



NEW KENT COUNTY  
PLANNING COMMISSION -- REGULAR MEETING  
JANUARY 20, 2015, AT 6:30 PM  
COUNTY ADMINISTRATION BUILDING BOARDROOM  
AGENDA

**ITEM DESCRIPTION**

1. CALL TO ORDER

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. ANNUAL ELECTIONS AND REORGANIZATION

A. ELECTION OF OFFICERS

- I. 2015 CHAIR
- II. 2015 VICE CHAIR
- III. 2015 PUBLIC HEARING CHAIR
- IV. 2015 PUBLIC HEARING VICE CHAIR
- V. 2015 REPRESENTATIVE TO THE RICHMOND REGIONAL PLANNING DISTRICT COMMISSION

B. REVIEW AND ADOPTION OF BY-LAWS

C. ADOPTION OF MEETING SCHEDULE

5. APPROVAL OF MINUTES

A. DECEMBER 15, 2014

6. CITIZEN COMMENT PERIOD

COMMENTS ARE LIMITED TO THOSE ON PLANNING RELATED ISSUES THAT ARE NOT SCHEDULED FOR A PUBLIC HEARING LATER ON THE AGENDA. PLEASE SIGN UP ON THE SHEET AT THE BACK OF THE ROOM PRIOR TO THE START OF THE MEETING.

7. PRESENTATION

8. UNFINISHED BUSINESS

9. PUBLIC HEARINGS

7:00 PM OR AS SOON THEREAFTER AS POSSIBLE. SPEAKERS ARE LIMITED TO THREE MINUTES EACH & SHOULD COME TO THE PODIUM AND STATE THEIR NAME AND ADDRESS.

- A. **APPLICATION CUP-03-14 COLONIAL HOLDINGS, INC:** COLONIAL HOLDINGS, INC. HAS APPLIED FOR AN AMENDMENT TO THEIR EXISTING CONDITIONAL USE PERMIT TO ALLOW COLONIAL DOWNS TO HOST ACCESSORY EVENTS AND USES AT THE FACILITY WHETHER OR NOT THE FACILITY HOLDS A PARI-MUTUEL HORSERACING LICENSE FROM THE VIRGINIA RACING COMMISSION. THE SUBJECT PROPERTY IS LOCATED AT 10515 COLONIAL DOWNS PARKWAY AND IS FURTHER IDENTIFIED AS TAX MAP & PARCEL NUMBER 33-6 (GPIN #118-2736-0725).

- B. APPLICATION OA-01-15:** THE PLANNING COMMISSION WILL CONSIDER ORDINANCE CHANGES FOR SECTION 91-127 OF THE NEW KENT COUNTY CODE. THIS SECTION CONTAINS SPECIAL PROVISIONS FOR OPEN SPACE OR CLUSTER SUBDIVISIONS. PROPOSED AMENDMENTS INCLUDE RAISING THE MINIMUM ACREAGE TO 50 ACRES, ALLOWING DEED RESTRICTIONS IN LIEU OF RECORDED CONSERVATION EASEMENTS, REQUIREMENTS TO CONNECT TO PUBLIC WATER/SEWER IF THE SUBDIVISION IS IN A SERVICE AREA, NOT PERMITTING THESE TYPES OF SUBDIVISIONS ON LAND ZONED R-1, AND ONLY ALLOWING THESE SUBDIVISIONS IN AREAS DESIGNATED AS RURAL LANDS IN THE COMPREHENSIVE PLAN.
  
- C. APPLICATION OA-02-15:** THE PLANNING COMMISSION WILL CONSIDER ORDINANCE CHANGES FOR ARTICLE II, CHAPTER 62, OF THE NEW KENT COUNTY CODE. THIS ARTICLE CONCERNS THE AGRICULTURAL AND FORESTAL DISTRICTS PROGRAM AND THE PROCESS AS OUTLINED IN THE STATE CODE. THE PROPOSED CHANGES TO THE COUNTY CODE REFLECT CHANGES TO THE VIRGINIA STATE CODE CONCERNING AGRICULTURAL AND FORESTAL DISTRICTS.
  
- D. APPLICATION OA-03-15:** THE PLANNING COMMISSION WILL CONSIDER ORDINANCE CHANGES FOR SECTIONS 91-128 AND 98-871 OF THE NEW KENT COUNTY CODE. THESE SECTIONS CONTAIN SPECIAL PROVISIONS FOR COMMERCIAL AND INDUSTRIAL SUBDIVISIONS AND PROVIDE SITE PLAN PROVISIONS FOR BUSINESS, COMMERCIAL, AND SERVICE USES. THE PROPOSED CHANGES WILL MODIFY THE EXCEPTION PROCESS FROM AN ADMINISTRATIVE PROCEDURE TO A LEGISLATIVE PROCEDURE.

**10. NEW BUSINESS**

- A. PLANNING COMMISSION 2014 ANNUAL REPORT (MS. LE DUC)**
  
- B. PRESENTATION OF THE FY2016 CAPITAL IMPROVEMENT PLAN (MR. HATHAWAY)**

**11. CHAIRMAN'S REPORT**

**12. RRPDC REPORT**

**13. COMMISSIONER'S REPORTS**

**14. STAFF REPORTS**

**15. MEETING SCHEDULE**

- A. THE PLANNING COMMISSION WILL TENTATIVELY HOLD THEIR NEXT REGULAR MEETING ON TUESDAY, FEBRUARY 17, 2015 AT 6:30 PM IN THE BOARDROOM**

**16. ADJOURNMENT**

## 2015 Planning Commission Officers

### ELECTION OF CHAIR OF PLANNING COMMISSION

I move to nominate \_\_\_\_\_ as the 2015 Chair of the New Kent County Planning Commission. (2014 J. Chalmers)

I move to close nominations for the 2015 Chair of the New Kent County Planning Commission.

