

**Open Work Session
Land Use/Tier Maps/Community Sewer Systems
March 1, 2016**

Mr. Jack Lenox, Director of Planning, Zoning and Community Development, Mr. Keith Hall, Transportation & Long Range Planning, and Mr. Wayne Strausburg, Director of Administration, came before Council. Mr. Hall said there have been ongoing work session discussions on the Growth Tier Map with this Council, as well as with the previous Council. There was also an extensive public outreach in trying to find out what rural property owners thought about the implications of the County adopting a Tier Map that met state expectations. He said there was a public hearing held back in February 2013. There were elections at both the state and county levels, so it was decided to put this item on hold until the elections were over. There is now a different administration up in Annapolis, so they are coming back with the Comprehensive Plan discussion in which the Growth Tier Map is one part of the Comprehensive Plan. Mr. Hall said some of the things they have heard from both the public and elected officials is how this legislation took away Planning and Zoning authority. In addition, they heard how this affects rural property owners and the limitation of being able to do major subdivisions consistent with our own County zoning and having the state regulating how many lots we can have in the agriculture areas. Mr. Hall continued, saying he has been working with this Council to come up with some innovative solutions and looking at a hybrid program. He has reviewed with Council several Tier Map assessments. The Tier Map is mainly predicated on the County's current zoning. In addition, there is a component of it that looks at the Water and Sewer Plan as well. Mr. Hall said the draft Tier Map that has been presented to Council is consistent with the state's expectations. There have been discussions on how do we have flexibility, and how do we have local autonomy again. Mr. Hall said the question is what are we are going to do to make sure a property owner, whether in a rural or designated growth area, can develop more than a minor subdivision with onsite septic systems. Mr. Hall continued, he said he passed out a document that shows the background, principals and concerns, as well as recommendations. He would like to go over the recommendations. He said, at this point, he has presented a draft Tier Map. The draft Tier Map is consistent with the County's current zoning and Water and Sewer Plan. It meets the state's expectations for the starting point, however, we do not want to review this map as a static document; it is going to be fluid. We have to be able to make amendments to the Tier Map, though amendments will be the exception, rather than the norm. We have to have processes in place to make sure what we are doing provides the property owner with flexibility. We are trying to afford property owners, whether they are in a rural area consistent with the agriculture zoning district, or in a designated growth area, the ability to be able to request a major subdivision and that means eight or more lots. The draft Tier Map currently shows those areas as nothing more than a minor subdivision being served on an individual septic and that is not acceptable. There is not a big demand right now for new residential growth, and the Tier Map is purely limited to new residential growth. We want to have provisions for processes in place to accommodate for when those discussions pick back up in the future. Mr. Hall said what we are trying to achieve with the hybrid is the ability of a property owner to initiate a modification of an existing tier designation that restricts development served by individual septic systems to no more than seven lots. To achieve this, it is going to be based on one caveat. It is going

to be contingent upon a development proposal being received by the Planning and Zoning Department and being presented to the Planning and Zoning Commission. The applicant, hopefully with good soils, and based on current zoning density restrictions, will be able to achieve more than eight lots. If so, the designation request should be honored and granted and through that process, the applicant would move from a more restrictive tier to a less restrictive tier, without changing any of the zoning underlying the tier. The Tier Map is essentially an overlay, and it will be used as a policy document. Mr. Cannon then clarified that the 1 in 15 density would apply, to which Mr. Hall responded, yes, the zoning density still prevails. For example, if you have property in the A1 Zoning District, there are two development operations for you density wise. There is the cluster, which is 1 dwelling unit per 3 acres, or a conventional subdivision, which is 1 dwelling unit per 15 acres. Mr. Hall said those are still going to apply. He said what the restriction is removing is the ability to only being limited to ask for 7 lots. For example, if he had 60 acres in an A1 Zoning District, and he wanted to do a cluster subdivision, prior to this regulation, he could have asked for 20 lots. Mr. Hall said you also have the Health Department factor as well to meet the perk test and that is why you see these two provisions really trying to guide this discussion. He said this is still a subdivision process; this will still remain in the hands of the Planning and Zoning Commission. Mr. Cannon clarified that the County is accepting the seven lots that were mandated in the O'Malley administration, and the process is going to continue. Mr. Hall said that is something where we have no ability to change regulation. He said there are two types of subdivisions, there is a minor, which is no more than seven lots and there is a major, which is no more than eight lots. In response to this legislation, the previous County Council amended our Wicomico County subdivision regulations to take the minimum subdivision up to the maximum extent allowed by law, which is the seven lots. Mr. Kilmer said these principals seem pretty good, but we still have to draw the lines. This is the start and then Council has to figure out where the lines go for Tier III and Tier IV, asking is that correct. Mr. Hall said what has already been presented has drawn the line, as we are using the zoning map as the basis for the foundation of those lines and then getting into the difference between where you can have our designated growth areas. The difference between where they would be restricted to a minor subdivision on individual septic systems versus being able to do a major subdivision also contingent on the Water and Sewer Plan. Mr. Hall said the lines have already been drawn in the existing documents and regulatory controls. We are using those lines to try to adhere to the state regulations. At this point, if the Council is comfortable with the current zoning district as it lies, as well as the Water and Sewer Plan, which is under Council's authority, then we have the foundation and that is how they were able to produce the Growth Tier Map. Mr. Cannon asked how do the subdivisions regulations come into play. Mr. Hall said the subdivision regulation was the adjustment to the minor subdivision going up to seven lots. Other than that, subdivision is consistent with what it was before the septic bill came into play. Nothing changes. The subdivision activity in the process is under the authority of the Planning and Zoning Commission, and it is not of the authority of the Council. In prior discussions, in talking of the hybrid, we started talking about processes. One of the things discussed from a very preliminary standpoint was what role does the Council play. Going back and evaluating this again, the Council should play the same role they played as before the septic bill was enacted, which is the authority of the Planning and Zoning Commission. Mr. Hall said Council's authority is potential Water and Sewer Plan amendments. He said

what they are proposing does not change that process. They do not want to create a conflict between the Planning and Zoning Commission and County Council. They do not want the approvals of subdivision applications to become a legislative process. Mr. Hall said it goes back to the Comprehensive Plan that has a Tier Map in it. Some of those areas that are designated for growth will be annexed. Just because those properties are annexed, it does not mean we go back into the document and open up the comprehensive planning process, remove that one piece out, close the plan back up until the next time there is an amendment. Mr. Cannon asked if the prior Council was satisfied with the Tier III and Tier IV designations. Mr. Matt Holloway said the big discrepancy was just where that line is going to be. He said we have addressed that by allowing this amendment process. Mr. Matt Holloway said he also likes the thought of just following our current zoning map to determine where those lines are, so Council is not picking new winners and losers. Mr. Cannon asked where do we go from here. Mr. Hall responded they would like to go ahead and roll up this program, which is inclusive of a map and some text, which they will work through the Law Department to refine the text. They would like to roll it into the Comprehensive Plan and come back at the next work session to start working on the draft Comprehensive Plan. He said Council will see the land use plan as part of the Comprehensive Planning document, it is consistent with the Growth Tier Map. We are making sure that all the policies and programs that are under the authority of Planning and Zoning are lined up, and they are ready for dialogue and discussion moving forward on the draft Comprehensive Plan. Mr. Cannon said he was hoping that the Comprehensive Plan would make reference to the concerns they have about the septic systems that are failing. Mr. Hall said they know there are failing septic systems, they know the County has nutrient targets to meet as part of the WIP, they know they need to come up with innovative cost effective solutions, and the Comprehensive Plan is not going to put out any policy recommendations that are contradictory to that. Mr. Hall said the Comprehensive Plan has been well vetted over the five years they have been working on it with the Planning Commission. Mr. Cannon then clarified that the role of the Comprehensive Plan is not to address failing system systems, to which Mr. Hall responded, not specifically, but it is the role of the Comprehensive Plan not to discourage any future policy considerations that this County may have with regards to providing some type of community or public service to existing subdivisions that are having failing septic systems, whether in the designated growth areas or in the agricultural zoned areas in Wicomico County. Mr. Hall said that is just one of the features of our hydrology. There are areas with perched water tables and existing subdivisions were built on very small residential lots that are not compatible to be retrofitted with septic system replacements. We have to take that into consideration when moving forward, but it would be more from a policy standpoint than a regulatory standpoint.

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

Open Work Session
Poultry Houses
March 1, 2016

Mr. Jack Lenox, Director of Planning, Zoning and Community Development, Mr. Keith Hall, Transportation & Long Range Planning, and Mr. Wayne Strausburg, Director of Administration, came before Council. Mr. Strausburg said it was mentioned at the last County Council meeting that the Executive was attempting to arrange a public forum with representatives from the Maryland Department of Mental Health and Hygiene, the Department of the Environment and the Maryland Department of Agriculture. He said they have arranged that forum, and it will be held on March 22nd, at the Wicomico County Youth and Civic Center, in the Midway Room, commencing at 6 p.m. Mr. Strausburg said the second broad comment he would like to make is that during the public comments he thinks he heard an assertion that the County Executive has the unilateral authority to stop the poultry developments, principally the one on Naylor Mill Road and, to his knowledge, that is not at all the case. Mr. Strausburg said they have been working on due diligence, fact-finding, since the last County Council meeting, and Mr. Lenox has a proxy that he can present to Council. Mr. Lenox said there are a number of directions we can take. He said the public comments tonight touched on a lot of issues regarding health and public safety. He said the forum the Executive is holding is something they are hoping will bring additional information ahead for Council's consideration, which they anticipate could run parallel to the more traditional zoning concerns. He said zoning has difficulty taking responsibility for a number of the environmental issues. Environmental permitting has traditionally been covered by state agencies and health related agencies. Zoning deals better with bulk type of issues, such as how high, how short, how far back, do you need parking and to what extent. He has put together an outline on the direction that Council could consider taking as far as additional zoning requirements, if that is the direction Council would like to choose. Mr. Lenox then passed out a document titled "Poultry House Standards – Discussion Draft (3-1-16)" that contains information from adjoining communities as well as from literature, in general, that has been considered and incorporated in some other jurisdictions. Mr. Lenox said he also looked at zoning from a Wicomico County perspective. He said we have to agree on definitions. He has avoided the word CAFO as CAFO is not terminology the County uses in the County Code. He used the phrase "Poultry Houses". The zoning code, however, does not define poultry houses; it just assumes we all know what they are. He is suggesting that the definition of Poultry Houses should be defined to include all related buildings, structures, and appurtenances. This would specifically include fans, feed bins, litter storage, manure sheds, incinerators, composters, and cold storage. Mr. Lenox said if those in the industry can think of anything else that could show up in the definition, we should put it on the list because we want to make sure the active parts of the facility are being dealt with and not being dealt with casually. Mr. Lenox continued, he said we are talking about the County Code as it applies to existing and how it applies to new poultry houses, so we need to define how new regulations would apply. They are suggesting the regulations should distinguish between the existing poultry house replacement, which is something we will be seeing more of, and allow for expansion of existing house footprint. The number 10% has been suggested for discussion. New poultry houses would have to comply with new standards. The issue of road access was discussed with

