

**Open Work Session  
Poultry Houses  
February 16, 2016**

Mr. Cannon said Council has in the brief book a very rough draft of legislation of what Council could expect to see as far as poultry houses. Also included is an example of legislation from Accomack County that includes some of the work that was in Somerset County as well. He said we are just trying to see what direction Council needs to go and try to come to some resolution on poultry houses in Wicomico County. An extremely large complex is being developed, which has created a lot of concern among the community. Mr. Cannon said he understands that the large complexes have been put in place for a number of reasons, one being it is more cost efficient than putting in small units because of what the new environmental regulations are with stormwater management, etc. and to offset, the larger poultry farms have been proposed. In addition, he found it surprising that the larger houses do not necessarily mean more chickens. Larger houses are being built simply because the chickens are being afforded more room and that reduces the risk of potential for disease, especially when they are transferring from not using antibiotics. When we get away from antibiotics, the chickens are then more susceptible to disease and, therefore, the chickens need more room. Mr. Cannon said he is not going to say that every large chicken house is not going to have more chickens because he has not evaluated those numbers yet. He cannot speak one way or another, but those are some of the arguments that have been presented. Either way the public is looking for some direction on the part of the Council as far as how to address these poultry houses. Mr. Cannon said he thinks anyone would agree that the regulations Wicomico County has in place right now are very inadequate. Going back to what Mr. Lenox has said before, you can explain the regulations for Wicomico County as far as poultry houses in one sentence and that is there is a restriction of 100 feet and nothing more. Mr. Cannon continued, he said what Council has before them is draft legislation that is a combination of several regulations, but for the most part we are trying to focus primarily on what the zoning regulations are and how we might what to address those concerns. Mr. Hall said this is a good start, then asking Mr. Cannon if he could go through the process of how he got the information. Mr. Cannon said he had some discussions with representatives of Somerset County because they have already gone through this process, and he is trying not to reinvent the wheel, if it fits for our County as well. He said last Friday, the chairman of Accomack County came to Salisbury, and they spoke for about 45 minutes on the processes they have gone through. He provided a document, which Council has on the table, that is a study from the University of Georgia. Mr. Cannon said we have had good input from Somerset and Accomack County that can be beneficial. Mr. Kilmer suggested that the legislation be tied to the Tier Map. He said there is concern that poultry house operations are near residential developments/subdivisions. The Tier Map, Tier IV, is where the poultry houses are supposed to be located. He said it does not make sense to enact these regulations in areas of the County where subdivisions are not supposed to be happening, for example Athol Road. He said the population density is not out there on what would turn out to be Tier IV once we get the Tier Map completed. Mr. Kilmer said he is not sure how he feels about the legislation. He said agriculture land is agriculture land but some agriculture land is in Tier III, which is the land closest to Salisbury. Mr. Kilmer said he does

not think regulations need to be countywide, maybe restrict the regulations to the tiers because that is where the real concerns seem to be. Mr. Cannon asked for clarification that the regulations would not necessarily apply to Tier IV because that is agriculture land, to which Mr. Kilmer responded, under the Tier Map, there is not supposed to be much development in Tier IV. He said agriculture is supposed to be zoned by the right to farm area but there is substantial development in some parts of agriculture land now and that is why we are seeing some conflict. Mr. Kilmer continued, he said the Council needs to limit the burden of government on agriculture production as much as possible. Mr. Hall said he assumes Planning and Zoning will come up with the regulations that Council will ultimately recommend, so it would be a good idea if Planning and Zoning attended the work sessions and public hearings. Mr. Cannon said he made that request to the County Executive, and Planning and Zoning was told not to attend the work session today. Mr. Cannon said he is confused by that because the director of Planning and Zoning is at the Executive's disposal, as well as Council's disposal, as he is paid by taxpayers dollars like everyone else. Council would like to have an open work session to review the pros and cons of the legislation, and it ties our hands if we do not have a member of our own staff to assist us with this process. Mr. Joe Holloway said he would like to mention that Wicomico County has a Right to Farm law. He said two weeks ago we had dozens of people stand up at the podium and complain that live in the rural areas outside of Salisbury, which he assumes the people who spoke are homeowners. Mr. Joe Holloway then read a section from the Right to Farm law that indicates "Wicomico County recognizes and supports right to farm agriculture lands in a manner consistent with generally accepted agriculture management practices. Residences on property on or near agriculture land should be prepared to accept the inconveniences or discomforts associated with agriculture operations, including but not limited to noise, odors, flies, fumes, dust, the operation of machinery of any kind during any twenty-four-hour period (including aircraft), the storage and disposal of manure, and the application of spraying or otherwise of chemical fertilizers, soil amendments and pesticides. Wicomico County had determined that inconveniences or discomforts associated with such agricultural operations shall not be considered to be an interference with reasonable use and enjoyment of land . . ." Mr. Joe Holloway continued, he said everyone who has bought property in Wicomico County was handed a copy of the Right to Farm law, and it is signed as part of their settlement package. He said he read Delmarva Poultry Industry's Best Management Practices and their suggestion to have setbacks and buffers. He thinks this should all be part of the Right to Farm law because this is farming. Mr. Cannon asked if he is suggesting that instead of adopting zoning legislation, we amend the Right to Farm act, to which Mr. Joe Holloway responded, yes. Mr. Joe Holloway said if anyone has a complaint about odor or dust, they are allowed to call the Health Department as that is mentioned in the Right to Farm law. Mr. Cannon said when you talk about the Right to Farm law, you may be talking about health related ordinances and what Council is proposing is zoning regulations. Mr. Joe Holloway said zoning can be part of it; we can insert whatever we want to in the Right to Farm law, it is not just limited to health. Mr. Cannon then asked Mrs. Harris if she had any input. Mrs. Harris said she thinks it is an interesting concept, and we could insert that in the poultry section of the County Code. She would like to look at it some more, but it certainly is an interesting idea. Mr. Cannon clarified that the zoning regulations would have to be implemented in the County Code, to which Mrs. Harris responded, yes. She said similar

