

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

O-09-10

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 10th day of November, 2010:

Present:	Vote:
Thomas W. Evelyn	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
David M. Sparks	Aye

Motion was made by Mr. Burrell, which carried 5:0, to adopt the following ordinance:

**AN ORDINANCE AMENDING, RESTATING, AND READOPTING
CHAPTER 63, ARTICLE II, AGRICULTURAL AND FORESTAL DISTRICTS,
TO THE NEW KENT COUNTY CODE OF ORDINANCES**

WHEREAS, it is the policy of the Board of Supervisors to conserve and protect and to encourage the development and improvement of the agricultural and forestal lands in the county as an economic and environmental resource of major importance; and

WHEREAS, the Planning Commission scheduled and conducted a formal and duly advertised public hearing in accordance with the applicable requirements of the Code of Virginia, carefully considering the public comment received and forwarded the amendments with a favorable recommendation;

NOW THEREFORE BE IT ORDAINED that the New Kent County Code be amended, restated, and readopted as set forth below:

ARTICLE II. AGRICULTURAL AND FORESTAL DISTRICTS*

***Cross references:** Any ordinance consistent with this Code pertaining to agricultural and forestal districts saved from repeal, § 1-6(a)(9); animals, ch. 10; agricultural, A-1, § 98-211 et seq.

Sec. 62-31. Policy of article.

It is the policy of the board of supervisors to conserve and protect and to encourage the development and improvement of the agricultural and forestal lands in the county for the production of food and other agricultural and forestal products. It is also the policy of the board of supervisors to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes. It is the purpose of this article to provide a means for a mutual understanding by landowners and localities to protect and enhance agricultural and forestal land as a viable segment of the county's economy and as an economic and environmental resource of major importance. This article is authorized pursuant to Code of Virginia, § 15.2-4300 et seq.

Sec. 62-32. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advisory committee means the agricultural and forestal districts advisory committee.

Agricultural production means the production for commercial purposes of crops, livestock and livestock products, and includes the processing or retail sales by the producer of crops, livestock or livestock products which are produced on the parcel or in the district.

Agricultural products means crops, livestock and livestock products including, but not limited to, field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

Agriculturally and forestally significant land means land that has recently or historically produced agricultural and forestal products, is suitable for agricultural or forestal production or is considered appropriate to be retained for agricultural and forestal production as determined by such factors as soil quality, topography, climate, markets, farm structures and other relevant factors.

Application means the set of items a landowner must submit to the board of supervisors when applying for the creation of a district or an addition to an existing district.

District means an agricultural, forestal, or agricultural and forestal district.

Forestal production means the production for commercial purposes of forestal products and includes the processing or retail sales, by the producer, of forestal products which are produced on the parcel or in the district. The term "forestal products" includes, but is not limited to, saw timber, pulpwood, posts, firewood, Christmas trees and other tree and wood products for sale or for farm use.

Landowner and owner of land mean any person holding a fee simple interest in property but does not mean the holder of an easement.

Cross references: Definitions generally, § 1-2.

Sec. 62-33. Application form; fees; due dates.

Any property owner seeking to establish an agricultural and forestal district or add property to an existing district shall make application to the board of supervisors upon the application forms provided in the office of the county administrator. Such application shall be accompanied by payment of a fee in the amount as provided in appendix A to this Code to cover the costs of processing and reviewing the application, including costs of advertising the required public hearings. Applications for the creation of, or addition to, a district shall be received by the department of community development on or before ~~May 1~~ March 1. Applications for withdrawal from, or termination of, a district shall be received by the department of community development on or before ~~May 1~~ March 1.

(Ord. No. O-26-04, 12-13-2004; Ord. No. O-03-09, 2-18-2009)

Sec. 62-34. Agricultural and forestal district advisory committee.

