

**Open Work Session  
Poultry Houses  
July 19, 2016**

Mr. Jack Lenox, Director of Planning, Zoning and Community Development, came before Council. Mr. Cannon said Council is looking at legislation that has just come back from the Planning Commission. Mr. Lenox said Council is very familiar with the issues that have been brought up as it has been involved in the poultry discussions for a while now. He said the Planning Commission Report has been submitted to Council, and he would like to walk through the report. He said when Council reached a consensus on a draft form of legislation a while back, it was forwarded to the Planning Commission. Mr. Kilmer is the Council representative on the Planning Commission. Mr. Lenox said the Planning Commission took very seriously the importance of this topic to the County as a whole and the Commission dove right in. They scheduled a night public hearing, which is not their normal approach, but recognizing the level of interest and importance, they took that added step. He said it was a very open hearing as everyone was allowed to speak as long, or as many times as they wanted and he thinks everyone benefited from that process. There is also a written record of the hearing and written comments were accepted prior to the hearing, at the hearing and several days after the hearing. The Planning Commission forwarded to Council every written comment they received. Mr. Lenox said that seemed appropriate because much of the public took their time to put together their written thoughts, background information and they felt it imperative as they move forward. The Commission anticipates that when the Council takes action, there will be another public hearing, so the written comments can be incorporated in the record without any sort of interpretation on their end. He said Council has the entire packet and can refer to the information as the discussion proceeds. Mr. Lenox said the Planning Commission has not only provided recommended changes to the draft legislation, but also a detail summary about the types of issues that they addressed and what changes were included. Mr. Lenox further said, in terms of the format of the legislation, a couple of significant matters were addressed along the way, strictly according to format and process. They have attached for Council's review an opinion from the Law Department responding to a question that was raised by the public. He said, as presented in the written opinion, the Planning Commission wrestled with the legislation versus the standards question and there are some examples in the County where there is legislation and then follow-up standards and that is something the Council mirrored in discussing this matter. The advice the Planning Commission received from legal counsel was that in order for the regulations to have the same effect, to be a requirement that can withhold scrutiny, the standards would need to be adopted. The conclusion seemed to be that if we have to go through the same process, which is the process the County is going through now that involves Planning Commission review, Planning Commission public hearing, Council introduction, Council public hearing, then adoption, in that order, to withstand public scrutiny, it is best to incorporate the standards in the code directly. Mr. Lenox said that is a change in format or organization, however, the standards as prepared by Council having to do with the buffer plantings and access are repeated basically word for word, but put directly into the Code. He said that is the biggest difference. There were also questions from the public about the modification of the standards by special exception, and the Planning

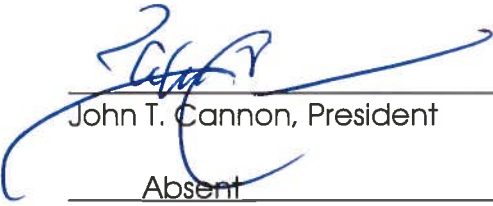
Commission has backup from legal counsel explaining that the approach is appropriate and, in fact, they have examples of that in the County Code already. Mr. Lenox continued he said there were some very minor wording changes, but there are a couple of points of substance. It was brought to their attention that when Council focused so much on what it perceived to be the issue that being larger, commercial poultry houses, Council skipped over what is considered to be accessory these days, and the Planning Commission wants to make sure that traditional accessories to residential dwellings are covered, so the County is not precluding the people that want to raise poultry for their own purposes. Based on that information, there has been some modifications to the definition. Mr. Lenox said, as Council may recall, there were examples as to how this does not apply to the replacement of existing poultry houses. He said that raises an interesting question in zoning because if a use or structure is nonconforming, it is not used for over a year, generally, those rights expire. The Planning Commission wanted to write in some additional protections for existing, older poultry houses for them to be replaced if the property owner chooses, but also provide some protections for the derelict structures that no person in all good conscience would still consider a poultry house, so they included some definitions for that as well. There is also an expansion of 10% included in the draft legislation. It was thought that the Planning Commission should look into that a little bit deeper. The 10% now reads 25%, and the 25% is calculated in a way that will allow for an expansion of a given poultry house or a poultry house complex. Mr. Lenox said it is simple math, four could be five is what that comes down to, or you could do an expansion of the structures. He said Council may recall when the language shifted from designated growth areas to zoning categories, Council focused on residential districts, which is still the case. It was identified, however, that there are several districts in the County that allow poultry houses that were not addressed, so the Planning Commission added districts where poultry houses are already allowed, but had not been included in the draft legislation, which are general commercial, regional commercial, and light industrial. If those districts are not included, there would be no standards applying to them whatsoever, so the Planning Commission needed to address that situation. Mr. Lenox continued he said the language having to do with exhaust fans, the dimensions and separations stay the same. The Planning Commission received quite a bit of input that the County should clarify that there are ventilation vans and then there are tunnel ventilation fans, so the Planning Commission included a definition for tunnel ventilation fan(s). There were also some changes to the language on the additional buffer. They spoke to the industry and that change is fine representing 10 foot center spacing. There was not a figure in the original draft version of the legislation. Mr. Lenox said the separation from dwellings for the poultry houses was a big issue. The Planning Commission had to say what is a poultry house and then say what is a dwelling and that took a while because there are some derelict dwellings around the County, and the Planning Commission needed to address those a little bit more specifically. The issue is the dwelling not being located on the farm. The Planning Commission realized they needed clarification on what is a farm. A farm can be in a number of parcels. In agriculture these days, the farm is not always owned, it can be leased or managed. The language the Planning Commission settled on was parcel or parcels under common ownership or lease. Mr. Lenox continued he said, as Council initiated, there are modification provisions by special exception. The Planning Commission worded it according to standard zoning language and, therefore, has included it in the legislation as a finding among other