to what the County did with the National Electrical Code, we could make reference in the County Code that we follow the Right to Farm act. Mr. Cannon said in a prior conversation, it was discussed if the regulations could be adopted in the form of a resolution. The legal advice was it had to be in the form of a legislative bill. Mrs. Harris explained that the County Code currently provides for 100 feet setback and, if that is going to be changed, it will need to be done by legislative bill. If Council wants to add regulations, it seems they should be added to the County Code as that is where people look to figure out what they need to do. Mr. Cannon said Mr. Lenox could give Council a very good idea on what the best approach is, whether it is in the form of a resolution, bill, code, or the Right to Farm act. Mrs. Harris said resolutions are intended for short-term things and legislative bills are for things that are long-standing, things that will be permanent until changed. Mr. Creamer said Mr. Joe Holloway made a very good point in referencing the Right to Farm bill. That law was enacted by a previous County Council a number of years ago, but he thinks it was done prior to this form of government. He thinks we are talking about some of each, some amendments to our zoning ordinance, additions to the Right-to-Farm law, and tying these regulations to our Tier Map. He said if you recall our previous discussions with the planning director, the Tier Map, Comprehensive Plan and zoning are all connected. It could very easily be that once Council reaches a concurrence on the changes that are needed, such as setbacks and buffers, to provide additional protection (Protection meaning the right to use your property and what else can be done in your neighborhood.) they can certainly be included in the Right to Farm legislation that the County already has. Mr. Creamer said in regards to Mr. Cannon's concerns about not having planning staff present, the Council is still able to make progress by discussing the areas that you think need to be covered and then provide a packet to the planning staff, asking them to review it to determine where certain regulations fit. Mr. Joe Holloway said he found the section in the Right to Farm law he was looking for earlier, it indicates "Declaration of a nuisance. If the Health Officer determines that a nuisance exists, the Health Department may declare the existence of a nuisance. In determining whether a nuisance condition exists in connection with an agriculture operation, the Health Officer shall apply criteria provided in this chapter. Further, the Health Officer may consider the professional opinion of the Wicomico County Cooperative Extension Service of the University of Maryland or other qualified experts in the relevant field . . ." Mr. Joe Holloway said there are already things in place. Mr. Cannon expressed his thoughts on having the Planning and Zoning director attend the open public forums to address concerns. Mr. Strausburg said there are several issues being raised. The first issue of concern is the environment; zoning is way down the list. The Executive has requested for the Maryland Secretary of Environment, Secretary of Health, and the Secretary of the Department of Agriculture to come to Wicomico County for a public forum. Mr. Strausburg said it seems that Council is trying to legislate before we have all the facts, and the director of Planning and Zoning cannot provide Council with all the facts in those three areas. Mr. Cannon said there was a meeting last week in which it was discussed how the Council wanted to proceed and what the Executive's concerns were. At that meeting, he explained that Council was looking at the zoning issues right now. Mr. Cannon said you can look at each section at a time. Accomack County and Somerset County addressed their zoning issues first and health issues second. He said everyone was in agreement to move forward. Mr. Strausburg responded that was not his recollection and said the County needs to examine the facts first. Mr. Cannon and Mr. Strausburg continued their

