

## **Open Work Session**

### **Recommendation from the Salisbury-Wicomico Planning Commission for Liquid Organic Fertilizer Storage Text Amendment**

**March 1, 2022**

Mr. Paul Wilber, County Attorney, and Ms. Lori Carter, Director of Planning, Zoning, and Community Development, came before Council.

Mr. Wilber said the Planning Commission gave a lot of consideration both in public hearings and receiving written comments to this whole subject. He said it was the subject of several meetings at the Planning Commission, and it produced the recommendation, which he thinks is in the Council's briefing book, and it also produced a recommended Legislative response, and he would like to run through that with Council.

Mr. Wilber said the definition for liquid organic fertilizer or soil amendment storage would be the storage of a State of Maryland approved fertilizer or soil amendment produced from poultry processing residuals via a dissolved air flotation process. He said temporary portable and/or mobile storage is exempt and requires approval of the Planning Director or their designee.

Mr. Wilber said, as far as where it can be located, it would be in the agricultural rural A1 zoning district and would only be allowed by special exception from the Wicomico County Board of Appeals. He said liquid organic fertilizer or soil amendment storage would adhere to the following setbacks – 200 feet from all property lines, 400 feet from any residential dwelling not located on the same parcel or parcels under common ownership or lease, as well as any school, place of religious assembly, nursing home, daycare center, manufactured home park, subdivision of ten or more houses, or an approved health department septic system location to serve any of the above.

Mr. Wilber said the open storage tank erected prior to the enactment of this Legislation pursuant to a permit by the County may continue as a nonconforming use in its current location regardless of zoning district. He said all of this would be incorporated in the table of permitted uses.

Mr. Wilber said that is a summary of the Legislation that has been presented from the Planning Commission, and it is now up to the Council to decide how they would like to proceed.

Mr. Hastings said they have heard public comments where folks asked how they are addressing some of the issues. He said, as for odor, he thinks the only thing was a 200-foot setback was proposed. He said the other thing mentioned was the risk to public health, such as if a tank breaks or there are mosquitos breeding in there, and they have received pictures from neighbors. He said the other thing mentioned was traffic safety, so there are at least three things that they did not feel had been addressed.

Mr. Hastings said the other question in his mind is that this is for an aerobic process as opposed to anaerobic process, and another issue that was brought up in public comment was the Earth Care project, which he knows nothing about, but, from what he understands, it is a closed process. He said, with a closed process they can have material inside that will break down and capture that for gas, and it helps contain the nutrients. He said anerobic digestion is kind of where everything is going, so, honestly, he is surprised that the old school technology of sticking things in a giant tank and waiting for it to crust over was proposed as something feasible. He said Perdue has a really good facility in Seaford, Delaware,

which he thinks could be helpful if Councilmembers could work with Holly Porter to take a tour of the space. He said he wants to make sure they are addressing the concerns that were brought up today, but also that they are forward-looking, and the future of agriculture is not using these kinds of older tanks, but much more anerobic digestion so they can recover those nutrients that are highly needed.

Mr. Hastings said the questions brought up in public comments were how this is addressing odor, the risk to public health, and traffic safety, so he is asking those questions.

Ms. Carter responded, in regards to the question of how it relates to traffic safety, that was discussed, but when they looked at it as far as the overall purview, that was not looked at in entirety. She said she thinks specifically that is something that was examined, but, again, what they were looking at or what the actual Commission was tasked to do did not go to that length.

Mr. Hastings asked about odor, to which Ms. Carter responded, she thinks the way they were trying to respond to it was looking at the setbacks, and that may be something the Council may not feel is enough, but that is what they looked at as it relates to the poultry standards. Mr. Wilber added, he believes it is the same setbacks as the CAFOs. Mr. Hastings said he remembers reading 200 feet, but he thought it was 400 feet, to which Ms. Carter responded, it is 400 feet from residential. She said she thinks the last meeting they had was when Council suggested it needed to include everything in regards to schools and places of worship, etc., so that is what the Commission looked at as well.

Mr. Hastings said he thinks risk to public health is the only other thing he heard said, such as a tank breaking. He said he thinks originally in this conversation they said they do not regulate what is in the tank, only the size, but now it looks like they are getting into the organic fertilizer and being more specific, which he thinks is helpful. He said there is no way any Councilmembers are going to know anything about safety as far as if this is the right depth, but there is a current DAF tank that is millions of gallons, and he is assuming hopefully there are no other issues if that were to breach. He said they have pictures of flies and mosquitos on people's homes from half a mile away or more, so he guesses maybe the Planning Commission did not get into that part, but he knows that is an issue that was brought up.

Mr. Wilber responded, the only comment he will make is all of these tanks are required by special exception, so there would be public notice, there would be a public hearing, and the Board of Appeals can put conditions on them, such as berms.

Mr. Dodd said, if Mr. Hastings is willing to spearhead that tour, he would be glad to take it. He said Council has heard these same concerns over and over again about the odor and lately about the traffic. He said he thinks they can legislate the traffic, but can they legislate the traffic concerning the DAF tanks, to which Wilber responded, that falls under enforcement, so they are looping into the Sheriff's Department territory. Mr. McCain said they can regulate what kind of vehicles travel on those roads and what those vehicles carry, to which Mr. Holloway responded, he does not think they can do that. Mr. Wilber clarified, as long as they are not contradicting State law.

Mr. McCain said, when they discussed this in a Work Session several months ago, he knows they had some differing opinions, but, if his memory serves him right, the consensus was that they wanted them to address this as being in the industrial zoned areas, not in the ag district, but it seems like they just threw that out almost from the beginning. Mr. Wilber responded, the Planning Commission looked at that intently and concluded that it was better suited to be in the agricultural district. Mr. McCain then

asked why, to which Mr. Wilber responded, because it is difficult. He clarified, given the profile of available industrial areas in Wicomico County, they actually would be placing these tanks closer to much greater population density. Mr. McCain said he would debate that. He said that is why they are industrial zoned districts. He clarified, the purpose of that is they are trying to avoid population density, and that is why the industrial zones are where they are. He said think about all the subdivisions they have in the County that are in the agricultural district. He said they have vast numbers of subdivisions and homes in their agricultural districts, but now they could have a DAF tank 400 feet away. He said he has always said it is industrial waste, it needs to be in an industrial zone. He said it is not an agricultural product and it is not produced on the farm. He said he found it interesting that there was language in there about the fact that it would be close to residential and was too odorous and too impactful to be in the industrial zone, so it is okay to be in the agricultural zone. He said that just perplexes him a little bit. Mr. Wilber responded, there was a PowerPoint put together by Planning staff that probably would be helpful for Council to see. Ms. Carter added, that would be helpful if this is something Council wants to continue the discussion on. She said there was a lot of data provided and the presentation assisted the Commission in making some of the decisions and recommendations they made.

Mr. McCain said he finds the distances significantly inadequate, to which Mr. Wilber responded, that is why they are here. He clarified, they are presenting Council with the Planning Commission's proposal.

Mr. Cannon said he had the same concerns as Mr. McCain in reference to the industrial designation, but he was surprised to see that the industrial areas in Wicomico County are very high density. He said, in one instance there is a residential subdivision very close to one of the industrial parks, so they probably were not planned out as well as they should have been, at least to serve this purpose.

Mr. Cannon said the other thing he found out in talking to some residents is that it is an agricultural business that impacts the agricultural community, and not all farmers who might want to engage in having a DAF tank could do that if it were in an industrial area because then they would have to go to the expense of buying the property in the industrial area and establishing everything there as opposed to putting one on their own property, so that was another reason that maybe industrial would add unnecessary additional costs. He clarified, he is as empathetic with the residents in the area as well, but he does not think putting it in an industrial area is going to serve everyone's best purpose. He said he has concerns over the traffic though, and the balancing act there is what they do in limiting the trucks in the rural area because they also have to consider what they are doing to the poultry industry going day in and day out removing and bringing in chicks to all the farms and the unintended consequences, so they have to tread very carefully as to how they would restrict traffic in the agricultural areas as well.

Mr. Holloway said the Planning Commission had the same kinds of discussions. He said one thing he heard when all of this started was that the people affected by this had no say in what happened, which was the number one thing he heard, but the way this is drawn up now, they do, to which Mr. Wilber responded, they get notice, and there is a hearing. Mr. Holloway said of course that can work both ways.

Mr. Holloway said he wants to comment on Mr. Hastings' comment about flies. He said the closest chicken house to where he lives is probably a couple thousand feet, and his wife fusses at him all the time about keeping the door closed because of the flies and they do not have a DAF tank anywhere near them. He said they live in the country, and there are bugs, so they are everywhere, but they might be more intense where that tank is, he does not know.

Mr. Holloway said, as far as traffic goes, they have to make sure they have good roads. He said he has been preaching the roads sermon for 15 years now, but they just cannot get these country roads fixed. He said there should be an aggressive roads program that brings their County roads up, but he knows money is going for other things other than roads. He said the roads are the County's responsibility, so to be able to say they can take a tractor trailer loaded with shingles down a road but say they cannot take a tractor trailer that is a tanker down the road means people cannot get fuel or oil. He said one local municipality not long ago restricted their streets in the town and had some farmers upset because it was such a small town that they actually had some fields on the streets in the town, and now there is a farmer who cannot drive his farm truck down it, so they have to be really careful with that.

Mr. Hastings said, for this process as a whole, it would be nice to go slow and make sure they get it right. He said he can reach out to Ms. Porter and see if they can get a tour at Perdue as he thinks that could be a potential option to solve some of the issues that folks have brought up. He clarified, the facility in Seaford is an anaerobic digestion where they can put DAF into a closed system so they cannot see it or smell it. He said they can actually do that in an industrial area and it is not an issue, so that could be a potential option. He said he is just reflecting on what folks have said today, and it sounds like there are still issues, so, as much as possible, he would like them to be as slow and deliberate as possible on this.

Mr. Cannon said it was mentioned that this was fashioned close to what the poultry industry had and also requiring berms as well with the poultry houses. He then asked if that was taken into consideration, to which Ms. Carter responded, that was not part of the consideration. Mr. Cannon suggested adding that. Mr. Davis said that is not going to help with the smell. He said he lives two miles from the dump and he smells that every day, and they have all kinds of barriers up there. He said that is not going to stop the smell, to which Mr. Cannon responded, it could stop the wind from blowing.

Mr. Keith Hall, Deputy Director of Planning, Zoning, and Community Development, then came before Council and said he is probably going to be a little repetitive from where they started. He said the Commission looked at five decision points, so the first thing they took into consideration, reviewing what the Council provided, was what the use is. He said, as the Legislation came down to them, the use was about a structure, and zoning does not deal with structures. He said the use was storage, but then it was asked what was being stored. He said DAF is a process, it is not actually a soil amendment, it is not a liquid, so they had to come up with a definition. He said DAF is a liquid organic fertilizer or soil amendment that is approved by the State of Maryland and made from poultry processing residuals.

Mr. Hall said, as for zoning, Mr. McCain said something about industrial zoning. He then displayed a zoning map and said, what came down from the County Council was that it was going to be in Industrial-1 and Industrial-2 zoning districts, which is light and heavy industrial, and there are six areas. He then explained where each area is located and pointed out areas designated as County and City growth areas, which is where cities and towns are looking to annex, and where the County is encouraging growth and development to go. He said that area really does not work very well because it is intensely developed. He said, when they look at the Brick Kiln Road corridor, that is a little different and less intensely developed, so one could make an argument that something that is heavy, very intense use would go in a heavy industrial zoning district there. He then pointed to the Port of Salisbury on the map and said he does not know if Council wants this heavy intensive use next to the Port of Salisbury, and he does not think that was ever the intention of the Council. He then pointed to another designated growth area that was next to a lot of commercial and residential activity. He then looked at an area on Zion Church

Road and said that is the Perdue grain facility and it might not ever change from that use, but once they come inside on the properties adjacent on the other side of the Bypass, they see there is a lot of intensity of use versus the A1. He said there are major subdivisions out in the A1 districts, as Mr. McCain made an example of. He said, when they look at the majority of A1, they do not see a lot of roads because there is not a lot of development out there. He said, when the Planning and Zoning Commission looked at this, they looked at the use, which is storage of a liquid organic fertilizer or a soil amendment that is State approved and zoned poultry processing residuals that go through a dissolved air flotation process, which means it is specific to what they know as DAF. He clarified, it is not any other soil amendment, it is not any other fertilizer, none of that. He concluded, they have their use, their definition, and their A1 zoning district recommendation.

Mr. McCain said the big difference is that those industrial zone districts exist on that map, and they know where they are, so if someone owns real estate or is buying real estate and is adjacent to an industrial zone district, they know that, so they know what potential uses might go there. He said, if someone buys a house in the ag district, they can wake up tomorrow and could have a 3-million gallon DAF storage tank going up 400 feet from their house, which is a big difference. He clarified, they already know where the industrial zone areas are, and there is some development around them, but they are industrial zone areas. He said the landfill area was pointed out, and that is a large area and they have an Industrial 2 district there and there is actually very little residential around there, and that is why it is zoned Industrial 2.

Mr. Hall said the Legislation that was considered also required a 300-foot setback and it required that it was on a collector road. He said they went through that analysis, and there are very few eligible properties, so there are really not many available. He said, in addition, another consideration the Commission took into account was, if they put a storage tank for a liquid organic fertilizer or a soil amendment in the purple areas on the zoning map, there would be traffic from where it is being stored to where it is being applied, so having it closer to where it is being applied would help reduce traffic, and that was something they thought about.

Mr. Hall said the considerations were the limited availability, the cost per acre, and it is considered agricultural. He clarified, he knows there is some dispute here, but they looked at it that the Maryland Department of Agriculture has approved this for use on a farm. He said zoning works on where it is, not on how it is produced and where it is produced, but the piece of property where it is at. He said he will give Council an example. He said everything in their homes was probably produced in an industrial zone district at an industrial plant, but their homes are not zoned in an industrial district because the use is a residence, not where the stuff that came into their residence was produced, so they have to differentiate that as well. He clarified, it was not felt that having this in the agricultural zone is better, it is the product that is going there, which is an agricultural product, not an industrial product that is permitted by the State, and, therefore, the A1 zoning district is where it landed. He clarified, however, this is up for Council's discussion. He said the Planning Commission's recommendations were based off staff input as well as staff analysis.

Mr. Hall said another concern was traffic, which he thinks was mentioned by a few Councilmembers today. He said, when they look at the Zoning Code Chapter 225, uses are not predicated on the classification of road that they are on as that is not zoning. He said, if they wanted to look at roads, they would look at minimal frontage sizes of a lot. He said, for example, a sawmill in an A1 zoning district has

to have frontage of 1,500 feet, which is a pretty big, extensive gap, so they are not getting those lots everywhere in the County. He said, if they look at road classifications and say they have to have frontage on one road type or another, that is good for the property, but the product is still going to be using all the roads for circulation patterns, so it does not really achieve the end goal.

Mr. Hall said the third point they looked at after zoning was if it was going to be a conditional use or inherent. He explained, inherent means, by right, they come in a zoning district and meet the building permit requirements. He said the Commission said everything is going to be by special exception, which takes in the certain criteria and the consideration on a case-by-case evaluation for applications, and one of those things is the traffic and it will analyze that. He said there are certain roads that can handle more capacity whether it is a residential use or agricultural use, and that is very key because not all roads are the same and the Commission saw that. He said they looked at the analysis and they showed them the collector roads, and, again, it did not achieve the desired result, so he thinks that was part of the consideration of why everything would go to the Board of Appeals.

Mr. Hall said, as the Legislation came down to the Commission, it was about an above ground storage tank. He said, keeping in mind the direction they have gone with how the use is termed and how it is defined, now it does not matter if it is above ground or below ground, in a lagoon, or in a warehouse, it all requires a special exception. He said the special exception was something they heard about for the past few years and the lack of transparency with this process, so this is the way they insure there is going to be transparency so the public can comment on any application that would require this use in the future.

Mr. Hall said they talked about setbacks, and poultry was the landing spot as it came down from this Council with a 300-foot setback; however, it was heard what Councilmembers said and it was also expressed to the Commission that 300 feet might work, but poultry was probably the biggest debate about a setback that he has experienced in his 15 years in Wicomico County. He said it was very extensive work, and what he thinks the setbacks do for poultry that most do not is take into consideration adjacency of uses, residential subdivisions, places of religious worship, and places of assembly. He said all of those things are taken into consideration with a variable setback, so if a property is not adjacent to other places, it is a 200-foot setback, similar to poultry, but if it is next to one of those uses, it is a 400-foot setback. He said, looking at the other uses that are allowed in the A1 zoning district, that is pretty restrictive.

Mr. Hall said Mr. Hastings said something about flies, to which Mr. Hastings responded, for the record, Council received multiple pictures of cars and houses that were covered in tens of thousands of flies.

Mr. Cannon then suggested continuing this discussion in another Work Session. He clarified, they have two more Work Sessions ahead of them and they are under time restraints, and this is a lot of information and they do not want to miss it. Mr. Hall responded, he thinks that is something that is applaudable by the Planning and Zoning Commission. He clarified, they went through all of these steps, and he thinks one thing they have to be cautious about as they move forward with these deliberations is making sure they parse out what is under the authority of zoning and what is not under the authority of zoning and what might reside with another regulatory body.

Ms. Carter asked what Mr. Cannon would specifically like them to bring back because it is a lot of information, to which Mr. Cannon responded, he thinks where Mr. Hall is heading is very good. He

clarified, Mr. Hall is helping Council be aware of all the processes that have been in place and what they went through, and that is very valuable. Mr. McCain said this is more for the Council to figure out where they go from here. Mr. Cannon said Mr. Holloway hit on it from the beginning and it was reiterated that there was a request for more input, and that is probably one of the key goals they have achieved so far through the appeals process.

There was no further discussion.



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John T. Cannon, President, At-Large



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Ernest F. Davis, Vice President, District 1



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William R. McCain, At-Large



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Nicole Acle, District 2



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Larry W. Dodd, District 3



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Josh Hastings, District 4



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Joe Holloway, District 5



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Laura Hurley, Council Administrator