**[If only one nomination]** I move to elect \_\_\_\_\_ as the 2015 Chair of the New Kent County Planning Commission by acclamation.

### ELECTION OF VICE-CHAIR OF THE PLANNING COMMISSION

I move to nominate \_\_\_\_\_ as the 2015 Vice-Chair of the New Kent County Planning Commission. (2014 M. Lane)

I move to close nominations for the 2015 Vice-Chair of the New Kent County Planning Commission.

**[If only one nomination]** I move to elect \_\_\_\_\_ as the 2015 Vice-Chair of the New Kent County Planning Commission by acclamation.

### ELECTION OF PUBLIC HEARING CHAIR

I move to nominate \_\_\_\_\_ as the 2015 Public Hearing Chair of the New Kent County Planning Commission. (2014 P. Townsend)

I move to close nominations for the 2015 Public Hearing Chair of the New Kent County Planning Commission.

**[If only one nomination]** I move to elect \_\_\_\_\_ as the 2015 Public Hearing Chair of the New Kent County Planning Commission by acclamation.

## 2015 Planning Commission Officers

### ELECTION OF PUBLIC HEARING VICE-CHAIR

I move to nominate \_\_\_\_\_ as the 2015 Public Hearing Vice-Chair of the New Kent County Planning Commission. (2014 K. Butler)

I move to close nominations for the 2015 Public Hearing Vice-Chair of the New Kent County Planning Commission.

*[If only one nomination]* I move to elect \_\_\_\_\_ as the 2015 Public Hearing Vice-Chair of the New Kent County Planning Commission by acclimation.

### ELECTION OF RRPDC REPRESENTATIVE

I move to nominate \_\_\_\_\_ as the 2015 RRPDC Representative of the New Kent County Planning Commission. (2014 E. Pollard)

I move to close nominations for the 2015 RRPDC Representative of the New Kent County Planning Commission.

*[If only one nomination]* I move to elect \_\_\_\_\_ as the 2015 RRPDC Representative of the New Kent County Planning Commission by acclimation.

## **BYLAWS**

### ***NEW KENT COUNTY PLANNING COMMISSION***

#### **Recitals**

The New Kent County Planning Commission ("Commission") has been established in conformance the Code of Virginia, § 15.2-2210, et seq., the New Kent County Code of Ordinances, § 18.2-231, et seq., and with the resolution adopted by the Commission of Supervisors in New Kent County on February 8, 1960.

Previously, the Commission has adopted these Bylaws in order to facilitate the exercise of its power and duties in accordance with the provisions of Chapter 25, Title 15, Article 3, Code of Virginia. These Bylaws were adopted June 3, 1986 and revised and readopted on February 19, 1992, August 16, 1994, December 15, 1995, March 17, 2003, April 20, 2009, January 19, 2010, February 22, 2011, November 21, 2011, January 17, 2012, January 22, 2013, March 17, 2014, and \_\_\_\_\_, 2015.

#### **ARTICLE I** **OFFICERS AND THEIR SELECTION**

A. The Officers of the Commission shall consist of a Chairman, a Vice Chairman, a Chairman for Public Hearings, and a Vice Chairman for Public Hearings, each of whom shall be a citizen member of the Commission and shall serve for a one-year term. The Director of Community Development or his designee shall serve as the Secretary to the Commission.

B. Commissioners shall nominate candidates for office during the first meeting of each calendar year. Election of officers shall follow immediately.

C. A candidate receiving a majority vote of the members present and voting shall be elected. In the event of a plurality, the candidate receiving the largest number of votes shall be elected. Tie votes shall be subject to a run-off election.

D. Elected officers shall serve until a successor takes office. An officer may succeed himself or herself for one additional term. Whenever a vacancy in office occurs, the Commission shall immediately elect a replacement officer using the procedures set forth above. Newly elected officers shall take office immediately upon election.

#### **ARTICLE II** **DUTIES OF OFFICERS**

A. The Chairman shall:

1. Preside at all meetings of the Commission.
2. Appoint committees, special and/or standing.
3. Rule on all procedural questions.
4. Approve all agenda items.
5. Carry out other duties as assigned by the Commission.

B. The Vice Chairman shall assume the duties of the Chairman in the Chairman's absence or inability to act.

C. The Chairman for Public Hearings shall:

1. Preside over all public hearings of the Commission.

2. Preside over the Commission's business in all joint public hearings of the Commission and the Board of Supervisors.
  3. Rule on all procedural questions during the public hearing.
- D. The Vice Chairman for Public Hearings shall assume the duties of the Chairman in the Chairman's absence or inability to act.
- E. The Secretary shall:
1. Keep the minutes of the Commission.
  2. Maintain the files and written records of the Commission.
  3. Publish the Notice for all meetings and public hearings of the Commission to the Commissioners and the public.
  4. Certify all maps, records, and reports of the Commission.
  5. Attend to the correspondence of the Commission.
  6. Prepare all agenda items for the Chairman's approval.
  7. Draft and sign all correspondence necessary for the execution of the duties and functions of the Commission.
  8. Communicate all short suspense items by telephone/electronic communication in lieu of normal correspondence.

