

**Open Work Session  
Poultry Houses  
March 15, 2016**

Mr. Jack Lenox, Director of Planning, Zoning and Community Development, and Mr. Wayne Strausburg, Director of Administration, came before Council. Mr. Lenox said he provided Council with a document titled "Poultry House Standards-Discussion Draft (3-15-16)," which is the updated version from what was discussed two weeks ago (March 1, 2016). He said at the last meeting he went over an outline of considerations if Council were to look at additional regulations. He said the outline includes questions and suggestions made at the last meeting, which has been identified in bold and in brackets. It appears, in retrospect, that most of the attention was given to the landscaping section, so there are some additions in that section. They have not made any changes to setbacks and separations as they are looking to Council for guidance for those and any other issues Council would like. Mr. Cannon asked Council members if they have any questions or recommendations. He said, at the last work session, part of the discussion was tending towards what distances the setbacks Council would like to see established, if any. It was suggested that the Council members take the opportunity to visit some of the local chicken houses, so they can get an idea what the distances look like at 200', 400' or 500', and what distance would be best to address Council's concerns. Since that time, Council has had that opportunity, so he is looking to Council members to see if they are pleased with what has been presented or if they have any ideas. Mr. Joe Holloway said the earthen berms are going to be cost prohibitive. He said most of the dirt that is coming out of the ponds, they are using for pads. He said a tandem load of dirt is about \$275 or \$250, and it would take thousands of loads to make an earthen berm depending on where it had to be built and how long they had to be. Mr. Hall said he would like to see a 500' setback from the property line which will eliminate the need for the 200' setback from the centerline of a state, county, city or town maintained road. He thinks the 500' setback makes it more reasonable all the way around. Mr. Cannon said we have the Agriculture Rural District and the Designated Growth Area, so there are two different areas to possibly set different parameters. He then asked Mr. Hall if he is taking about a 500' setback in the Agriculture District or the Designated Growth Area, or both. Mr. Hall said he would like to see the 500' in both. Mr. Cannon then clarified that Mr. Hall would like to see the 500' setback from the property line as opposed to the dwelling, to which Mr. Hall responded that is correct. Mr. Joe Holloway asked if Council members could get a chart that shows how much land it will use for a 400' or 500' setback on a typical farm, say with four poultry houses around it. Mr. Strausburg said it would depend on the configuration of the parcel. Mr. Joe Holloway said that is correct. He said 400' is a lot and 500' is more, and he is wondering if it is going to take a lot of property that poultry houses would be allowed to be built on off the market. Mr. Kilmer said he is concerned as it applies to Mr. Halls suggestion of the 500' in the A-1 Agriculture District and Designated Growth Area. He said part of the strategy is to have stricter regulations in the Designated Growth Area to protect the residents who are there. It does not make sense to him to have strict protection in the Designated Growth Area and the A-1 Agriculture District. He said part of the secondary effects might be to have stricter regulations in the Designated Growth Areas to accommodate residents, so it may drive some of these poultry houses to the Agriculture District. He said if you have setbacks in

both, it reduces that incentive. Mr. Joe Holloway said he noticed when he took his tour that not every farm is the same. He said he went to one farm that basically did not need any buffers or setbacks because the poultry farm was built on a small rise in the middle of a swamp. Mr. Joe Holloway then asked Mr. Lenox how can Council devise the regulations so that none of the regulations are set in stone, so the buffers or setbacks can be reviewed by a committee. He said his thoughts are the Right to Farm Committee because that is what the County has and that is the purpose of the committee. If someone cannot build because of setback restrictions, they are being denied their right to farm. He said every farm is going to be different depending on the layout of the land and the trees. There should not be a need for buffers if there is a forest next to the property. There should not be setbacks if it is next to land that is designated not to be built on. Mr. Joe Holloway asked what can Council put in the legislation that makes the regulations flexible. Mr. Lenox said they tried to include some flexibility in the landscape vegetative buffer requirements. They also added additional language that indicates "A vegetative buffer may not be required if the immediately adjacent property is subject to a recorded open space or agricultural easement." Also, a vegetative buffer may not be required if sufficient existing vegetation exists on or adjacent to the site. Mr. Lenox said there are some incidences where forest stand on an adjacent property. He said they can add that flexibility with the landscaping. He suggests that Council be specific as possible for setbacks. He said if a setback is in place from a property line or street line Council should indicate unless . . . then state the reason. He said he thinks prospective property owners need to have some certainty in that these are the reasonable standards. This goes for the adjacent property owners as well so they know what to expect. Mr. Lenox said as far as having a committee look at this on a site-by-site basis, he would caution Council about making it too discretionary and then open up an appeals process from there as well. He said that has not been the role of the Agriculture Reconciliation Committee in the past. The committee was established to handle complaints. They are an interim step before the complaint goes to Circuit Court. He said that is not the committee's role currently, so it would be a significant change. Mr. Joe Holloway said he understands that, but a person who owns a piece of land, if they want to build a poultry house on it, and, if they were denied that request, then that would be a complaint. Mr. Lenox said that is true, if Council wanted to leave open that option for varying setbacks. For example, Council picks a setback, say it is 100', then there is something unique about a piece of property, the property owner could go to the Board of Appeals and apply for a variance. He said the criteria for variances are hard to meet, but Council could write in a special exception procedure to vary setbacks. Mr. Joe Holloway said he likes that idea. Mr. Lenox said that process would go the Board of Appeals for approval. Mr. Lenox said it would not be a special exception for the use as a whole; it is a special exception to vary a dimensional requirement. Mr. Joe Holloway asked the Council members how they felt about the suggestion. Mr. Hall said he would be curious to see how it would be written. Mr. Lenox said you have setbacks that generally apply under general circumstances and then leave in a provision for unique special circumstances associated with that property. Mr. Joe Holloway provided an example, he said there are two parcels of land, a father lives on one parcel and a son lives on the other parcel. The son wants to build poultry houses, but the setbacks restrict him because of his father's farm, but his father says he is okay with him building the poultry houses. Mr. Lenox said there is also situations where a family farm may chose to put a particular