The board of supervisors hereby establishes an advisory committee which shall consist of four landowners who are engaged in agricultural or forestal production, four other landowners of the county, the commissioner of the revenue or the chief property assessment officer, and a member of the board of supervisors. The members of the committee shall be appointed by and serve at the pleasure of the board of supervisors. The advisory committee shall elect a chairman and a vice-chairman and elect or appoint a secretary who need not be a member of the committee. The advisory committee shall serve without pay, but the county may reimburse each member for actual and necessary expenses incurred in the performance of his duties. The committee shall advise the local planning commission and the board of supervisors and assist in creating, reviewing, modifying, continuing or terminating districts within the county. In particular, the committee shall render expert ~~advise~~ *advice* as to the nature of farming and forestry and agricultural and forestal resources within the district and their relation to the entire locality.

(Ord. No. O-26-04, 12-13-2004)

Cross references: Boards and commissions, § 2-111 et seq.

Sec. 62-35. Application for creation of district in one or more localities; size and location of parcels.

Any owner or owners of land in the county may submit an application to the board of supervisors of the county for the creation of a district within county. Each district shall have a core of no less than 200 acres in one parcel or in contiguous parcels. A parcel not part of the core may be included in a district if the nearest boundary of the parcel is within one mile of the boundary of the core, or if it is contiguous to a parcel in the district the nearest boundary of which is within one mile of the boundary of the core. No land shall be included in any district without the signature on the application, or the written approval of all owners thereof. A district may be located in more than one locality, provided that (i) separate application is made to each locality involved, (ii) each local governing body approves the district, and (iii) the district meets the size

requirements of this section. In the event that one of the local governing bodies disapproves the creation of a district within its boundaries, the creation of the district within the adjacent localities' boundaries shall not be affected, provided that the district otherwise meets the requirements set out in this chapter. In no event shall the act of creating a single district located in two localities pursuant to this subsection be construed to create two districts.

(Ord. No. O-26-04, 12-13-2004)

Sec. 62-36. Criteria for evaluating application.

Land being considered for inclusion in a district may be evaluated by the advisory committee and the planning commission through the Virginia Land Evaluation and Site Assessment (LESA) System or, if one has been developed, a county LESA system. The following factors should be considered by the planning commission and the advisory committee, and at any public hearing at which an application that has been filed pursuant to Code of Virginia, § 15.2-4303 is being considered:

- (1) The agricultural and forestal significance of land within the district or addition and in areas adjacent thereto;
- (2) The presence of any significant agricultural lands or significant forestal lands within the district and in areas adjacent thereto that are not now in active agricultural or forestal production;
- (3) The nature and extent of land uses other than active farming or forestry within the district and in areas adjacent thereto;
- (4) Local developmental patterns and needs;
- (5) The comprehensive plan and, if applicable, the zoning regulations;
- (6) The environmental benefits of retaining the lands in the district for agricultural or forestal uses; and
- (7) Any other matter which may be relevant.

In judging the agricultural and forestal significance of land, any relevant agricultural or forestal maps may be considered, as well as soil, climate, topography, other natural factors, markets for agricultural and forestal products, the extent and nature of farm structures, the present status of agriculture and forestry, anticipated trends in agricultural economic conditions and such other factors as may be relevant.

Sec. 62-37. Planning commission review of application; notice; hearing.

Upon the receipt of an application for a district or for an addition to an existing district, such application shall be referred to the planning commission of the county which shall:

- (1) Provide notice of the application by publishing a notice in a newspaper having general circulation within the district and by providing for the posting of such notice in five conspicuous places within the district. The planning commission shall notify adjacent property owners as shown on the maps of county, used for tax assessment purposes by first-class mail. The notice shall contain:
 - a. A statement that an application for a district has been filed with the board of supervisors and referred to the planning commission pursuant to this article;
 - b. A statement that the application will be on file open to public inspection in the office of the clerk of the board of supervisors;