### **ARTICLE III** **AGENDA PREPARATION POLICY**

A. The Secretary shall prepare an agenda for each regular meeting of the Commission, with the concurrence of the Director of Community Development. Commissioners, staff, and others may submit to the Secretary items for the agenda at any time prior to Noon Monday three (3) weeks preceding the regular meeting at which such item is to be considered. The Chairman shall approve all agenda items.

B. The Planning Manager shall make copies of the agenda available for each Commissioner. The County Administrator shall make copies of the agenda available for members of the news media serving the County no later than seven (7) calendar days preceding the meeting to which it relates.

C. The Secretary shall deliver minutes from the previous month's meeting to the Commissioners with the agenda prior to the first meeting of the month. Unless requested by a Commissioner, the Commission shall be dispense with a reading of the minutes and the minutes will be approved upon motion and vote of the Commission.

D. Procedure for Dealing with Items Not On the Agenda

1. The Commission shall not consider any matter not on the agenda except at the discretion of the Chairman. The Commission shall not act upon any matter not listed on the agenda over the objection of any three members present.

2. For any special meeting, the call for such meeting shall state the business to be discussed. The Chairman or Secretary shall prepare a written agenda listing all items to be considered for every special meeting. No other business shall be discussed or acted upon over the objection of any member present.

**ARTICLE IV**  
**MEETINGS**

A. The time and place of Commission meetings shall be set from time to time by resolution of the Commission. When a meeting date would fall on a legal holiday, or when a meeting must be postponed because of inclement weather or other similar circumstances; the meeting shall be held on the next business day on which the County offices are opened.

B. If there are no public hearings scheduled for a meeting, the Chairman has the discretion to cancel the meeting up to seven days prior to the scheduled meeting. The Secretary will notify the Commissioners via US mail of the cancellation and will post the cancellation notice in the appropriate place at least five days prior to the scheduled meeting.

C. The Chairman, or two members, may call a Special Meeting of the Commission upon written request to the Secretary. The Secretary shall mail to all Commissioners, at least five days in advance of a Special Meeting, a written notice fixing the time and place of the meeting and the purpose thereof.

D. Order of Business

1. The order of business for a regular meeting shall be:

- a. Call to order
- b. Moment of Silence and Pledge of Allegiance
- c. Roll call
- d. Determination of a quorum
- e. Approval of minutes
- f. Citizen comment period
- g. Presentations
- h. Unfinished business
- i. Public hearings
- j. New business
- k. Chairman's report
- l. RRPDC appointee report
- m. Commissioners' report
- n. Staff report
- o. Meeting schedule
- p. Adjournment

2. The Chairman has the authority to alter this order of business if the Chairman deems it necessary. The Commission may go into closed session prior to 6:30 p.m. Public Hearings will take place at 7:00 p.m. or thereafter.

E. Quorum and Voting

1. A majority of the members of the Commission shall constitute a quorum.

2. Every member who is in the meeting room when the question is put, shall vote or state the reason for abstaining. The member shall announce such intention to abstain at the time the issue comes before the Commission and shall not participate in the discussion on such issue or question.

3. No action of the Commission shall be valid unless a majority vote of those present and voting authorizes it. Voting may be by roll call, in which case the Secretary shall keep a record as a part of the minutes.

4. A recorded roll call vote shall be taken on matters as required by law and on other matters as deemed appropriate by the Chair or at the request of any member.

F. Procedure for Roll Call of Commission Members

1. The Chairman of the Commission shall cast the last vote.
2. The members of the Commission shall cast votes in district order on a rotating basis.
3. The Chairman or Secretary of the Commission shall restate all motions before a vote is taken and the result of the vote shall be announced following each vote.

G. General and Special Rules of Procedure

1. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Commission in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the Commission may adopt.

2. Members need not rise when speaking.
3. Motions need not be seconded.
4. There is no limit to the number of times a member can speak to a question.
5. Informal discussion of a subject is permitted while no motion is pending.
6. The Chair need not rise while putting questions to vote.
7. The Chair may speak in discussion without rising or relinquishing the Chair.
8. The Chair may make motions and vote on all questions.

9. Should any member have three (3) absences from a regular meeting in a calendar year; written notification of those absences will be given by the Chairman of the Planning Commission to the Board Supervisor who appointed that member.

H. Members Absenting Themselves from Meeting Prior to Adjournment

1. After the names of members of the Commission have been recorded as present at any meeting of the Commission, the members shall not absent themselves before adjournment unless by consent of the Commission.

I. Commission to Sit With Open Doors

1. The Commission shall sit with open doors and all persons conducting themselves in an orderly manner may attend the meetings; however, the Commission may hold closed sessions as permitted by law and when deemed necessary by a majority vote of the Commission.

2. The Commission shall keep a set of minutes of all meetings, committee meetings, sub-committee meetings, and public information meetings. The Minutes are public record.

3. All official papers and plans involving the authority of the Commission shall bear the signature of the Chairman together with the certification signed by the secretary and chairman.

J. Procedure to Address the Commission

1. When any person, including Commission members, speaks to the Commission, they shall address the Chairman and shall confine themselves strictly to the question before the Commission.

2. No person in attendance at a meeting of the Commission shall be permitted to address the Commission while members are considering any motion, resolution, or ordinance preliminary to a vote on the same, except at the discretion of the Chairman.

K. Citizens Comment Period

1. Any person who wishes to speak at the Public Comment Period shall indicate their name, address, and topic on the Public Comment register.

2. The Chairman after opening the Public Comment Period will call on each speaker in the order their names appear on the register.

3. Each speaker shall state his or her name and address for the record.

4. Each speaker shall be allowed three (3) minutes for comments unless additional time is granted by the Commission. If a speaker represents a group, there shall be a time limit of seven (7) minutes.