things, not just as a sort of a reference to what is important. He said that goes back to unique soils, land cover, relationships such as the farmer's son with the house next door, so that language has been tighten up a little bit. Mr. Lenox said reverse setbacks is still written as proposed, but again setbacks from what, so that was clarified a little bit more. Something Council has heard in passing and is now in the legislation for the first time is the effective date of the amendment. Right now people are asking the question, how will this apply, and it has never been the County's practice to have new regulations apply to those who are already in the process and have invested money based on County Code. Therefore, there is language in the legislation that indicates that if the property owner has submitted a complete stormwater plan to the County that has been stamped and received prior to the effective date, they will be protected. The Planning Commission does not want to provide that protection forever, so the property owner will need to proceed in a timely fashion and will have to continue to move through the process expeditiously towards getting a building permit. Mr. Creamer said Mr. Lenox has done an excellent job explaining why there needs to be a date of implementation. He then asked is there any flexibility; are there any other benchmarks, or something through the process which might also be used as the starting date. Mr. Lenox said as a recent example, the County impact fee, the County said they had to have a complete building permit application by the effective date that included Health Department approval, so that worked for some people and perhaps not for others. In that instance, they did a complete building application. Mr. Lenox said other benchmarks were far less defined such as when someone says, I have been working on this project for a year. He said there is no documentation to that effect, so they did not know how to attach a date to that situation. Someone could also say, they purchased property intending to build poultry houses on it, but the Planning Commission did not know how to handle that situation either. The benchmark that the Planning Commission is proposing to Council, which the public will have a chance to comment on, is the first date they could document that it came to the County and that is the stormwater plan. Mr. Lenox said Council has the draft legislation with the additions or subtractions noted, and Council has a unanimous recommendation from the Planning Commission to move forward. Mr. Cannon thanked Mr. Lenox and the Planning Commission for reviewing the legislation in the detailed fashion that they did. He said the recommendations are excellent. Mr. Kilmer said Council spent a lot of time going over the legislation and then Mr. Lenox and his staff provided additional information that Council had not thought of. Mr. Kilmer thanked Mr. Lenox for the time he spent on the project. Mr. Hall said there are some glaring items in the proposal that should be addressed and, hopefully, they can get them addressed by the state, some of which are the reports that were provided to the Council, particularly the one from Georgia where only one study was done for ammonia content, and that study has been referenced a number of times as being the gospel. He said he thinks it is important that the state takes a look at the reports that shows ammonia concentration and fine particulates downwind from boiler houses; he thinks it is a state obligation. He said he has spoken to Delegate Anderton about this a little bit and, hopefully, the state will look into the airborne particulates and do some research, so the County can have some accurate information in the future. Mr. Hall said he thinks there are concerns regarding the number of inspections done by MDE. He said MDE inspects once every five years. He thinks it would be prudent of the state to do an inspection once every two years just to make the public a little bit more comfortable. There is a price that

comes along with that request, but that is something the state will have to work out. He thinks it is prudent for the state to take up these issues rather than leave the burden with the local people. Mr. Lenox said we are near other jurisdictions as well, so even if the County can tighten this up internally, there would still be concerns of those nearby. Mr. Lenox said he would like to mention one other thing. In the cover memo, he left one issue sort of hanging out there, and this came up at the very end of the Planning Commission review, and that is the suggestion that Council incorporate language that would stop someone, either a proponent or an opponent, from sort of running to beat the clock and building a house to just stop a poultry house, or it could work the other way. Mr. Lenox said he would like to continue to work with Council and Mr. Baker to see if some language can be added to the legislation so that someone does not come in and try to block the process. Mr. Cannon clarified that there is some additional language that needs to be added to the legislation, to which Mr. Lenox responded, yes. Mr. Lenox asked if he should work with Mr. Baker in drafting the wording, to which Mr. Cannon responded, yes. Mr. Joe Holloway thanked Mr. Lenox for his work. He said in the past 9 or 10 years he does not think there has been an issue that could have as much effect on the County as this project. This is our number one industry, and the wrong decisions here could cripple the industry. Mr. Joe Holloway said if you ride by some of the employers of the industry and look at the cars in the parking lot, you will see how important this industry is to Wicomico County. He said he knows there was reluctance on some people to not do anything as far as zoning. The County had to do something, but he thinks they have worked up some regulations that will satisfy people on both sides of the fence. Mr. Cannon clarified that what is in the Brief Book will be incorporated into the final legislation with all the whereas paragraphs. Mr. Lenox said the Planning Commission did not address the preamble, the whereas paragraphs, and he sensed there was some discomfort on how the whereas paragraphs are worded. Mr. Lenox said he will work with Mr. Creamer to put together something Council is comfortable with.

*Signatures are on the following page.*

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John T. Cannon, President

Absent

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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



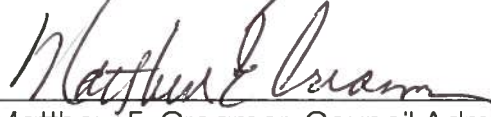
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John B. Hall, District 4



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Joe Holloway, District 5



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Matthew E. Creamer, Council Administrator