- c. Where applicable, a statement that any political subdivision whose territory encompasses or is part of the district may propose a modification which must be filed with the planning commission within 30 days of the date that the notice is first published;
- d. A statement that any owner of additional qualifying land may join the application within 30 days from the date the notice is first published or, with the consent of the board of supervisors, at any time before the public hearing the board of supervisors must hold on the application;
- e. A statement that any owner who joined in the application may withdraw his land, in whole or in part, by written notice filed with the board of supervisors, at any time before the board of supervisors acts pursuant to Code of Virginia, § 15.2-4309;
- f. A statement that additional qualifying lands may be added to an already created district at any time upon separate application pursuant to this article;
- g. A statement that at the termination of the 30-day period, the application and proposed modifications will be submitted to the advisory committee; and
- h. A statement that, upon receipt of the report of the advisory committee, a public hearing will be held by the planning commission on the application and any proposed modifications;

~~(2) Upon the termination of the initial 30-day period, refer such application and proposed modifications to the advisory committee.~~

~~(2)~~ ⁽²⁾ Upon the termination of the initial 60-day period, and within the next succeeding 30 days, report its recommendations to the board of supervisors including, but not limited to, the potential effect of the district and proposed modifications upon the county's planning policies and objectives;

~~(3)~~ ⁽⁴⁾ Hold a public hearing as prescribed by law;

~~(4)~~ ⁽⁵⁾ Publish in a newspaper having general circulation within the district a notice describing the district or addition, any proposed modifications and any recommendations of the planning commission and the advisory committee and send the notice by first-class mail to adjacent property owners and to those political subdivisions whose territory encompasses all or is any part of the district or addition.

Sec. 62-38. Advisory committee review of application.

Within 30 days of receiving an application and proposed modifications pursuant to Code of Virginia, § 15.2-4307(2), the advisory committee shall review and make recommendations concerning the application and modifications to the planning commission.

Sec. 62-39. Hearing; creation of district; conditions; notice.

(a) The board of supervisors, after receiving the report of the planning commission and the advisory committee, shall hold a public hearing as provided by law, and after such public hearing, may by ordinance create the district or add land to an existing district as applied for, or with any modifications it deems appropriate. The board of supervisors shall require, as a condition to creation of the district, that any parcel in the district shall not, without the prior approval of the board of supervisors, be developed to any more intensive use or to certain more intensive uses, other than uses resulting in more intensive agricultural or intensive uses, other than uses resulting in more intensive agricultural or forestal production, during the period which

the parcel remains within the district. The board of supervisors shall not prohibit as a more intensive use, construction and placement of dwellings for persons who earn a substantial part of their livelihood from a farm or forestry operation on the same property, or for members of the immediate family of the owner, or divisions of parcels for such family members, unless the board of supervisors finds that such use in the particular case would be incompatible with farming or forestry in the district. The owner, upon application for the construction and placement of a dwelling on land lying within a district, must present sufficient evidence that a substantial part of their livelihood is earned from a farm or forestry operation on the same property.

(b) To further the purposes of this chapter and to promote agriculture and forestry and the creation of districts, the board of supervisors may adopt programs offering incentives to landowners to impose land use and conservation restrictions on their land within the district. Any conditions to creation of the district and the period before the review of the district shall be described, either in the application or in a notice sent by first-class mail to all landowners in the district and published in a newspaper having a general circulation within the district at least two weeks prior to adoption of the ordinance creating the district. The ordinance shall state any conditions to creation of the district and shall prescribe the period before the first review of the district, which shall be no less than four years but not more than ten years from the date of its creation. In prescribing the period before the first review, the board of supervisors shall consider the period proposed in the application. The ordinance shall remain in effect at least until such time as the district is to be reviewed. In the event of annexation by a city or town of any land within a district, the district shall continue until the time prescribed for review.

(~~b~~ c) The board of supervisors shall act to adopt or reject the application, or any modification of it, no later than 180 days from the date the application was submitted. Upon the adoption of an ordinance creating a district or adding land to an existing district, the board of supervisors shall submit a copy of the ordinance with maps to the commissioner of the revenue, and the state forester, and the commissioner of agriculture and consumer services for information purposes. The commissioner of the revenue shall identify the parcels of land in the district in the land book and on the tax map, and the board of supervisors shall identify such parcels on the zoning map, where applicable and shall designate the districts on the official comprehensive plan map each time the comprehensive plan map is updated.