5. All comments will be addressed to the Chair.

6. All items presented during citizens comment period will be taken under advisement by the Commission. The Commission will take no action on items brought to the attention of the Commission during citizens comment period, unless such action is taken in accordance with Article V of these bylaws.

L. Public Hearings

1. All public hearings will be advertised to begin at 7:00 p.m. unless otherwise directed by the Chairman and will be conducted thereafter at the Commission's discretion. Public hearings may be postponed, continued, or canceled at the discretion of the Commission.

2. In addition to those required by law, the Commission at its discretion may hold public hearings when it decides that a hearing will be in the public interest.

3. The following rules shall apply to public hearings:

a. The case before the Commission shall be summarized by the Chairman for Public Hearings or member delegated by the Chairman for Public Hearings. Any person who wishes to speak at the public hearing shall indicate their name and address on the register for that hearing.

b. After opening the public hearing, the Chairman for Public Hearings will call on each speaker in the order their names appear on the register.

c. Each speaker shall state his or her name and address for the record.

d. Each speaker shall be allowed three (3) minutes for comments unless additional time is granted by the Chairman for Public Hearings. If the speaker represents a group there shall be a time limit of seven (7) minutes.

e. Speakers shall restrict their comments to the item for which the public hearing is being held. All comments will be addressed to the Chairman for Public Hearings.

4. The following format shall apply to the conduct of public hearings, which the Chairman for Public Hearings may change in his or her discretion:

- a. Staff report on the Item.
- b. Presentation or comments by the applicant or their representative. Interested parties shall have the privilege of the floor.
- c. Questions or comments by the Commission members.
- d. Formal opening of the public hearing by the Chairman for Public Hearings.
- e. Comments by the Public.
- f. Further comment by the applicant or their representative.
- g. Formal closing of the public hearing by the Chairman for Public Hearings.
- h. Discussion and action by the Commission, including the recall of persons who have spoken previously.

#### **ARTICLE V**

#### **APPOINTMENT OF STANDING AND SPECIAL COMMITTEES**

A. The Chairman of the Commission shall appoint committee members to any permanent or temporary committee established by the Commission. The Chairman shall make his committee appointments within thirty (30) days of passage by the Commission of a resolution creating a committee.

B. Appointments to other commissions and boards shall be approved by vote of the entire Commission. Whenever possible, membership on such bodies shall be proportional by election districts. Individuals who move from a district to another district or change districts due to redrawing of the district lines during their term of office shall remain in office until the expiration of their term. If any commission or board contains an odd number of members, the district under-represented shall be on a rotating basis.

C. The Commission shall charter all committees, whether permanent or temporary. The charter shall, at a minimum, prescribe the committee's mission, membership, and duration, authorize or prohibit the expenditure of public funds, and set forth any reports, results or other item the committee shall deliver to the Commission.

D. Standing committees may be appointed for one (1) year, the Commission Chairman shall fill vacancies immediately.

E. Special committees may be appointed by the Chairman for purposes and terms approved by the Commission.

#### **ARTICLE VI** **AMENDMENTS**

A. These Bylaws may be amended upon the recorded vote of two-thirds (2/3) of the Commission's entire membership in the first regular meeting of the Commission following the meeting in which the amendment is proposed.



## New Kent County Planning Commission

### 2015 Meeting Schedule

Tuesday, January 20, 2015

Tuesday, February 17, 2015

Monday, March 16, 2015

Monday, April 20, 2015

Monday, May 18, 2015

Monday, June 15, 2015

Monday, July 20, 2015

Monday, August 17, 2015

Monday, September 21, 2015

Monday, October 19, 2015

Monday, November 16, 2015

Monday, December 21, 2015

Regular Meetings are scheduled for 6:30 P.M.

Public Hearings begin at 7:00 P.M. in the Board Room  
of the New Kent County Administration Building

The Commission may schedule other meetings as needed.



**NEW KENT COUNTY  
 PLANNING COMMISSION -- REGULAR MEETING  
 MONDAY, DECEMBER 15, 2014, AT 6:30 PM  
 COUNTY ADMINISTRATION BUILDING BOARD ROOM  
 MINUTES**

THE REGULAR MEETING OF THE NEW KENT COUNTY PLANNING COMMISSION WAS HELD ON THE 15TH DAY OF DECEMBER IN THE YEAR TWO THOUSAND FOURTEEN IN THE BOARD ROOM OF THE COUNTY ADMINISTRATION BUILDING AT 6:30 PM.

**IN RE: CALL TO ORDER**

Mr. Chalmers called the meeting to order at 6:30 pm.

**IN RE: ROLL CALL**

Attendance:

Mrs. Joyce Williams	Present
Mr. Clarence "Tommy" Tiller	Present
Mrs. Charna Moss-Gregory	Present
Mr. Howard Gammon	Absent
Mr. Michael Lane	Present
Mr. Edward Pollard	Present
Ms. Katherine Butler	Present
Ms. Laura Rose	Present
Mrs. Patricia Townsend	Absent
Mr. Richard Kontny	Present
Mr. Jack Chalmers	Present

Mr. Chalmers established that there was a quorum.

Also Attending:

- Ms. Michele Gowdy, County Attorney
- Mr. Matthew Smolnik, Director, Community Development
- Ms. Kelli L. Z. Le Duc, Planning Manager
- Mr. Kenneth Vaughan, Zoning Official
- Mrs. Cathy Williams, Recording Secretary

**IN RE: MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE**

Mr. Chalmers led the moment of silence and Pledge of Allegiance.