conversation. Mr. Cannon expressed his concerns with the Executive not allowing Mr. Lenox to be present at the work session, so Council could discuss certain zoning issues. Mr. Strausburg explained that he thinks legislation is premature as the County needs to look at the environment, health and zoning issues and further said Mr. Lenox does not have the expertise in all those areas. Mr. Joe Holloway said zoning and health issues are connected. The public said the fans are blowing particles out in the air near their residences. The setbacks that the Council sets will help determine how close those particles get to their houses. Also, there are health issues associated with the particles they breathe. Mr. Joe Holloway said they are all connected. Mr. Cannon agreed that one does impact the other. He said he does not, however, want to address health ordinances at this time. He would like to start working on the zoning issues, such as setbacks, buffers, etc. as quickly as possible because that is what has been requested. Mr. Joe Holloway said we need to take our time because the actions Council will take will affect a major industry in Wicomico County and the Eastern Shore. He said there are counties all over this country that would love to have what we have, referring to the poultry industry. Mr. Joe Holloway continued, he said he is in favor of having setbacks and buffers, but we need to know what the impacts are going to be. He said there are a lot of things that have not been addressed in the draft legislation, such as what happens when a poultry farmer has a fire or wind damage to the poultry house or land preservation in relation to setbacks and right of ways. Mr. Joe Holloway said we should not be moving quickly. Mr. Cannon said he does not want to stall month after month as Council has been trying to move this forward for eight months. Mr. Cannon said the draft legislation contains standards accepted by the poultry industry. This legislation was drafted to get Council to start talking about what the County needs. Right now there is no law in Wicomico County that prohibits the construction of poultry houses next to residential neighborhoods other than the 100 foot setback. Council needs to be expedient, not careless, to get new regulations on the books. Mr. Joe Holloway said those property owners live in the agriculture district so they signed a statement at settlement that they read and understand the Right to Farm law. Mr. Cannon said he is trying to move forward with legislation that everyone agrees with. The purpose of the work session is to determine the pros and cons to figure out what direction to go. Mr. Cannon said he would like legal counsel to look into how to incorporate the Right to Farm act as well as the Tier Map. Mr. Kilmer said this legislation cannot be rushed, as it has to go to the Planning Commission and legislative bills have their own timeline, so no matter what Council does, it is going to take months. He thinks having expertise from staff will help Council make the right choice. Agriculture is moving towards the larger chicken houses, so the rules need to be updated to reflect that change, but he does not think there is going to be a ban against the larger chicken houses. The health issues are handled by state law, mostly, and he appreciates the Executive for trying to get state people to Wicomico County to discuss those issues in particular how they apply to this County. Mr. Kilmer said he has read some interesting articles that people have sent that discuss the impact of CAFOs. Talking about CAFOs generally and then in terms of what can exist in Wicomico County under state laws and regulations in terms of manure disposal and run-off are two separate issues, so there does need to be a public airing on how it impacts Wicomico County. There is more room for cooperation. He said Mr. Joe Holloway is correct in that Council has to get this done correctly. This changes the County Code and that is what people look at to find the laws and regulations of the County. Mr. Joe Holloway asked at what point in time would Mr. Lenox be prepared to

address the Council. Mr. Strausburg asked what would Council like for him to address. Mr. Joe Holloway then asked when do you plan to meet with the state folks. Mr. Strausburg said they called the governor's office again this morning to encourage that meeting to take place as soon as possible; they will probably find out tomorrow. Mr. Strausburg said if the questions are pertaining to planning and zoning, they would be happy to answer them, but the issue we are addressing is the direction of an entire industry and a fundamental change in that industry. There have been assertions made that poultry houses are detrimental to health and the environment. Mr. Strausburg said he thinks before the County takes a half step, we need to consider what the facts are on the ground so that when we make our decision and adopt new regulations or new zoning requirements, we do so within the context of what people with the expertise to make those judgments have to say. Mr. Strausburg continued, he said the Maryland Department of Health is assigned the duty of protecting our health, so we should be taking our lead from them. The Maryland Department of Environment is charged with protecting the environment, and the Maryland Department of Agriculture probably understands CAFOs better than anyone in the room. He said what they are proposing is careful, deliberate gathering of the true facts on the ground so what we come up with makes sense for Wicomico County. Mr. Joe Holloway asked if the meeting would be open to the public or Council members, to which Mr. Strausburg responded it was contemplated that it would be an open public forum probably at the Civic Center; he has to make those arrangements. Mr. Cannon asked what happens when somebody comes in for a permit for a large chicken house development in Wicomico County say in two weeks, to which Mr. Strausburg responded they can do that and Council passing legislation is not going to change the situation. He said he read a newspaper article over the weekend and someone made the comment that no one has told these people they have the right to do what they are doing. They absolutely have the right to do what they are doing; they have a legal right to do what they are doing. He said we need to be very careful with how quickly we move ahead with depriving people of their property rights without full knowledge of the different areas that we have to understand before we move forward. Mr. Cannon said Council is not suggesting comprising anybody's property rights under any circumstances. We have a letter of support from the farm bureau, and they have given their support of Council moving forward with some type of legislation. Mr. Hall said it is interesting that a lot of the research has been done by other counties like Somerset County and Accomack County, eight months to one year ago. Even the Delmarva Poultry Industry (DPI) came out with their Best Management Practices in June of last year, but they did not present it to Council until December. We are not acting quickly on this, we are acting slowly. It is a knee jerk reaction because the CAFOs have come in now, and they are making an impact on our farming community. Two years ago, we did not know what they were. Mr. Strausburg said CAFOs have been in the County for years, to which Mr. Hall responded that is correct, but the public has not been aware of the impact the poultry houses have. Mr. Cannon clarified that Mr. Hall is referencing to the larger chicken houses, to which Mr. Hall said correct. Mr. Strausburg said he provided Mr. Creamer with the Frequently Asked Questions of CAFOs. CAFOs are defined as confinement with poultry of 37,500 birds. He said the legislation that he read this morning defined a CAFO as 200 birds. Mr. Cannon asked what legislation he is referring to, to which Mr. Strausburg said the legislation that is in Council's packet. Mr. Cannon said the legislation is nothing but draft legislation for a work session. It is an arbitrary document