part of their farm under different financing mechanisms, so you have the traditional family farm setup, the house and the poultry associated with it, and you may have a lot line. He said that is a circumstance you may want to have some accommodations for, because that is just for business purposes. Mr. Cannon asked if it is necessary to write that process into a legislative bill then confirming that is the current process for special exceptions. Mr. Lenox said not for a special exception for a setback. Mr. Cannon said maybe he is not using the right terminology, then asked if there an appeals process in place. Mr. Lenox said there is terminology in place to allow for variances. However, the criteria for meeting a variance is not just a decision of do you like it or do you not like it, a hands up or a hands down. The Board of Appeals has to make certain findings and findings for variances are very restrictive. If it is Council's intent to allow flexibility, the trick is to put it in the County Code that there is a special exception to allow variances. Mr. Cannon stated if Council puts in a special exception to allow for any variance, the County is going to have liability day in and day out. He said everyone is going to say there was favoritism given in one instance and not in another. He thinks if the County gets into such gray areas, we are opening ourselves to incredible exposure for liability. Mr. Lenox said he suggests that Council makes it as specific as possible as far as your expectations. Mr. Kilmer said this is how Planning and Zoning operates. It is not a new process as they talk about special exceptions for certain things. Mr. Kilmer said this happens on a monthly basis in Planning and Zoning when it comes to a store or something like that, but not for farms. He said there is ample precedence for this. Mr. Cannon said he thought Mr. Lenox said we could not get into special exceptions. Mr. Lenox said he cautioned the use subject to special exceptions. Mr. Lenox said hearing the request for how to craft some flexibility for setbacks, you could put that provision in the County Code as a special exception to vary the setback if you meet certain criteria. Mr. Lenox said he would ask Council to be specific about the criteria. Mr. Lenox said he would like to respond to Mr. Kilmer's observation about the Planning and Zoning Commission, the city code is setup so when the city looks at the Comprehensive Development Plan, it allows the commission to modify standards. The County could do something similar. Mr. Cannon asked if that provision could be added to this poultry legislation, to which Mr. Lenox responded, yes. Mr. Kilmer said on the vegetative buffer issue, he is in favor of the three rows of plants. However, he had some people express concerns about the regulations specifically saying that this row has to be a certain type of planting and this row has to be a certain type of planting. Someone made the comment that deciduous trees do not have leaves half of the year. He does not think the County should micromanage what the grower can plant. He said the furthest row for evergreen trees is a good idea, but for the other two rows, there might need to be some flexibility because what works best for the property may not match the plants identified. Mr. Kilmer continued he said it is good to identify the requirement for the three rows, but for the first and middle row, he does not think it should spell out what type of plant should be there. Mr. Lenox said the criterion was borrowed from a nearby jurisdiction and that is why it was presented to Council for discussion. Mr. Lenox said the additional flexibility is appropriate, and we would probably have the landscape plan done by a qualified professional. There are folks out there that can provide technical advice on what the best type of plants are good for certain areas. We could leave that flexibility there to make sure that a professional does that plan. Mr. Davis said he recalls, at one of the chicken houses he visited, it was mentioned that they had someone that does research on plants to make sure they are able to provide the