**IN RE: APPROVAL OF MINUTES**

A. September 15, 2014 – Regular Planning Commission Meeting. Mr. Pollard commented on a sentence

on page seven of the minutes that he thought should be removed.

A motion was made by Mr. Kontny to approve the minutes with correction of the September 15, 2014—Regular Meeting.

The members were polled:

Mr. Howard Gammon	Absent
Mrs. Joyce Williams	Aye
Mr. Clarence "Tommy" Tiller	Aye
Mr. Edward Pollard	Aye
Mrs. Patricia Townsend	Absent
Mrs. Charna Moss-Gregory	Abstain
Mr. Michael Lane	Aye
Ms. Laura Rose	Aye
Mr. Richard Kontny	Aye
Ms. Katherine Butler	Abstain
Mr. Jack Chalmers	Aye

The motion carried with a 7:0:2 roll call vote.

**IN RE: CITIZEN COMMENT PERIOD**

*Comments are limited to those on planning related issues that are not scheduled for public hearings later on the agenda. The comment sign-up sheet is located at the back of the room and citizens are required to sign up prior to the start of the meeting.*

None

**IN RE: PRESENTATIONS**

None

**IN RE: UNFINISHED BUSINESS**

**A. ACTION ON APPLICATION PUD-01-14, PATRIOTS LANDING MANAGEMENT CORPORATION.** A PUBLIC HEARING WAS HELD ON THIS APPLICATION AT THE AUGUST 18, 2014 REGULAR MEETING. APPLICANT TO GIVE UPDATE.

As part of the record, Mr. Lane recused himself from the vote.

Mr. Keene, counsel for the developer said that the issues with the Homeowners Association had been addressed and resolved and an agreement was executed.

Mr. Pollard asked Mr. Keene to explain the private roads issue and why it needs to be supported by the Board. Mr. Keene answered that VDOT decided not to take into their secondary system, roads that cross a dam and would not accept the road as public, therefore, it had to become a private road but built to VDOT standards. Also as part of the negotiations with the Homeowner's Association, and under County Ordinance, a reserve fund was set up with annual contributions from the Sub-Association for maintenance of the road and replacement of the dam.

Mr. Pollard asked about the private road being an obstacle in the selling of a home in that area. Mr. Keene answered that it would be better from a lender's point of view, because of the responsibility of the Homeowner's Association and available documents.

Mr. Kontny wanted to see the Agreement that was executed between the Homeowner's Association and the developer and felt that he was in the dark about some things. He questioned the figures that were allocated in the reserve fund and thought they were low. He stated that the homeowners should be made aware that the reserve fund goes beyond 20 years. He wanted to make sure that funds all environmental requirements were met with the construction of the private roads. Mr. Keene explained the funds and said they were comfortable with the numbers. He also explained the technicalities of the dam and added that it was a low impact dam.

Mr. Kontny wanted to get information from the county Environmental Planner who was not present at the meeting to ask about the Stormwater requirements based on water being around three sides. Ms. Gowdy said that it would be reviewed by the Environmental Planner when the site plan was distributed.

Mr. Pollard asked about the styles of the homes being built. Mr. Keene answered it would be similar to the first phase.

A motion was made by Ms. Butler, to adopt Resolution PC-24-14 to forward Application PUD-01-14 to the New Kent County Board of Supervisors with a favorable recommendation.

The members were polled:

Mr. Richard Kontny	Aye
Mrs. Joyce Williams	Aye
Mr. Howard Gammon	Absent
Mrs. Charna Moss-Gregory	Aye
Mr. Michael Lane	Abstain
Mrs. Patricia Townsend	Absent
Ms. Katherine Butler	Aye
Mr. Edward Pollard	Nay
Ms. Laura Rose	Aye
Mr. Clarence "Tommy" Tiller	Abstain
Mr. Jack Chalmers	Aye

The motion carried with a 6:1:2 roll call vote.

**IN RE: PUBLIC HEARING**

**A. CUP-02-14 COLONIAL HOLDINGS, INC.:** COLONIAL HOLDINGS, INC. HAS APPLIED FOR A CONDITIONAL USE PERMIT TO AUTHORIZE COLONIAL DOWNS TO HOST A ONE-DAY MOTORCYCLE RACING EVENT ON A DATE TO BE DETERMINED IN 2015 (TENTATIVELY MAY 16). THE PROPOSED RAIN DATE FOR THE EVENT IS THE NEXT DAY (SUNDAY). THE RACING EVENT IS PROPOSED TO OCCUR FROM APPROXIMATELY 1:00 P.M. TO 8:00 P.M. THE SUBJECT PROPERTY IS LOCATED AT 10515 COLONIAL DOWNS PARKWAY AND IS FURTHER IDENTIFIED AS TAX MAP & PARCEL NUMBER 33-6 (GPIN #I18-2736-0725).

*Ms. Butler, Public Hearing Vice-Chairwoman, explained the process for the public hearing.*

Ms. Le Duc gave an overview of the event leading to the CUP. The current CUP requires a separate CUP be submitted for motorized racing events. Colonial Downs is planning on hosting a one-day motorcycle racing event tentatively scheduled for May 16, 2015. She went over the CUP process and verified that all steps were taken. She added that the County Sheriff would be providing crowd control.