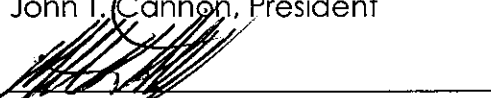
for the Council to start with. It is not a proposal from Council on how we want to move forward. He does not want to mislead the public. Mr. Strausburg expressed concerns that we may be compromising property rights by proposing for poultry purposes 202 birds as opposed to 37,500 birds. He said even with changing setbacks, you are comprising an agriculture owner's property rights. Mr. Cannon reiterated that the legislation in the packet are work session documents; draft documents. Mr. Strausburg said we need to separate facts from assertions that are not necessarily true. He pointed out that Mr. Kilmer made a comment at the end of the legislation session that there had been assertions made that were not factual. He said we are just trying to gather facts before we consider legislation. Mr. Cannon said that is what Council is trying to do as well. Mr. Kilmer said the process of changing zoning laws is going to take months, even if we start the process this afternoon, which we are not, it still has to go to Planning and Zoning and public hearing. He said the public meetings with the experts could take place at the same time as reviewing legislation. Mr. Cannon said Mr. Kilmer is right, both of these things can be done at the same time. The Council can hold work sessions while representatives from the State of Maryland come down to talk to the public. He said what is absolutely egregious is the fact that we have staff members that have been instructed not to come and discuss this topic with the County Council. He does not care if we are talking about chicken houses or chicken soup. If the Council requests a staff member to be at a work session, they should be allowed to attend. Mr. Cannon said this will be on the Council agenda again, and he would like Mr. Lenox to attend so that Council can review what the options are. Mr. Cannon asked Mrs. Harris to review what the best approach might be, to which Mrs. Harris said she would. Mr. Dodd made the suggestion that if there are any more meetings with the Executive that maybe one or two Council members should attend. Mr. Cannon said the last meeting was an impromptu with the Executive that he and Matt Creamer met with him after the MACO session in Annapolis last week. Mr. Dodd said he agreed that Council needs to move forward and that it is a knee jerk reaction. He said everyone that has spoken has made good points. He is anxious to see the secretaries from the State of Maryland. He said Council needs to have more work sessions. He does not think Council needs to meet meeting to meeting, but maybe set up a couple more work sessions throughout the month so that Council can be thorough with this. Not everyone has to attend, but we need to have more input on this topic, and Council needs to do the right thing because there are a lot of people depending on us to make the right decision.

*Signatures are on the next page.*

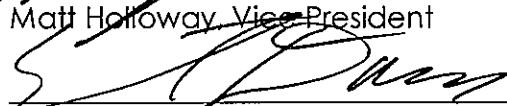
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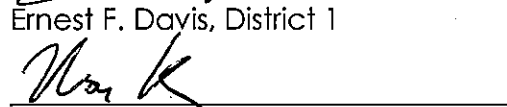
John T. Cannon, President



Matt Holloway, Vice President



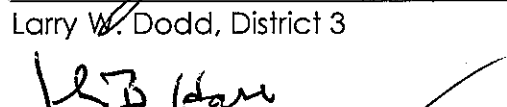
Ernest F. Davis, District 1



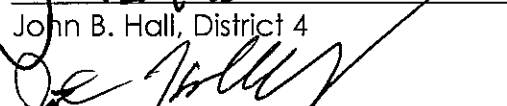
Marc Kilmer, District 2



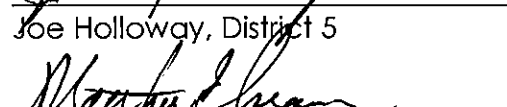
Larry W. Dodd, District 3



John B. Hall, District 4



Joe Holloway, District 5



Matthew E. Creamer, Council Administrator