Sec. 62-40. Additions to district.

Additional parcels of land may be added to an existing district by following the process prescribed for the creation of a new district. Such additions shall be reviewed at the time previously established for review of the district to which they are added.

Sec. 62-41. Review of districts.

(a) The board of supervisors may complete a review of any district created under this section, together with additions to such district, no less than four years but no more than ten years after the date of its creation and every four to ten years thereafter. If the board of supervisors determines that a review is necessary, it shall begin such review at least 90 days before the expiration date of the period established when the district was created. In conducting such review, the board of supervisors shall ask for the recommendations of the advisory committee

and the planning commission in order to determine whether to terminate, modify or continue the district. When each district is reviewed, land within the district may be withdrawn at the owner's discretion by filing a written notice with the board of supervisors at any time before it acts to continue, modify or terminate the district. The county planning commission or the advisory committee shall schedule as part of the review a public meeting with the owners of land within the district, and shall send by first-class mail a written notice of the meeting and review to all such owners. The notice shall state the time and place for the meeting; that the district is being reviewed by the board of supervisors; that the board of supervisors may continue, modify or terminate the district; and that land may be withdrawn from the district at the owner's discretion by filing a written notice with the board of supervisors at any time before it acts to continue, modify or terminate the district. The board of supervisors shall hold a public hearing as provided by law. The board of supervisors may stipulate conditions to continuation of the district and may establish a period before the next review of the district, which may be different from the conditions or period established when the district was created. Any such different conditions or period shall be described in a notice sent by first-class mail to all owners of land within the district and published in a newspaper having a general circulation within the district at least two weeks prior to adoption of the ordinance continuing the district. Unless the district is modified or terminated by the board of supervisors, the district shall continue as originally constituted, with the same conditions and period before the next review as that established when the district was created,

(b) If the board of supervisors determines that a review is unnecessary, it shall set the year in which the next review shall occur.

(c) The board of supervisors may also complete a mid-term review when the term of the district is fifty percent complete. The mid-term review shall consist of county staff inspecting the district using the most recent aerial photography available. If it appears that a parcel has been developed into a more intensive use or to certain more intensive uses without proper approval of the board of supervisors (pursuant to Sec. 62-39), the owner shall be notified and required to contact the State Forestry Department, Extension Service, and/or the Colonial Soil and Water Conservation district to request an inspection of the property. The property owner shall submit the inspection results to the director of community development, or his designee, not later than sixty days past the mid-term review date. If no report is submitted, or the report states that the property is no longer in conformance with the AFD program, the Board may elect to remove the property from the AFD program. Upon removal of any land from a district created pursuant to this article, land that is no longer part of a district shall be subject to roll-back taxes as are provided in Code of Virginia, §58.1-3237.

Sec. 62-42. Effects of districts.

(a) Land lying within a district and used in agricultural or forestal production shall automatically qualify for an agricultural or forestal use-value assessment pursuant to Code of Virginia, § 58.1-3229 et seq., if the requirements for such assessment contained therein are satisfied. Any ordinance adopted pursuant to Code of Virginia, § 15.2-4303, shall extend such use-value assessment and taxation to eligible real property within such district whether or not the county board of supervisors has adopted an ordinance pursuant to Code of Virginia, § 58.1-3231.

(b) The board of supervisors shall not exercise any of its powers to enact local laws or ordinances within a district in a manner which would unreasonably restrict or regulate farm

structures or farming and forestry practices in contravention of the purposes of this article unless such restrictions or regulations bear a direct relationship to public health and safety. The county comprehensive plan and zoning and subdivision ordinances shall be applicable within such districts, to the extent that such ordinances are not in conflict with the conditions to creation or continuation of the district set forth in the ordinance creating or continuing the district or the purposes of this article. Nothing in this article shall affect the authority of the county to regulate the processing or retail sales of agricultural or forestal products, or structures therefor, in accordance with the comprehensive plan or any local ordinances. Local ordinances, comprehensive plans, land use planning decisions, administrative decisions and procedures affecting parcels of land adjacent to any district shall take into account the existence of such district and the purposes of this article.

(c) It shall be the policy of all agencies of the commonwealth to encourage the maintenance of farming and forestry in districts and all administrative regulations and procedures of such agencies shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans or other funding.

(d) No special district for sewer, water or electricity or for nonfarm or nonforest drainage may impose benefit assessments or special tax levies on the basis of frontage, acreage or value on land used for primarily agricultural or forestal production within a district, except a lot not exceeding one-half acre surrounding any dwelling or nonfarm structure located on such land. However, such benefit assessment or special ad valorem levies may continue if imposed prior to the formation of the district.

Sec. 62-43. Proposals as to land acquisition or construction within district.

(a) Any agency of the commonwealth or any political subdivision which intends to acquire land or any interest therein other than by gift, devise, bequest or grant, or any public service corporation which intends to:

(1) Acquire land or any interest therein for public utility facilities not subject to approval by the state corporation commission, provided that the proposed acquisition from any one farm or forestry operation within the district is in excess of one acre or that the total proposed acquisition within the district is in excess of ten acres; or

(2) Advance a grant, loan, interest subsidy or other funds within a district for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities to serve non-farm structures, shall at least 90 days prior to such action file a notice of intent with the board of supervisors containing such information and in such manner and form as the board of supervisors may prescribe. Such notice of intent shall contain a report detailing all reasons for the proposed action including, but not limited to, an evaluation of alternatives which would not require action within the district.

(b) Upon receipt of a notice filed pursuant to subsection (a) above, the board of supervisors, in consultation with the planning commission and the advisory committee, shall review the proposed action to determine: (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district; (ii) the policy of this article and the necessity of the proposed action to provide service to the public in the most economical and practicable manner; and (iii) whether reasonable

alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district. If requested to do so by any owner of land that will be directly affected by the proposed action of the agency, corporation, or political subdivision, the director of the department of conservation and recreation, or his designee, may advise the local governing body on the issues listed in clauses (i), (ii) and (iii) of this subsection.

(c) If the board of supervisors finds that the proposed action might have an unreasonably adverse effect upon either state or local policy, it shall issue an order within 90 days from the date the notice was filed directing the agency, corporation or political subdivision not to take the proposed action for a period of 150 days from the date the notice was filed. During such 150-day period, the county board of supervisors shall hold a public hearing, as prescribed by law, concerning the proposed action. The hearing shall be held where the board of supervisors usually meets or at a place otherwise easily accessible to the district. The board of supervisors shall publish notice in a newspaper having a general circulation within the district, and mail individual notice of the hearing to the political subdivisions whose territory encompasses or is part of the district, and the agency, corporation or political subdivision proposing to take the action. Before the conclusion of the 150-day period, the board of supervisors shall decide whether the proposed action will have an adverse effect upon state or local policy and whether the proposed action is necessary to provide service to the public in the most economical and practicable manner, and it shall, by the issuance of a final order, report its decision to the agency, corporation or political subdivision proposing to take the action. If the agency, corporation or political subdivision is aggrieved by the final order of the board of supervisors, an appeal shall lie to the circuit court having jurisdiction of the territory wherein a majority of the land affected by the acquisition is located. However, if such public service corporation is regulated by the state corporation commission, an appeal shall be to the state corporation commission.

(Ord. No. O-26-04, 12-13-2004)

Sec. 62-44. Withdrawal of land from a district; termination of a district.

(a) At any time after the creation of a district within the county, any owner of land lying in such district may file with the board of supervisors a written request to withdraw all or part of his land from the district for good and reasonable cause. A request to withdraw land from a district is not favored and therefore withdrawals will only be allowed for good and reasonable cause shown, to include, but not be limited to:

- (1) The proposed new land use will not have an adverse impact on agricultural or forestal operations on other property within and adjacent to the district;
- (2) The withdrawal is consistent with the comprehensive plan and/or the zoning ordinance;
- (3) The proposed land use is consistent with the public interest of the county in that it promotes the health, safety or general welfare of the county, rather than only the proprietary interest of the owner;
- (4) The environmental benefits assessed in creating the district will not be adversely affected;
- (5) The proposed land use could not have been anticipated at the time the land was included in the district and a change in circumstances places an undue hardship on the owner should the land remain in the district; and

(6) Agricultural and/or forestal production is no longer practicable or feasible due to changes in soil, climate, water, topography, incompatible land uses adjacent to the property, and other relevant changes that would impact agricultural and/or forestal production on this land.

(b) The board of supervisors shall refer the request to the planning commission and the advisory committee for their recommendations and shall hold a public hearing. Land proposed to be withdrawn may be reevaluated through the state or county land evaluation and site assessment (LESA) system. The landowner seeking to withdraw land from a district, if denied favorable action by the board of supervisors, shall have an immediate right of appeal de novo to the county circuit court. This section shall in no way affect the ability of an owner to withdraw an application for a proposed district or withdraw from a district pursuant to Code of Virginia, §§ 15.2-4307(1)(v) or 15.2-4311.

(c) Upon termination of a district or withdrawal or removal of any land from a district created pursuant to this article, land that is no longer part of a district shall be subject to roll-back taxes as are provided in Code of Virginia, § 58.1-3237. Sale or gift of a portion of land in a district to a member of the immediate family as defined in Code of Virginia, § 15.2-2244 shall not in and of itself constitute a withdrawal or removal of any of the land from a district.

(d) Upon termination of a district or upon withdrawal or removal of any land from a district, land that is no longer part of a district shall be subject to those local laws and ordinances prohibited by the provisions of Code of Virginia, § 15.2-4312(B).

(e) Upon the death of a property owner, any heir at law, devisee, surviving, cotenant or personal representative of a sole owner of any fee simple interest in land lying within a district shall, as a matter of right, be entitled to withdraw such land from such district upon the inheritance or descent of such land, provided that such heir at law, devisee, surviving cotenant or personal representative files written notice of withdrawal with the board of supervisors and the commissioner of the revenue within two years of the date of death of the owner.

(f) Upon termination or modification of a district, or upon withdrawal or removal of any parcel of land from a district, the board of supervisors shall submit a copy of the ordinance or notice of withdrawal to the commissioner of the revenue, the state forester and the state commissioner of agriculture and consumer services for information purposes. The commissioner of the revenue shall delete the identification of such parcel from the land book and the tax map, and the board of supervisors shall delete the identification of such parcel from the zoning map, where applicable.

(g) The withdrawal or removal of any parcel of land from a lawfully constituted district shall not in itself serve to terminate the existence of the district. The district shall continue in effect and be subject to review as to whether it should be terminated, modified or continued pursuant to Code of Virginia, § 15.2-4311.

(Ord. No. O-26-04, 12-13-2004)

Sec. 62-45. Application form and general guidelines.

The director of community development with the assistance of the AFD Advisory Committee and the planning commission is authorized to develop (1) an application form that requires the land owner to certify to the requirements of state law and regulation and to provide evidence of such conformity, and (2) administrative guidelines that will assist the land owner in completing the application.

(Ord. No. O-26-04, 12-13-2004)

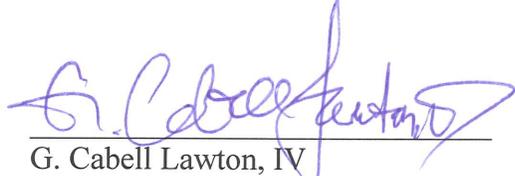
This ordinance shall be effective immediately.

G. Cabell Lawton, IV
County Administrator

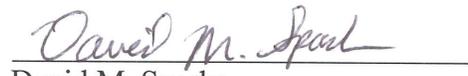


David M. Sparks
Chairman

This ordinance shall be effective immediately.



G. Cabell Lawton, IV
County Administrator



David M. Sparks
Chairman