Mr. Ian Stewart, President of Colonial Downs spoke about the American Motorcyclist Association's good standings as being the premier motorcycling association in the country. He added that in the past the event was held in August, however, they were planning the event in the month of May instead because of surface changing that would occur on the track. If no race horsing events were scheduled for the year at Colonial Downs, then the date would be changed to August 2015. He said the racing would commence at 5:00 pm going until 8:00 pm, with practice beginning at 2:00 pm to 3:30 pm. There would be 11 races lasting 10 minutes each, with the key event lasting 20 minutes. The race attracts tourism and generates tax revenue and employment opportunities. He reviewed the 2013 sound study conducted and stated the sound decibel levels were lower than what was required in the CUP.

Ms. Butler opened the public hearing.

Mr. Steve Dubosky, resident of Brickshire, spoke in support of the racing, as he has in the past. His home is right outside the racetrack. He stated that he has attended the event and when he returned home he could not hear any noise from the track. He added that the race track has fiscal issues and this event would help to improve them.

Mr. Ron Scoville of Tunstall Road said he has volunteered in the past for this event and intended to volunteer for the 2015 event also. He said volunteers come from other states to attend and spoke highly of the motorcycle race and encouraged it to be held at Colonial Downs.

With no one else speaking, Ms. Butler closed the public hearing.

Mr. Kontny was concerned about the noise when motorcycles are leaving the track after the event. He recommended that the event end at 7:00 pm instead of 8:00 pm.

Mr. Stewart stated it is not loud for very long as it only takes a few minutes for the cyclists to clear out. He also stated it is scheduled on a Saturday and to increase attendance, it would be an economic benefit if the event could go until 8:00 pm.

A motion was made by Mrs. Charna Moss- Gregory to adopt Resolution PC-26-14 to forward Application CUP-02-14 to the New Kent County Board of Supervisors with a favorable recommendation.

The members were polled:

Mr. Clarence "Tommy" Tiller	Abstain
Mr. Richard Kontny	Nay
Mrs. Charna Moss-Gregory	Aye
Mr. Edward Pollard	Aye
Mr. Howard Gammon	Absent
Mr. Michael Lane	Aye
Ms. Katherine Butler	Aye
Ms. Laura Rose	Aye
Mrs. Patricia Townsend	Absent
Mrs. Joyce Williams	Aye
Mr. Jack Chalmers	Aye

The motion carried with a 7:1:1 roll call vote.

**IN RE: NEW BUSINESS**

- A. OVERLAY ZONING DISTRICTS** – AT THE AUGUST PC MEETING IT WAS EXPRESSED THAT A POSSIBLE OVERLAY ZONING DISTRICT IN BOTTOMS BRIDGE SHOULD BE EXPLORED. STAFF DISCUSSED THIS FURTHER WITH MR. TILLER AND HE AGREED TO BRING IT UP AT AN UPCOMING BOARD OF SUPERVISORS MEETING TO GET THE BOARD'S FEEDBACK BEFORE THE PLANNING COMMISSION EXPLORES THIS FURTHER.

Mr. Chalmers introduced Mr. Matthew Smolnik, new Director of Community Development. Mr. Smolnik said he was tasked with completing the draft guidelines for Bottoms Bridge overlay zoning district presented to him by the County Administrator. Mr. Smolnik said he would be drafting the guidelines to be more uniform and would be reviewing changes and additions with the Subcommittee and was hoping to present them at the January 2015 meeting.

**B. SET JANUARY MEETING DATE**

Due to a holiday on the next scheduled Planning Commission meeting, January 19<sup>th</sup>, it was discussed by the commission that the meeting would be held on the following day, Tuesday, January 20, 2015.

A motion was made by Mr. Pollard to change the January 2015 meeting date to Tuesday, January 20, 2015.

The members were polled:

Ms. Laura Rose	Aye
Mrs. Charna Moss-Gregory	Aye
Mrs. Joyce Williams	Aye

Mr. Richard Kontny	Aye
Mr. Howard Gammon	Absent
Mr. Edward Pollard	Aye
Mrs. Patricia Townsend	Absent
Mr. Clarence "Tommy" Tiller	Aye
Mr. Michael Lane	Aye
Ms. Katherine Butler	Aye
Mr. Jack Chalmers	Aye

The motion carried with a 9:0:0 roll call vote.

**IN RE: CHAIRMAN'S REPORT**

Mr. Chalmers thanked everyone for their support as it was his last meeting chairing the Commission.

**IN RE: RICHMOND REGIONAL PLANNING DISTRICT COMMISSION (RRPDC)**

Mr. Pollard talked about the last two RRPDC meetings he attended. The last meeting he attending amended their budget for next fiscal year. There was a presentation provided by the Federal Reserve Bank of Richmond in which they are researching workforce development.

The prior meeting, the President of VCU spoke and stated the need for research in promoting future need of technology. He stated that he wanted to see more college graduates and focus on creativity and entrepreneurship.

Mr. Chalmers wanted to know the number for the approved budget. Mr. Pollard answered the revised number was 2.5 million dollars.

Mr. Chalmers wanted to know what it would be spent on.

Mr. Pollard answered personnel, and they are also trying to cut expenses by finding new office space.

**IN RE: COMMISSIONER'S REPORT**

Mr. Kontny mentioned the Department of Forestry's convention center off Route 60 that included a 16-room motel as well as other features. He thought it would be a great facility for the county to promote. He also stated that he had mentioned it to the 2015 World Cycling Association event being held in New Kent in 2015 and should be promoted to other events that may be held in the vicinity to include the possible upcoming Colonial Downs motorcycle race.

**IN RE: STAFF REPORTS**

Ms. Le Duc gave a brief overview of the upcoming items being presented at the January 2015 meeting. The first meeting of the year items would include by-laws and elections, as well as public hearings on ordinance changes. She added that the annual report may or may not be ready.

**IN RE: MEETING SCHEDULE**

The Planning Commission's next meeting was scheduled for Tuesday, January 20, 2015 at 6:30 p.m. in the Board Room.

**IN RE: ADJOURNMENT**

A motion to adjourn was made and seconded by all.

The meeting was adjourned at 7:30 p.m.

Respectfully submitted:

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Cathy Williams  
Recording Secretary

DRAFT



## MEMORANDUM

DATE: January 20, 2015

TO: New Kent County Planning Commission

FROM: Kelli Le Duc, Planning Manager

SUBJECT: Application Number CUP-03-14, Colonial Holdings, Inc.

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### REQUEST

Representatives from Colonial Holdings, Inc. ("Colonial Downs") have requested an amendment to their existing Conditional Use Permit to allow Colonial Downs to host accessory events and uses at the facility whether or not the facility holds a pari-mutuel horseracing license from the Virginia Racing Commission.

### PUBLIC HEARINGS

Planning Commission: January 20, 2015, 2015 7:00 p.m., County Boardroom  
Board of Supervisors: Tentatively scheduled for February 9, 2015  
7:00 p.m., County Boardroom

### GENERAL INFORMATION

Tax Parcel: 33-6

GPIN: I18-2736-0725

Size: Parcel is 345 acres in size.

Owner & Applicant: Colonial Holdings, Inc.

Zoning: Planned Unit Development (PUD)

**Adjacent Zoning:** Planned Unit Development (PUD) to the South and East and Economic Opportunity to the North and West

### Current Uses

- The property is subject to a 1993 Conditional Use Permit as a “Horse Racing Facility” and a subsequent Conditional Use Permit from 2002 which allows the following ancillary activities provided that Colonial Downs holds a current and valid pari-mutuel horseracing license from the Virginia Racing Commission:
  - Special exhibitions and shows of equipment, articles for sale or display, and educational programming;
  - Circuses, concerts, musical events, light and firework displays, and carnivals;
  - Parties and family events, weddings reunions, conferences, and conventions;
  - Animal shows, animal fairs, animal contests of skill, and polo matches;
  - Athletic events
- A Conditional Use Permit (CUP-01-13) was issued on April 8, 2013 for a motorcycle race, which was held in August of 2013. The race and subsequent sound test report were conducted in accordance with the Permit.
- A Conditional Use Permit (CUP-04-13) was issued on January 13, 2014 for a motorcycle race, which was held in August of 2014. The race was conducted in accordance with the Permit.
- The Board of Supervisors will consider an application for a Conditional Use Permit (CUP-02-14) at their meeting on January 12 for a motorcycle race to be held on a day to be determined in 2015.

### COMMENTS FROM REVIEWING AGENCIES

Staff sent the conditional use permit application and information to all County reviewing agencies and received no comments.

### STANDARDS FOR REVIEW

The standards for review of Conditional Use Permits are set forth in Section 98-744 of the New Kent County Zoning Ordinance:

1. *The proposed use shall not be prejudicial to the character of the neighborhood.*
2. *The proposed use shall not adversely affect the general plans for the physical development of the county as embodied in the comprehensive plan.*
3. *The proposed use shall not be detrimental to the use or development of adjacent properties or the general neighborhood nor impair the value of buildings or property in surrounding areas.*
4. *The proposed use shall not unreasonably restrict an adequate supply of light, water, or air to adjacent property nor produce undue congestion in the street.*

5. *The proposed use shall adequately provide for access facilities for the estimated traffic.*
6. *The proposed use shall be subject to any applicable site planning or performance standards enumerated in article XXII of this chapter.*
7. *The proposed use shall be reasonable in terms of the logical, efficient, and economical extension of public services and facilities serving the county, such as water, sewer, streets, police and fire protection, transportation, recreation, and public schools.*

**SUGGESTED MOTIONS**

1. In order to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County, I move to adopt Resolution No. PC-01-15 to forward Application CUP-03-14 to the New Kent County Board of Supervisors with a favorable recommendation.

or

2. I move to forward Application CUP-03-14 to the New Kent County Board of Supervisors with an unfavorable recommendation for the following reasons:

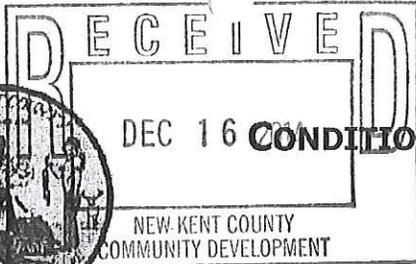
- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_

Attachments:

- Application CUP-03-14
- Advertisement & Adjacent Property Owners List
- Resolution, PC-01-15

Copies to:

- Applicant
- File



**CONDITIONAL USE PERMIT (CUP) - AMENDMENT APPLICATION**

County of New Kent, Virginia  
 Planning Department

Web site: [www.co.new-kent.va.us/planning](http://www.co.new-kent.va.us/planning)

New Kent County ♦ Community Development Department-Planning ♦ P O Box 50 ♦ New Kent, VA 23124 ♦ Phone 804-966-9690 ♦ Fax 804-966-8531  
 \*\*Use P O Box for all mail. Street address: 12007 Courthouse Circle, New Kent, VA 23124 FOR DELIVERIES ONLY\*\*