Council earlier in the evening and Council has agreed to take under consideration how that would apply to poultry houses as well as large-scale development projects. Mr. Lenox said the County has dealt with this in the past sort of innocently. We wished property owners well, and we trusted they would interact with our roads responsibly. He said it is probably true that we need to take a closer look at how we deal with that situation for everyone who impacts our County roads. Mr. Lenox continued, he said there have also been discussions about how zoning relates to the Right to Farm Act. He said this evening Council made appointments to the Agriculture Reconciliation Committee, which is a committee that has not met often in the past, but when they have met, it has been fairly contentious and that has been a good intermediate step between an agriculture operation and court. That was the purpose of the committee when it was established and there is also a process of mediation to try to make sure that operations are following best practices. They are not regulatory from the standpoint of reviewing permits. They look at situations, whether it be the containment of animals in your yard or the best agriculture operation in any way it is defined. It is important, if we do move towards any zoning regulations, to recognize the right to farm in the process. In the County Code, we differentiate starting with the Comprehensive Plan, then going through the zoning, with designated growth areas. This is something Council has looked at with the Tier Maps. He said, as Council may recall, the Tier Map falls back to zoning, certainly the zoning code correlates with the zoning map, and all that is based on the Comprehensive Plan. There was discussion with the issue on what happens when agriculture and residential use have that interface. The areas are not exclusive. We have residences in agriculture areas. We also have agriculture uses in our designated growth areas. A land use map and a zoning map are two different things. One is a snap shot and one is a plan. The plan has to look out over multiple decades. When Council goes through the Comprehensive Plan to setup something, they are trying to make sense of what it is today and, hopefully, it was make sense as the community evolves, as the County grows as time passes. Agriculture in a designated growth area has been dealt with as an interim use in a lot of respects. Something that makes sense in a holding pattern, where people own property and they are allowed to get beneficial use from that, but are not quite ready in terms of development. The market is not ready, the roads are not ready, the water and sewer is not ready, so we have agriculture uses in designated development areas, but we also know that we are going to have residential and commercial. They are suggesting that Council look at those situations in a couple of different ways. The standards in the predominantly agriculture district would be different than the standards when you get closer to areas that we know will be developed in the future. Mr. Lenox continued; he said the standards that Council has seen in other documents establish a vegetative buffer. It is probably best not to just do that along the road, but do that in a way that surrounds all the active portions. Mr. Lenox said he is going to discuss a little bit later what a vegetative buffer is, but it is one thing to see what a vegetative buffer looks like now and then see what it will look like in 10 or 20 years, so we need to have some standards. They have looked at setbacks from legally established residential dwellings not on the property. He said the family farm is one thing. The person next door has to be considered differently. There are a couple of ways to go with that situation. One suggestion is a 400 foot setback from a dwelling. There are some other standards that get a little stricter that Council can consider as an alternative; 500 feet is being used as well with an additional setback if the fans are blowing towards the house, which is something Council will want to

consider. Mr. Lenox continued, he said we have heard suggestions about the separation of dwellings. One of our neighboring communities has identified, schools, churches, nursing homes, daycare centers, mobile home parks, and subdivisions of 10 or more homes. Discussions from the health standpoint seems to suggest that additional setbacks from those would be a good thing since that is the sensitive population that Council is hearing about that might be particularly susceptible, if there are any impacts at all. In speaking of minimum setbacks, one regulation says road, something else says public road. They defined it as State, County, City or Town maintained road. He said we are not just dealing with the metro core. We are dealing with small towns that have growth areas around them, so we may be facing that as well, so we would define public road. The standard setback is a 100 feet from all property lines. Mr. Lenox then presented a copy of the zoning map and said any areas of color are designated growth areas. The designated growth areas are not just the metro core, and it is not just around the cities and towns, it also around the rural villages. The color grey is a municipality, so it is not subject to the proposed regulations. In speaking of standards for the designated growth areas, Council should look at the minimum established for agriculture as well as different setbacks from property lines, and then we have the suggestion of berms. If the applicant is near a residential neighborhood, in an area that the County knows will grow, should we incorporate earthen berms. Mr. Cannon asked Mr. Lenox about the reverse setbacks people have been talking about. Mr. Lenox said they could incorporate the term reverse setbacks and propose setbacks for new dwellings and setbacks from agriculture use. Mr. Lenox asked if Council is talking about just poultry, poultry of a certain size or agriculture use; stating that would have to be defined. Mr. Joe Holloway said, if you just use agriculture, it could be anything built in Tier IV. Mr. Lenox said that would be rather extensive, which is why they warn people that we are an agriculture community and there may be things associated with agriculture that may bother them from time to time. Mr. Joe Holloway said that is what people sign when they purchase a home in the agriculture community. Mr. Cannon said in regards to his question about reverse setbacks. He said there may be a situation where you have a planned development, how do you make sure you are establishing some assurance on the property that does not have any buildings on it at that time. Mr. Cannon said in other words, if you have a property line with a building close to it, we are proposing a certain degree of setback, but if that building is not there yet, but the property line is, that allows the chicken house to be much closer. In his terminology for reverse setback, it is what do you establish for a property that is not there yet. Mr. Lenox said you could impose the exact reverse of what has been presented. You could require them to be x number of feet from the poultry house. Mr. Lenox said if you are looking at a development, large parcels out in the agriculture district, and the adjacent property is coming in for a development plan, you will most likely have the area available. However, if there is an individual lot next door and that is all the man owns, you do not want to make his lot unbuildable, so we need some flexibility. Mr. Matt Holloway asked if this would pertain to subdivisions, to which Mr. Strausburg said Council would have to look at platted subdivisions. Mr. Creamer mentioned we could exclude existing lots of record. Mr. Lenox said he would like to discuss the detailed landscaping plans. He is not an expert, so they would like to get some input from those who are in the landscaping business. What is being presented has been borrowed from an adjacent community, but it is a petty detailed layout. It also requires maintenance. Mr. Lenox said things happen, storms occur, so they would be required to replace the

vegetative buffer. Mr. Matt Holloway asked if there would be a separate version of the vegetative buffers for inside the designated growth areas that incorporates the earthen berms in the design or would it be a subsection on what is being presented. Mr. Lenox said he envisioned the berms being defined with the landscaping and not separate from that. He said they would have to modify what is being presented. Mr. Matt Holloway suggested that one section be for A1 Agriculture and one section for designated growth areas. Mr. Joe Holloway sketched an illustration of a farm and a county road. He said if someone owns lots along the road, say six lots, and there are no homes on the lots yet, and someone wants to build poultry houses, he then clarified that the poultry houses only have to a certain distance from the County road. Mr. Matt Holloway said and 200 feet from property lines, if it is in a designated growth. Mr. Joe Holloway said he is thinking about this in two ways. We need to protect the landowner that is going to be building the houses, but we are also protecting the farmer in the future from complaints. Mr. Joe Holloway then asked how can we adjust property that is not built on, but has the right soils to be built on. Mr. Matt Holloway asked if Mr. Joe Holloway was picturing those being existing lots of record. Mr. Joe Holloway said either existing lots of record or buildable lots. Mr. Hall said he thinks you have to distinguish they are existing lots of record. Mr. Creamer said that is what he was talking about, and Mr. Cannon said that is what he was calling a reverse setback. Mr. Joe Holloway said he was thinking a reverse setback was if the chicken houses were already there, people could not build close to them. Mr. Joe Holloway asked how do we approach that situation. Mr. Lenox said this has been worded as separation from existing dwellings and now we are suggesting separation from potential dwellings, and Mr. Creamer added only on recorded lots. Mr. Joe Holloway said he has heard from some people it should be 400 feet from any property line, which is tough because there are different types of property that may not be built on, such as agriculture land preservation and forest conversation, asking if there is a way to identify those types of properties. Mr. Creamer said the County has all that information on maps. Mr. Lenox said it could be 100 feet if the property was in forest conservation or an agriculture easement. Mr. Kilmer said Mr. Lenox discussed buffers all the way around the property, but if the property is bordering forest conservation, it would not necessarily make sense to require a buffer between the house and the forest. He said perhaps only in the agriculture district asking is there a way to request a special exception, if these rules do not make sense, and come before the Planning Commission. Mr. Creamer said that does not need to be a special exception that could be written right into the regulations. He said you can define setbacks in all the categories of land that Mr. Joe Holloway was talking about. Mr. Joe Holloway said, when we do this legislation, he would like to see the whole document subject to special exceptions because there are many circumstances that could affect the livelihood of the farmer or the people that own homes. Mr. Joe Holloway said when he says livelihood he means quality of life. Mr. Creamer said he may want to consider that in the designated growth areas, but a better solution would be to have a well written code because every time you have a special exception, you will have a difficult time completely eliminating subjectivity. Mr. Lenox said going back to Mr. Kilmer's question on buffers, in the first paragraph, under vegetative requirements, it says a vegetative buffer may not be required if sufficient vegetation already exists. Mr. Lenox said we can add to that about the adjacent property. Mr. Joe Holloway said when you are talking about fans, the technology in poultry houses changes quit often. He said the poultry companies may come along two years from now and tell the people that the

fans may do better if you put them on the other side of the poultry house. Mr. Joe Holloway said he does not know what the County would do in that situation. Mr. Matt Holloway asked how does Council feel about the 400 feet setback versus the 500 feet setback and, if the fans are facing away, then 600 feet. Mr. Cannon said he thinks Council needs time to review the proposed regulations. He also thinks Council should go on location and see exactly what 100 feet or what 200 feet is. Mr. Cannon said a gentleman spoke tonight about poultry houses on Old Frutiland Road. He said there are some behind the house and then there are some a good distance away, but he cannot say what the distance is in terms of feet, and he thinks Council needs to know that and feel comfortable with it. Mr. Strausburg suggested to go on any County land and flag it 400 feet and that will give you the bearings. He said Council may have difficulty trying to get on private property doing that. Mr. Creamer said Council could use a range finder to determine distance without going on private property, noting that he has one that is accurate out to 1,000 feet. Mr. Strausburg said what does 400 feet mean, what does 400 feet look like, is what Council needs to see. Mr. Cannon said he has a phone app that can tell the range. You can stand in the middle of the street, and it will tell you how far as long as you have a landmark and the mapping system is current. Mr. Strausburg said the County has plenty of land where they can demonstrate what that range looks like. Mr. Joe Holloway suggested that Council arrange a field trip and visit a couple of poultry farms. Mr. Cannon said that is a good idea, and he will try to put something together. He said, in the meantime, he would like to get the information presented in a legislative bill format and then it would be easy to just change the numbers if they need to. Mr. Lenox said he could have the legislation prepared. Mr. Lenox said he presented the points that needed to be discussed, but the next step is to put it in legislative form. Mr. Joe Holloway asked for clarification that the legislation bill has to go to the Planning Commission. Mr. Cannon said he would like it in legislative bill format, so they have an idea of what it will look like, how all the puzzle pieces will come together. Mr. Lenox said he recommends that Council go over the legislative bill and be fairly comfortable with it, subject to public hearing, and then submit it to the Planning Commission. Mr. Lenox then asked Mr. Kilmer how he feels about that process as he also serves on the Planning Commission. Mr. Kilmer said there will be time for public input both before the Planning Commission and before Council. Mr. Kilmer said, if we are going to talk about increasing the setbacks to 400 feet or 500 feet, we should talk about that more in the designation growth areas because we just talked about tier maps and said this is where we are going to be focusing on subdivisions. He said we need to try to make things align, so in the designated growth areas it is easier to build homes and harder to build chicken houses and in the agriculture land it is easier to build chicken houses and harder to build homes. There is a converse in those areas. Having regulations in these areas will have more of a natural effect, with chicken houses out in the agriculture lands and away from residences. He would encourage these regulations in the designated growth areas. He said that may alleviate the problem of having large chicken houses near 10 subdivisions. Mr. Joe Holloway asked what do we do when there is a subdivision like out on Morris Road that is not near anything. Mr. Kilmer said there are farmers that do not want any houses out in the agriculture land to avoid that type of situation. Mr. Dodd asked if there is a way to find out how many chicken houses are being rebuilt on current property versus new chicken houses. Mr. Lenox said they have not had any building permit applications for rebuilding. He said they would know when they submit for stormwater and the state

would know when they submit for sediment control. Mr. Lexnos said he will find out more about the process for replacement of chicken houses. Mr. Cannon said someone mentioned that CAFOs were being built without even having a permit from the State of Maryland asking how is that possible. Mr. Strausburg explained that the CAFO permit is not required until you want to load birds in the poultry house, so it seems counter intuitive that someone would make that investment, build that development without a permit. Mr. Strausburg said to his knowledge there is not an application for a CAFO permit for the proposed development out on N. West Road. Mr. Cannon clarified that the only time they can get a CAFO permit is when they are ready to load the birds in the poultry house. Mr. Strausburg responded that is correct, they cannot loan birds unless they have a CAFO permit. Mr. Joe Holloway said they have also heard that they have loaded birds without a CAFO permit. Mr. Strausburg said that is a state regulatory issue.

Signatures are on the next page.

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John T. Cannon, President



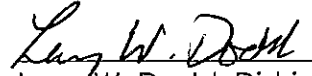
Matt Holloway, Vice President



Ernest F. Davis, District 1



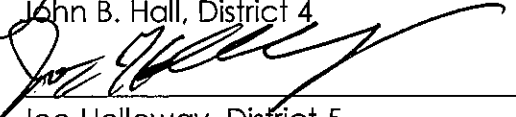
Marc Kilmer, District 2



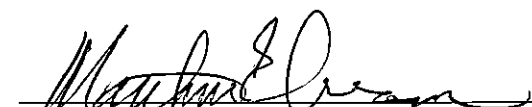
Larry W. Dodd, District 3



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Matthew E. Creamer, Council Administrator