service they are looking for. Mr. Lenox said Delmarva Poultry Industry has someone they work with, and he is sure there are others that are qualified. He said the County could incorporate that sort of standard. Mr. Creamer asked to go back to the other question, which he thinks there was a path identified. He asked to read back the path he thinks Council is considering taking. Specifically to poultry houses in the Agriculture District, Poultry houses are a use by right that is a permitted use in the Agriculture District. Council is talking about allowing a special exception in the Agriculture District for poultry houses and the special exception would allow variances for setbacks for specific and specified circumstances. Mr. Lenox said that is correct, his only clarification is if the Council only wants to limit that to the Agriculture District, how do we deal with Designated Growth Areas. Mr. Creamer said he is trying to get closure on the Agriculture District, then we can debate if it should be more restrictive in the Designated Growth Areas. Mr. Lenox said as it pertains to the Agriculture District that is what was discussed earlier, and it is consistent with Planning and Zoning practices. Mr. Strausburg said he would like to go back to Mr. Joe Holloway's comments on the setbacks. He just did some quick math and if you took a 20 acre farm, that is 871,200 square feet. To make the math simple, that is 1,000 feet by 870 feet, so if you have 2,000 feet on two property lines and 871 feet on the other two property lines, that is 3,742 feet of property line. If you take a 500 feet setback on all four property lines, that is 438,371 square feet, rough math that is 10 acres, so you have taken a 20 acre site, and you have reduced the development capability to 10 acres. He just wanted to do the math to give everyone a perspective on how we propose to establish setbacks. Mr. Joe Holloway said the measurements may be fine, but it depends on how the land is laid out. You could have poultry houses on one corner and have enough setbacks from the road or other houses. If you do not have flexibility in the regulations, it is going to lock the owners to building the poultry houses right in the middle of the property. Mr. Strausburg said he wanted to get a ballpark for a typical 20-acre parcel, if we do a 500' setback, assuming it is fairly regular in terms of its configuration, on how much density is being lost. Mr. Creamer said, at one of the farms he visited, the setbacks were intended to be further back towards the rear of the property but that turned out to be hydric soils and could not be built on, so the buildings were moved closer to the road. He said the soil types may create restrictions. Mr. Joe Holloway said that is another reason why we need flexibility. Mr. Kilmer said it makes sense to have reduced setbacks in the Agriculture District outside the Designated Growth Areas and not have special exceptions. He said you are most likely not to have special exceptions inside the Designated Growth Areas. Inside the Designated Growth Areas there is not as much forest or preserved land as there is out down Nanticoke Road. It makes sense to have reduced setbacks in the Agriculture District, outside the Designated Growth Areas and then maybe in the Designated Growth Areas have the 500' setbacks. Mr. Dodd said he has been trying to educate himself and that he why took the poultry farm tour, and he has been doing a lot of reading and listening. He asked if the poultry houses/CAFOs have to go before Planning and Zoning for approval, to which Mr. Lenox responded, no. Mr. Dodd said he wonders if that should be a thought to consider. He then said he was told that one of the CAFOs in the pipeline is being built in the metro core area asking Mr. Lenox if that is correct. Mr. Lenox said there is one in the Designated Growth Area and that one is in the metro core. Mr. Dodd asked if that is appropriate. Mr. Lenox said zoning allows poultry houses if you have 20 acres in that particular district. Mr. Dodd asked if the manure sheds for storage are lined or are they built with a

concrete floor. Mr. Joe Holloway said they put a clay floor in them. Mr. Cannon said he thinks the manure pad outside is cement. Mr. Kilmer said when he went out on the poultry farm tour, the farmer they talked to said the shed was lined. Mr. Dodd asked if the shed was lined with clay. Mr. Kilmer said he understands that there was something underneath. Mr. Dodd asked who is going to look at the plans to make sure that are within the designated setbacks, buffers, etc., to which Mr. Lenox responded, his office, as they deal with both zoning and building permits simultaneously. Mr. Dodd said he has been reading that there are 100 permits in the pipeline asking Mr. Lenox if that is true. Mr. Lenox responded certainly not in his office. He understands that there is a large number of permits with the state for either erosion and sediment control or stormwater. Mr. Dodd clarified that Planning and Zoning has not seen any permit applications, to which Mr. Lenox responded, no, right now they do not have a single application pending. The one talked about the most (N. West Road) is in redesign. Mr. Cannon said getting back to the outline, starting with the Agriculture Rural District, the first item on the list indicates, "A vegetative buffer, defined as attached, around all active portions of the poultry operation." He said Mr. Kilmer has suggested the deciduous trees are not necessary. He would like to get Council's opinion on that as he would like Council to make some decisions. Mr. Cannon said Mr. Lenox had mentioned that the language was borrowed from another jurisdiction. He said there must have been some reason as to why they put the terminology in there, which he had never heard of before until he read it, and he had to look it up to see what it was. Mr. Strausburg said the leaves come off annually. Mr. Cannon said maybe they want it to be pretty in the fall. He is curious as to why they used that terminology and why they picked that particular type of tree. There may be a very good reason why they did that, maybe root structures, but he has no idea what it might be. Mr. Cannon asked if Council is okay with the three rows of vegetative buffers and the distances that have been established between each of the buffers. He is assuming the distances are listed as more of a way to maintain the health of the trees and ferns, but he would like to make sure Council is okay with what has been proposed. Mr. Joe Holloway said the farmer need to make sure the trees are available to be purchased. Mr. Kilmer said he would like to suggest to take out letters A and B, under number 1, which would give some flexibility for the three rows. Mr. Hall said he would like to hear Mr. Matt Holloway's opinion on this topic. Mr. Matt Holloway said a lot of the older buffers consist of multiple rows of evergreens, but you do not see many with deciduous trees involved. He would like to know why they decided to put deciduous trees in the regulations. He agrees with Mr. Kilmer in that we should take out the language about the mandatory deciduous trees. Allowing someone to plant three rows of evergreens would be just as effective. Mr. Cannon suggested the language for the middle row be changed from "shall" to "may" in case there is some reason for the deciduous trees. Mr. Kilmer said we could just remove letters A and B as we do not need to include "may" as the word "may" is implied. You can have three rows of plantings, just make sure the last row is evergreen trees. For letters A and B, they would plant shrubs, evergreens or deciduous trees. Mr. Joe Holloway asked why was this language put in the regulations. He said there is a farmer near him that has these trees. They have evergreens and deciduous trees. Mr. Joe Holloway asked Mr. Bill Satterfield, who was in the audience, if he knows why the terminology was added. Mr. Satterfield went to the podium. He said the answer is, no, he does not know, but they have on their staff a fellow whose full-time position is to get buffers planted on chicken farms, and he has 40 years of experience in

landscaping, and he has been doing this with DPI for about 10 years. He said there are reasons why deciduous trees can be put in and are good. He said there are also tall grasses that will grow back year after year and will grow taller than him in one season. They do an excellent job in visual sheltering and containing the dust, feathers and odors. He said there are reasons why trees are planted on certain properties and some of it has to do with the growers preference, perhaps he wants to see flowering trees in the spring, maybe he does not care. He would not be too specific on the types of trees or plants in the buffer because it may not meet everyone's needs. Mr. Dodd said the other day when he took his tour there was some discussion on evergreens, and he asked about fast growing trees because some of the evergreens take several years to grow. Mr. Joe Holloway said when they get tall, they fall down and you have to start over and replace them. He said maybe that is why the deciduous trees are put there; maybe they do not blow over as easily as the evergreens do. Mr. Joe Holloway said you can get 10 to 15 years out of the Leyland Cypress trees, and then they have a tendency to blow over. Mr. Dodd said that is his question. He wonders if the deciduous trees are the fast growing trees. Mr. Cannon clarified that Mr. Kilmer is suggesting that in number 1, **there would remain a minimum of three staggered rows of plant materials, then eliminate letters A and B, and just say "the row furthest from the poultry operation shall consist of evergreen trees. Mr. Kilmer said that is correct as that will give flexibility to the other two rows.** Mr. Cannon asked Mr. Lenox if he would find out what the reason is for having A and B, then Council can discuss it again if necessary. Mr. Dodd asked if Council should consider Mr. Satterfield's suggestion about the tall grasses. Mr. Kilmer said they would be allowed to use the tall grasses. We are going to require a buffer and then they can decide what works best for their type of soil. Mr. Cannon said right now we are saying that there has to be three rows and the outer most row has to be evergreens. Council will wait for Mr. Lenox to get details that are more specific. Mr. Cannon said looking at Item 2, under the Agriculture-Rural District, it states "400' setback from any legally established residential dwelling". He said that Mr. Hall said he would like to see a 500' setback from a property line, which would supersede what is written, asking what is Council's preference as far as that is concerned. (400' from a dwelling vs. 500' from a property line). Mr. Cannon said if you establish the setback from a property line, you do not have to worry about where that dwelling might be, and it is much easier to identify. We would not have to worry about reverse setbacks. Mr. Kilmer said he would like to keep it 400' setback from any legally established residential dwelling in the Agriculture District outside the Designated Growth Area. He said the County should not have the same standards for where people are going to be as opposed to where farms are going to be. Mr. Cannon asked what happens if there is no residential dwelling. Mr. Kilmer said then it is the 100' property line setback. Mr. Lenox said they added the language "or approved Health Department dwelling location," which was Mr. Joe Holloway's suggestion as there may be subdivided lots that have not been built on yet. Mr. Joe Holloway said you have to protect those rights. Mr. Cannon clarified that Council has agreed to a 400' setback from a legally established dwelling and 100' setback from all property lines. Mr. Cannon then asked about the distances involving fans. It says 400' setback from a dwelling but a 500' setback if the exhaust fan is facing that general direction. Mr. Joe Holloway said he does not know if the exhaust fans would have that big of an impact as they blow down towards the ground. He asked if the fans are much of a concern to make a change to the setbacks, or is it the noise that the fans make that Council is concerned with. Mr. Kilmer said that might be

something to have in the Designated Growth Area that specifies a greater setback depending on the direction the fans are facing. Mr. Cannon said Mr. Joe Holloway said the fans blow down. He did not get a chance to see that in action, so he does not know to what degree odors are created or dust and particulates are emitted. Mr. Dodd said the ones he saw were located in the back away from the main road. He did not see any residential dwellings around them. Mr. Kilmer said he thinks that is the practice, but it would not hurt to have it in the Designated Growth Area. Mr. Cannon asked if Council should maintain the 400' from a residential dwelling and then asked if the reference to setbacks for fans relating to, schools, churches, nursing homes, etc. will be an issue in the Agriculture District. Mr. Matt Holloway said we should have those setbacks in the Designated Growth Areas. Mr. Cannon said the suggestion has been made that for number 2 the only item that remains is the first sentence. Mr. Cannon said item number 3, under the Agriculture District, it indicates, "Minimum of 200' setback from the centerline of a State, County or Town maintained road." asking if all Council members are in agreement with that sentence. He then asked if everyone agrees to the 100' setback from all property lines, shown as number 4, under Agriculture District. Mr. Hall asked how can you have a 200' setback from a centerline of a road, but only a 100' setback from all property lines. Mr. Creamer said, in practical application, the more restrictive applies. Mr. Joe Holloway said he would be fine with more than 100' setback from the property lines as long as there is some flexibility in the bill. Mr. Cannon asked Mr. Joe Holloway what he would like to see for the setback, keeping in mind that this is for the Agriculture District. Mr. Joe Holloway asked if 200' would be too restrictive. Mr. Matt Holloway said the 500' setback took 10 acres out of 20 acres, so you are looking at a loss of 4 acres for a 200' setback. Mr. Joe Holloway said to please keep in mind he is saying as long as there is flexibility in the legislative bill for people to ask for a special exception. Mr. Cannon said he likes the idea of 200' because we also want to try to protect property values of the surrounding agriculture areas, not developments, but maybe the person, who owns the farm next to the chicken house, would want a little more distance, and if you own the property next door, you may feel restricted as to what you can do even with your own house. It may provide protection for the surrounding farmers. Mr. Dodd clarified that Mr. Cannon is suggesting changing the minimum setback to 200', to which Mr. Cannon responded, yes. Mr. Hall said it might make things easier to eliminate number 3 that indicates 200' setback from a centerline and just have the 200' setback from the property line. Mr. Lenox said that would work. Mr. Strausburg said the 200' setback in the example he gave would change it from 10 acres to 4 acres of unusable land area. Mr. Joe Holloway asked Mr. Culver his thoughts on the setbacks. Mr. Culver said he thinks the 100' setback is too small because once you put in the buffer zone, you can have trees that can fall on a house or on a road in ten years. He likes the 200' better, he would not want anything shorter than 200'. Mr. Dodd asked if Council is striking the 200' setback from the centerline of a road. Mr. Cannon asked Mr. Lenox if that would suffice. Mr. Lenox said if you say 200' from all property lines that would include all right of way lines. Mr. Creamer asked if the 400' setback from a dwelling would trump the 200' setback from a property line, if there is a dwelling, to which Mr. Lenox said that is correct. Mr. Creamer said if there is a dwelling then it is 400' but, if it is an empty field or forest, then it is 200'. Mr. Kilmer said regarding the special exception provision that Mr. Joe Holloway talked about, asking if Council should talk about reverse setbacks as that has been important to some people. Mr. Joe Holloway said a person would have a chance to oppose it, if they have to come in for