**DESCRIPTION OF PROPERTY**

Tax Map Parcel Number(s): 33-6 Total Lot Area (Acres): 345  
 GPIN: 118-2736-0725  
 Property street address: 10515 Colonial Downs Parkway  
 Current Zoning: PUD Proposed Zoning: PUD  
 Current Use: equestrian facility Proposed Use: same and in CUP-2-02  
 Does proposed zoning/use include entire property? [ X ] YES [ ] NO  
 If no, how much will be used for proposed use? \_\_\_\_\_

**OFFICE USE ONLY**  
**\*DO NOT WRITE IN THIS BOX\***

Application No: CUP-03-14  
 AFD Status: \_\_\_\_\_  
 Date Received: 12/16/14  
 Tax Receipts: Yes No  
 Fee Amount: \$1150.00  
 Staff Initials: KLZ

**PROPERTY OWNERS INFORMATION**

Name: Colonial Holdings, Inc. f/n/a/ Colonial Downs Holdings, Inc.  
 Address: 10515 Colonial Downs Parkway  
 City: New Kent State: VA Zip: 23124  
 Telephone: Work: 804-966-7223 Home: \_\_\_\_\_  
 Cellular/Pager: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail Address: istewart@colonialdowns.com

**APPLICANT'S INFORMATION**

Name: Colonial Holdings, Inc. f/n/a/ Colonial Downs Holdings, Inc.  
 Address: 10515 Colonial Downs Parkway  
 City: New Kent State: VA Zip: 23124  
 Telephone: Work: 804-966-7223 Home: \_\_\_\_\_  
 Cellular/Pager: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail Address: istewart@colonialdowns.com

**AGENTS INFORMATION**

Name: Jeffrey P. Gelger  
 Address: c/o Hirschler Fleischer, P. O. Box 500  
 City: Richmond State: VA Zip: 23218-0500  
 Telephone: Work: 804-771-9557 Home: \_\_\_\_\_  
 Cellular/Pager: \_\_\_\_\_ Fax: 804-644-0957  
 E-mail Address: jgelger@hf-law.com

**WATER/SEWER SUPPLY**

- Public Water     Public Sewer     Well     Septic  
 Other: \_\_\_\_\_

As part of the submission, the following questions must be answered in detail in narrative form. Answers of "Yes" or "No" are **NOT ACCEPTABLE** and the application is not complete until 25 copies of this narrative have been submitted.

1. Describe in detail, the proposed use(s) of the property.
2. Describe in detail, how the proposed use may impact surrounding properties. Please relate your response to the existing zoning and land uses in the area, plus the characteristics of the proposed use—hours of operation, activity levels, appearance, etc.
3. Describe the proposed water and wastewater utility infrastructure including sources, discharges, permits, construction, ownership, and maintenance responsibilities.
4. Describe the environmental impact of the proposed development and the efforts to be undertaken to abate air, water, noise, stormwater, and other environmental impacts during and after construction.
5. Describe what techniques will be used to control traffic flow and what impacts the proposed use will have on existing roadways. Provide a professionally prepared traffic impact analysis for any development expected to generate 1,000 vehicle trips per day or more.
6. Describe the impact of the proposed use on New Kent County's Schools.
7. Describe the impact of the proposed use on New Kent County public services—water service, wastewater disposal, solid waste disposal, fire, rescue, law enforcement, libraries, etc.
8. Describe the impact the proposed use(s) will have on any historic sites or structures on the property or in the vicinity.
9. Describe the impact the proposed use(s) will have on any rare, endangered, or irreplaceable species or natural areas.
10. Describe the impact the proposed use(s) will have on the scenic or natural beauty of the County.

For those plans requiring review by the Planning Commission, the applicant shall, in addition to the plan sheets required above, submit an overall plan on one (1) or more eleven inch by seventeen inch (11" x 17") reproducible sheets and shall provide sufficient copies of larger plan sheets as required for the Planning Commission distribution list of twelve (12). In addition, the applicant shall provide electronic copies of all applicable documents.

I/We as the property owner/applicant/agent give permission for County personnel to enter subject properties in relation to the administration of this application and to any applicable New Kent County, State of Virginia or U.S. Federal Government regulations. Additionally, if the County Planning Department deems it necessary for an outside agency or organizations to review any technical part of this application, I/we agree to reimburse the County for all costs associated with such outside reviews and consultation within 15 business days of being billed by the County.

Property Owner Signature:	<u><i>W. M. Steward, PRESIDENT</i></u>	Date:	<u>12/16/14</u>
Property Owner Signature:	_____	Date:	_____
Property Owner Signature:	_____	Date:	_____
Applicant/Agent Signature:	_____	Date:	_____
Applicant/Agent Signature:	_____	Date:	_____

**All property owners must sign the application**

**FEES**

The fee for this application is **\$1150.00**. Make checks payable to *Treasurer of New Kent County*. **Fees must be submitted at time of application.**

Prepared by and after recording return to:  
Jeffrey P. Geiger, VSB #72960  
Hirschler Fleischer, P.C.  
P.O. Box 500  
Richmond, VA 23218-0500

Tax Parcel No.: 33-6; GPIN: I18-2736-0725

**NEW KENT COUNTY**

**SPECIAL LIMITED POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That (Name) COLONIAL HOLDINGS, INC., f/n/a COLONIAL DOWNS HOLDINGS, INC.  
(Telephone) 804-966-7223  
(Address) 10515 Colonial Downs Parkway, New Kent VA, 23124

as owner of the property described on Exhibit A attached hereto and incorporated herein by this reference, authorized to take such action, do hereby make, constitute and appoint:

(Name) Charles H. Rothenberg, James W. Theobald and Jeffrey P. Geiger  
(Telephone) 771-9503, 771-9513 and 771-9557  
(Address) P. O. