amended.

**Resolution No. 04-2020** – Extending the date of the adoption of the fiscal years 2021-2025 Capital Improvement Program (CIP) from the third Tuesday in February to June 1, 2020. Mrs. Hurley explained, the County Executive has requested that the date of the adoption of the CIP be extended so it can be adopted simultaneously with the expense budget for fiscal year 2021, and because there is uncertainty of the potential impact of State Legislation on capital projects during the 2020 regular session of the Maryland General Assembly. There being no discussion, on motion by Mr. McCain and seconded by Mr. Hastings, Resolution No. 04-2020 was unanimously approved.

**Resolution No. 05-2020** – Designating persons for training under the Open Meetings Act. Mrs. Hurley explained, State law requires each Public Body to designate at least one individual who is an employee or a member of the Public Body to receive training on the requirements of the Open Meetings Law. She said this Resolution is designating all Councilmembers to receive the training, and the training is to be completed within 90 days after being designated. She said the training can be taken on-line, and classes are offered by the Maryland Association of Counties (MACO).

Mr. McCain said some Councilmembers took that at MACO, so does this mean they have to take it again, to which Mrs. Hurley responded, no. She said, if they have taken the training, they only have to do it one time, but they have a new Councilmember on board, and they recommend Council designates someone each year and just keep the record in their files.

Mrs. Acle asked if they are going to have a policy and procedure manual for open meetings coming from this training, to which Mrs. Hurley responded, they have an Open Meetings Law that they follow, and she knows MACO also offers classes on that. Mrs. Acle said she wonders if they have written policies for specific open meeting documentations because this may be a good time to implement that, to which Mrs. Hurley responded, they can look into it.

There being no further discussion, on motion by Mr. Holloway and seconded by Mr. Cannon, Resolution No. 05-2020 was unanimously approved.

**Public Comments:**

There were no public comments.

**Council Comments:**

Mr. Hastings said he received close to 50 letters from folks in his District who have been receiving some of the benefits of Meals on Wheels, and they were actually very happy that this Body took the time to approve extra gap funding. He said they were actually some really heartfelt letters. He said there are a lot of folks in their community who are really struggling, and a lot of folks are in their 80s and 90s. He said he could still read most of the handwriting, but he could tell it was really a struggle for them to get that out, so he wanted to thank MAC and a lot of the folks who help keep this program going.

Mr. Hastings said Mr. Roser has left the meeting, but he is an amazing human being who has done a great job, and he really appreciates his service. He then said, go Ravens!

Mr. Cannon said he really appreciates Mr. Roser's work. He said Mr. Holloway, Mr. McCain, and himself were there when they initially hired Mr. Roser. He said they did not know what to expect, and he does not know if Mr. Roser knew what to expect either, but it turned into a really great number of years. He said Mr. Roser took charge of this and really made it a very effective operation, and he thanks him for that work he has done, and wishes him the best.

Mr. Cannon said he also got 20 or 30 cards in the mail. He said he thought he was really popular and a lot of people liked him. He said he thought he got all of these Christmas cards because he did not know what it was, but, lo and behold, it was about 20 little thank you cards where they had each taken their time to say Meals on Wheels has really been great to them, and they really appreciate the food. He said they were not just stamped thank you, but they gave it some thought and took the time to do it. He said people ask him why he runs for Office because it is a thankless job, but there are small moments like this that make it worth it, and they really appreciate it.

Mrs. Acle said her District reached out to her last week thanking Council for the support letter to do broadband in the rural areas. She said she even had a little boy call her and thank Council for doing it because he cannot access his homework because he does not have internet, so he is very excited to have that coming. She said anyone can go on Choptank's website, and there is a link where they can contact their Senator to support that in their area also.

Mr. McCain said he will follow Mr. Hasting's suit, except, go Clemson Tigers because that is the only game that counts.

Mr. Davis said he wants to thank Mr. Roser for all the help he has given him. He said, when he first came on Council, he was the new guy on the block, and there was a lot of stuff to absorb and he could not get it fast enough, but any time he would call Mr. Roser, he was able to find stuff to help him along the way. He said he really wants to thank him for all the work he has done for Council, and it is going to be a loss without him, but they have Mr. Hitchens here who has been trained well, so he thinks everything will go over smoothly. He again thanked Mr. Roser for the work, and said he hopes he enjoys his vacation.

Mr. Holloway said ditto to what everyone has said tonight about Mr. Roser. He said he was on Council when the situation arose where they needed an Internal Auditor. He said it was suggested by the fraud auditor when they went through the issues they had at the landfill. He said he knows there were a lot of people who did not agree with that position to begin with. He said a lot of people and Departments were fearful of that position, but Mr. Roser made that transition very easy. He said Mr. Roser went out and talked to people so they were not afraid to see him coming, and it was not like the IRS was showing up or something like that. He said he made that transition for that position very easy with the County employees, and he thinks that is important, and he thinks they need to retain that position because he thinks it is a safeguard to have an Internal Auditor. He said they play more than just the role of going out and doing an audit. He said, in the past, Mr. Roser has helped Council with their budget, and he is sure Mr. Hitchens will be doing the same. He said they always have questions because he knows some of this stuff is over their head sometimes, so he is looking forward to serving with Mr. Hitchens, and he wants to wish Mr. Roser good wishes on his retirement.

**Council President Comments:**

Mr. Dodd said he thinks everybody touched on everything, but he wants to welcome Mr. Hitchens aboard, and he wants to congratulate Mr. Roser on his retirement. He said he did a great job, and, as Mr. Holloway said, that position is important, and it is also in the Charter, so it is a required position. He said Mr. Hitchens has been here for the last two years and has mentored under Mr. Roser, and he has the most confidence in Mr. Hitchens. He again welcomed him aboard.

Mr. Dodd said, starting next Wednesday, MACO will have their Legislative Committees meet every Wednesday throughout March, and they will meet on a lot of issues dealing with Counties. He said Mrs. Hurley, Mr. Cannon, and himself went up there almost every week for the last five years, and that is going to start again, so they will be up there every single Wednesday. He said any Councilmember is more than welcome to attend, and they will be leaving from the GOB at about 7:30 a.m.

Mr. Cannon then said, as a point of order, it has been brought to his attention that on Resolution No. 02-2020 there was no motion or second on part of the Council on the confirmation, but there has to be some type of consideration made. He clarified, in other words, there has to be a motion and a second to introduce the Resolution, and then it can be voted down. He said the individuals who make that motion and second may still vote it down, but it has to come to the table or else it will be considered as a motion in the affirmative. He then made a motion to reconsider Resolution No. 02-2020. He said that has to be done first. Mr. McCain seconded the motion to reconsider Resolution No. 02-2020, and all Councilmembers were in favor of reconsidering the Resolution. Mr. Dodd said Mr. Cannon brought up a good point, and he is glad he brought it up.

**Resolution No. 02-2020** – Confirming the appointment of David A. Fitzgerald as Deputy Director of the Wicomico County Department of Emergency Services. On motion by Mr. Holloway and seconded by Mr. McCain; and by roll call vote, Mr. McCain abstained; Mr. Davis, nay; Mr. Holloway, nay; Mr. Cannon, nay; Mr. Hastings, nay; Mrs. Acle, nay; and Mr. Dodd, nay, Resolution No. 02-2020 failed with 6 voting in opposition, and 1 abstention.

There being no further business, on motion by Mr. McCain, seconded by Mr. Davis, and unanimously approved, the Legislative Session was adjourned to go into Open Work Sessions followed by Closed Work Sessions pursuant to General Provisions Article, Section 3-305(b)(1)(7) to consult with legal counsel to protect the attorney-client privilege, and to discuss the compensation of an employee in Closed Session to protect the privacy of the individual.

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The Wicomico County Council met in a Closed Work Session on Tuesday, January 7, 2020 at approximately 7:30 p.m. in Council Chambers, Government Office Building, Salisbury, Maryland.

In attendance: Larry Dodd, Council President; John T. Cannon, Vice President; Joe Holloway, William R. McCain, Josh Hastings, Nicole Acle, and Ernie Davis.

Present for the first Closed Work Session: Laura Hurley, Council Administrator; Robert Taylor, Council Attorney; and Lynn Sande, Executive Office Associate.

The purpose of the first Closed Work Session was to consult with legal counsel to protect the attorney-client privilege. No formal action was taken.

There being no further discussion, on motion by Mr. Hastings, seconded by Mr. Davis, and unanimously approved, the Closed Work Session was adjourned at approximately 9:00 p.m. The legal authority for the first Closed Session is General Provisions Article, Section 3-305(b)(7).

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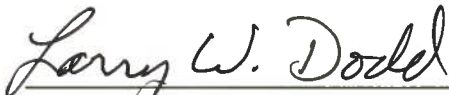
The Wicomico County Council met in a Closed Work Session on Tuesday, January 7, 2020 at approximately 9:00 p.m. in Council Chambers, Government Office Building, Salisbury, Maryland.

In attendance: Larry Dodd, Council President; John T. Cannon, Vice President; Joe Holloway, William R. McCain, Josh Hastings, Nicole Acle, and Ernie Davis.

Present for the first Closed Work Session: Laura Hurley, Council Administrator; Robert Taylor, Council Attorney; and Lynn Sande, Executive Office Associate. Mr. Levin Hitchens, Assistant Internal Auditor, was present for a portion of the Closed Session.

The purpose of the second Closed Work Session was to discuss compensation of an employee to protect the privacy of the individual. No formal action was taken.

There being no further discussion, on motion by Mr. Hastings, seconded by Mr. Davis, and unanimously approved, the Closed Work Session was adjourned at approximately 9:20 p.m. The legal authority for the second Closed Session is General Provisions Article, Section 3-305(b)(1).



Larry W. Dodd, President, District 3



John T. Cannon, Vice President, At-Large



Ernest F. Davis, District 1



Nicole Acle, District 2




Josh Hastings, District 4



Joe Holloway, District 5



William R. McCain, At-Large



Laura Hurley, Council Administrator