a special exception. Mr. Lenox said the property owner would be notified; they would have an opportunity to be heard. Mr. Cannon said the most the reverse setback is going to do is compromise the 200' distance. Mr. Cannon said regarding reverse setbacks, if a person wants to put a development there, it is going to be up to the developer if he wants to be any closer or not. This restriction is on the poultry houses. The developer can put his house within 300' of the poultry house if he really wanted to do that. **Mr. Cannon said Items Nos. 3 and 4 will be combined so there is just the 200' setback from all property lines.** Mr. Cannon asked, in looking at the Designated Growth Areas, are we going to include the 500' setback from all schools, churches, nursing homes, etc. in the Designated Growth Areas, to which several council members responded, yes. Mr. Matt Holloway said we need to get rid of Item No. 1 listed under the Designated Growth Areas. **Mr. Lenox said you need to get rid of Item No. 2, under the Designated Growth Areas because that issue would be covered under Item No. 1.** Mr. Cannon clarified that they would leave Item No. 1 listed, to which Mr. Lenox responded, yes. Mr. Cannon said what about the language regarding the exhaust fans that was listed in the Agriculture District section. Mr. Lenox he is not sure why he worded that language the way he did because in the worst-case the fans are facing towards a dwelling and, in the best-case the fans are facing away from a dwelling. It would seem that if the fan is facing away from a dwelling, the setback should be 400' or the 400' does not mean anything because all the poultry houses have exhaust fans. Mr. Cannon said he read the outline as 400' is what the County is establishing, but if there is a fan involved, it is going to be 500' and 600' if it is facing the dwelling. Mr. Lenox said we know that all poultry houses have fans. Mr. Cannon said not all sides have fans, so if the side with the exhaust fan is facing towards a dwelling it is 600' and, if it is facing away from a dwelling, it will be 500'. Mr. Joe Holloway said the chicken house would have to be 100' wide. Mr. Cannon asked if Council wants to drop that section down into the Designated Growth Area and keep the wording of the exhaust fans as 500' facing away and 600' if not. He said there is also the 500'/600' setback from schools, churches, nursing homes, etc. Mr. Matt Holloway asked if that is based on the direction the exhaust fan is facing. Mr. Lenox said no it is providing a setback from schools, churches, nursing homes, etc. He said Council established a 400' setback from the dwelling, so there should be a setback from those too. Mr. Lenox said you could have the 400' setback for the residential dwelling to also include schools, churches, nursing homes, day care centers, mobile home parks, or subdivision of 10 or more homes. Mr. Lenox said it would be a 400' setback and then an increase setback depending on the direction of the exhaust fans. Mr. Kilmer asked Mr. Lenox if he is talking about the setbacks in the A-1 Agriculture-Rural District or the Designated Growth Areas. Mr. Lenox said there should be setbacks if there is an existing school, church or nursing home in the Designated Growth Areas. Mr. Kilmer asked are we talking about applying it to both or just the stricter setbacks in the Designated Growth Areas. Mr. Lenox said the County has those types of things in the A-1 Agriculture District now. Mr. Creamer said if you are going to afford that level of protections now to those land uses because they are those land uses, the protection would be the same as if it were in the A-1 Agriculture District or in the Designated Growth Area because of the need for the additional protection of that land use. Mr. Lenox said if you are going to give that kind of protection to a single residential dwelling, then we have to give it to the others as well. Mr. Lenox said the County has daycare homes out in the County, certainly schools and churches everywhere. Mr. Cannon said we have established the same regulations



in the A-1 Agriculture District as we have in the Designated Growth Areas; everything is the same. Mr. Creamer said in the Designated Growth Areas, there are berms required. Mr. Kilmer said that somewhat defeats the purpose as we need to have stricter rules in the Designated Growth Area to protect it. Mr. Lenox said you could increase the setbacks in the Designated Growth Areas. Mr. Kilmer said he would like to stick to what was suggested before and have the stricter setbacks in the Designated Growth Area to protect the higher concentration of people, as that may secondarily encourage more poultry houses out in the Agriculture District. If you have the same regulations in the Designated Growth Area as the Agriculture District, why not build on Levin Dashiell Road, out in the middle of nowhere, two miles outside of Parsonsburg. Mr. Cannon said what has been established is that the 400' and the 500'/600' setbacks are acceptable restrictions and, therefore, acceptable in the A-1 Agriculture District. He said the question might be do we choose to become more restrictive in the Designated Growth Area. Mr. Cannon said what Mr. Lenox is saying is that if there is a school or church in the Agriculture District, you cannot place fewer restrictions. Mr. Matt Holloway suggested that those uses be recognized in the A-1 Agriculture District and have a 400' setback. He said he would like to have it as a 400' setback in the A-1 District for all of those uses and then in the Designated Growth Area it should be a 500'/600' setback for all of those uses. Mr. Hall said he agrees. Mr. Matt Holloway said it would then be more restrictive in the Designated Growth Areas. **Mr. Cannon clarified that there would be a 400' setback for all circumstance, except from property lines, within the A-1 Agriculture District, and a 500'/600' setback for all circumstances in the Designated Growth Areas.** Mr. Kilmer added and the A-1 Agriculture District would have the special exceptions but the Designated Growth Area does not. Mr. Joe Holloway said he does not think we should restrict the variance in the Designated Growth Area because you do not know what will come up. Mr. Kilmer said, if his thoughts are correct, then there is not much protected land so, if we have the variance in the Designated Growth Area, it would not hurt anything anyway. **Mr. Cannon clarified that the variances would be put in the A-1 Agriculture-Rural District as well as the Designated Growth Areas.** Mr. Creamer asked what is the setback in the Designated Growth Area. Mr. Cannon said, in the Designated Growth Area, it is 500'/600' setbacks. Mr. Cannon said the other area that Council needs to discuss is the earthen berms in the Designated Growth Areas. Mr. Joe Holloway said, if you have earthen berms, you would not have to worry about putting chicken houses in the Designated Growth Areas, as the expense is going to be too high. Mr. Kilmer said either that or we are going to get 13 or 14 houses on that location. Mr. Joe Holloway said he would rather see an increase in the vegetative buffer in the Designated Growth Area. They use the dirt out of the stormwater ponds to build the pads, so that means the farmer would have to go out and buy dirt to build the berms. He does not see the need for them. Mr. Cannon said he does not know if the earthen berms are cost prohibitive. Mr. Cannon asked Mr. Bill Satterfield if the berms are cost prohibitive. Mr. Bill Satterfield went to the podium. He said that he imagines that the earthen berms are cost prohibitive because he heard a number of year ago, when the state started the stormwater management program, and the requirement to have drained areas and the ponds, there was more money to be made in moving dirt than there were in growing chickens. Mr. Joe Holloway said the berms will create more of a runoff. Mr. Dodd asked what is the purpose of the berm. Mr. Satterfield said he would guess for a visual screen, but he does not know. Mr. Dodd asked if that is a DPI standard. Mr. Satterfield responded, no, he is not aware of any County requiring berms

around chicken houses. Mr. Joe Holloway said if you have a berm, you have water that cannot go this way or that way, it cannot run up over top of the berm. Mr. Joe Holloway said we may want to consider increasing the vegetative buffer to make up for not having a berm. Mr. Matt Holloway asked if he was referring to another row. Mr. Joe Holloway said he did not see it as necessary but that is up to everyone. **Mr. Cannon said the interest seems to be to strike earthen berms asking if that is correct, to which several council members responded, yes.** Mr. Cannon said going back to Item No. 1, under the A-1 Agriculture-Rural District, it says "around all active portions of the poultry operations." he then asked Mr. Lenox what does active portions mean. Mr. Lenox said that goes back to the top of the outline where it defines poultry houses, stating that is considered an active poultry house. Mr. Cannon asked if the vegetative buffers would have to then be in the front, sides and back. Mr. Lenox said they would need to be everywhere except for the provisions that have been written in the outline. Mr. Lenox said the buffer does not just apply to the poultry house, it applies to all the structures that go along with the poultry house. Mr. Dodd asked if this will completely enclose the farm, to which Mr. Lenox responded, yes, where it is needed, if there is not already existing vegetation either on the site or immediately adjacent. Mr. Kilmer said these regulations will need to go through Planning and Zoning and public comments, so we can work through some of these issues. Mr. Kilmer then clarified that they will get a clean draft on what has been discussed. Mr. Joe Holloway said there was a bill introduced on March 1<sup>st</sup> and there was great concern from the poultry companies about the road bill. They started requiring 50' and 60' entrances to the farms, so the trucks can go out in an angle and will not have to twist on the road. Mr. Joe Holloway asked if that should be addressed in the poultry house standards legislative bill that when they build a farm, the entranceway has to be 50' or 60'. Mr. Creamer said the traffic study will determine the need for a 50' or 60' driveway. Mr. Joe Holloway said he understands, but he wants to know if the 50' or 60' driveway should be included in the poultry house standards legislation. Mr. Lenox said if Council knows they want to require a 50' or 60' entranceway, then put it in the standards. Mr. Lenox said the legislative bill on the traffic study is not restricted to just poultry as it will cover other things. Mr. Joe Holloway said both Mountaire and Perdue do not have any problems with that requirement, and it keeps the trucks from tearing up the roads when they turn on them. Mr. Hall said this is an industry issue, and the industry has addressed it by saying this is our plan for building chicken houses. Mr. Hall asked if Council needs to include it in the poultry standards legislation if it is the industry standard. Mr. Joe Holloway said they have only spoken to two chicken companies, but there are others and he knows one does not follow the rules like the others, so he thinks it should be included. Mr. Kilmer said if it impacts the public roads, it should be included. Mr. Cannon said the one thing about the bill is that there really is no clear defined areas. There are no parameters defined in the legislative bill. Mr. Cannon said it is totally at the discretion of the department. Mr. Joe Holloway said he would like to get the 50' or 60' driveway entrance/exit in the poultry house standards, then the County does not need the road legislative bill. Mr. Kilmer asked if the entrance and exit from the property is part of zoning. Mr. Lenox said there not much that defines poultry house development in the County Code. Mr. Kilmer said there is precedence in zoning to have a 50' driveway, to which Mr. Lenox responded, yes, that would show up either in zoning or subdivision. It just happens that we do not have that standard right now. He said we have to consider the width of the road and radius, so we have to be careful how we define it.

Mr. Kilmer said since we doing zoning, it would make sense to include it because it is a zoning matter. Mr. Joe Holloway said maybe the road legislative bill can just disappear. Mr. Cannon said he is concerned about where the best place it should be so it falls in line with what Mr. Lenox has proposed. Mr. Lenox said he would talk to Mr. Young at the Department of Works to see what he suggests. **Mr. Cannon said he agrees with 50' or 60' entrance/exit, but he does not know if this is the proper place for it.** Mr. Matt Holloway said going to back to the disincentive to build a poultry house in a Designated Growth Area, the only difference is 100'; instead of the 400' setback, we have the 500'/600' setbacks depending on the direction of the fans, asking is that all Council wants as the distinction between the two. He said he knows the earthen berms could be too expensive. He said he thinks there should be some other disincentive for the Designated Growth Area. Mr. Joe Holloway asked if Council wants poultry houses in the Designated Growth Area. Mr. Joe Holloway said if we make the regulations too restrictive, the poultry houses are not going to be there. Mr. Lenox said there are some very large land holdings in the Designated Growth Areas. Mr. Creamer said we have to remember it is going to be 100 years before before the Designated Growth Areas fully develop, so we have to allow property owners the use of their land during the interium. Mr. Joe Holloway said as an example there used to be poultry houses on Gumby Road, but they have since been torn down and there is now a development there. He said depending on the how the market goes, there might be chicken houses there today and five or seven years down the road someone may tear them down. Mr. Cannon asked Mr. Matt Holloway what additional restriction would he like to see in the Designated Growth Area. Mr. Matt Holloway responded that an additional vegetative buffer would be something reasonable to ask for, such as instead of three rows, they have to have five rows, something substantial so the property owner who built houses in the County where they are supposed to build houses are not punished. Mr. Cannon said you also want to protect property values in the Designated Growth Areas and a poultry house could compromise that. Mr. Cannon said three rows of buffers is adequate. He said requiring five rows may sound like a lot more, but he is not sure if that will help with the enhancement of the property. Mr. Bob Culver made the suggestion for someone on the agriculture committee look that suggestion over. He said as a good example, down Pemberton Drive there are several farms between the subdivisions Pemberton Ponds and Sleepy Hollow, there is 40 acres that could hold three good chicken houses even with the new regulations. He said there are several fields like that up and down Pemberton Drive. He thinks a group of people should take a look at them and have them approved on an individual basis. Mr. Culver said he agrees that the earthen berm is too expensive. Mr. Dodd said there is a member of the Atlantic Coastal Bays Association on the committee, and his/her input would be important. Mr. Culver said they have a good variety of people. Mr. Culver said there are so many different properties, and he does not think we can write laws to protect all of them. Mr. Culver said going back to the one on Levin Dashiell Road, right now it is a fairly rural area, but if city sewer and water gets out there, which is a strong possibility, you are looking at one of the most developable pieces of property right across the road that could hurt their value as well as anyone else's value. Mr. Joe Holloway asked if they should include variances in the Designated Growth Areas. Mr. Kilmer asked if he is suggesting that poultry houses not be allowed in the Designated Growth Areas, but they could apply to the Planning and Zoning Commission to be allowed in those areas. Mr. Lenox said, if it is allowed by special exception, then it is not listed under the

permitted use and it is not listed as prohibited. It is allowed by special exception. If you meet the criteria, which is a public process that can be appealed, it could be a special exception in the Designated Growth Areas. That alone will be the biggest deterrent to have poultry houses in the Designated Growth Area because prospective developers of poultry houses will look elsewhere because they do not want the uncertainty of the legal process. Mr. Kilmer asked if that is what the County Executive supports or should we just think about it. Mr. Culver said he would like to think about it because this idea is new and everyone should talk about it. Mr. Lenox said Council needs to hear from the property owners who have invested in the Designated Growth Areas to find out what their interests are. Mr. Lenox said property owners like to have both options. They want to develop and they want to preserve, but they may have to choose. Mr. Cannon said that is a good point, but that is why there will be public hearings in reference to the legislation when it goes to the Planning Commission. Council needs to come up with some idea of what we want. Mr. Lenox said he agrees, as we need to provide something for the people to respond to. Mr. Cannon said right now we are not making any changes. Mr. Kilmer asked if Council could have Mr. Lenox draw up a new outline or legislative bill based on what was discussed today and then a separate outline for the special exception in the Designated Growth Areas to see what that one looks like, so Council can look at the two and get a better idea. Mr. Cannon said there is nothing else except for whatever Mr. Lenox defines as the criteria. Mr. Kilmer asked if Council could set the criteria. Mr. Lenox said there is standard criteria for special exceptions and that has to do with traffic, disrupting peoples' property and public facilities to support the use. Mr. Lenox said if there is something additional Council would like, then you can add that to poultry houses. Mr. Creamer said there is something else that has not been addressed yet and that is the circumstances under which the variances could be considered in the A-1 Agriculture District or in the Designated Growth Area. Mr. Lenox said they will draft some recommendations. Mr. Lenox said what is being discussed now with regards to the Designated Growth Areas is the use alone. Do you want to have discretion on whether or not that is a permitted use or if it is a use permitted by special exception. Mr. Lenox said that is different than the criteria that Mr. Joe Holloway suggested earlier about the setbacks. Mr. Cannon asked what is Council's desire. Mr. Joe Holloway said, it is like Mr. Lenox said, if it is done by special exception, there will not be any applications for poultry houses in the Designated Growth Areas. Mr. Lenox said it will go to the Agriculture District. Mr. Kilmer said he would like to think about it. He does not want to make a decision now as this idea is different than what Council has been considering. Mr. Cannon asked besides talking to property owners, which he is not sure how feasible that will be, without going through the public hearing process, how are we going to come to any different of a conclusion in two weeks than we can today. Mr. Kilmer said it would give Council members time to think about it. He said people will contact Council members as people have not been shy about contacting them about this issue in the past. Mr. Kilmer said this is a pretty momentous change, so he does not want to make a quick decision. Mr. Strausburg asked if Council would like for them to come back with an articulation of what the special criteria would look like. Mr. Cannon said that would be great. Mr. Kilmer suggested that Council have a special work session between now and the next meeting. Mr. Joe Holloway reiterated what Mr. Lenox said that if Council goes with special exceptions in the Designated Growth Areas that will probably kill the poultry industry in the Designated Growth Areas. Mr. Joe Holloway said the decision Council

needs to make is do they want to kill poultry houses in the Designated Growth Area because if we do, the special exceptions will take care of it. Mr. Cannon said another question is, is there enough land in the Agriculture District to satisfy the need of the poultry industry as a whole. Do we need to have the Designated Growth Area? Mr. Joe Holloway said there is a lot of property in the Designated Growth Area that is suitable for building poultry houses on. Mr. Joe Holloway said people are not building new homes, and poultry houses will not be there forever. Mr. Kilmer said those considerations is why he is saying Council should not be making a decision right now on this matter. Mr. Joe Holloway said he does not want to kill the poultry industry in the Designated Growth Areas. Mr. Cannon said Mr. Strausburg mentioned earlier that in the Designated Growth Area you are talking about retail, commercial or residential, and having poultry houses in the middle of that could be somewhat detrimental. Mr. Joe Holloway some people call poultry houses commercial. Mr. Creamer said maybe we should not have poultry houses in the Designated Growth Areas or maybe we should for a while and do it by special exception, and maybe Mr. Kilmer is correct in that Council members need to think about it. Mr. Cannon asked what is Council going to do between now and two weeks from now to come to a more definitive answer. Mr. Strausburg said his thinking is based on what he has heard, which is that Mr. Lenox could come back crystallizing the discussion on the Agriculture District and the Designated Growth Area before we introduce the concept of special exception. He could come back with a separate proxy on the Designated Growth Area that will stipulate a special exception and what the special exception criteria would look like and that would give Council two proxies to consider. Mr. Kilmer said he thinks that would be helpful to have that information prior to the meeting, so they have time to think it through and talk to some folks. Mr. Strausburg explained that Mr. Lenox is going to be on vacation the first week of April, so it may be best to have some sort of work session if Council could. Mr. Matt Holloway said, in looking at the map that was handed out showing all the existing and proposed chicken houses, he has trouble saying the County is not going to allow chicken houses in our Designated Growth Area when the County has a landfill in the Designated Growth Area. The landfill is within a quarter mile of the proposed chicken houses. Mr. Culver said that he is not advocating cutting out chicken houses. He said he has a friend with 200+ acres in the metro core off Jersey Road and Connelly Mill Road that would be a perfect place to have chicken houses, if he came before the Agriculture Commission and explained his situation, he would allow him to have the chicken houses. Mr. Cannon asked if that is the role of the Agriculture Commission, to which Mr. Lenox responded that is not the role of the Agriculture Commission. They are there to reconcile complaints of exiting sites in accordance with following best agricultures practices, such as is the fence down, are the cows getting out. Mr. Kilmer said he liked the idea of having a special work session as the next Council meeting is three weeks away.

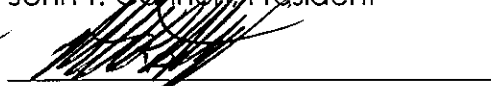
*Signatures are on the next page.*

Open Work Session  
Poultry Houses  
March 15, 2016




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John T. Cannon, President



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Matt Holloway, Vice President




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Ernest F. Davis, District 1



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Marc Kilmer, District 2



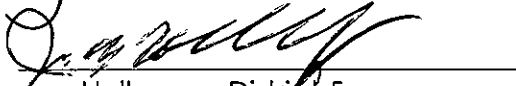
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Larry W. Dodd, District 3



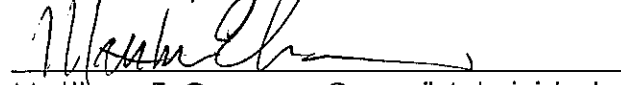
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John B. Hall, District 4



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Joe Holloway, District 5



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Matthew E. Creamer, Council Administrator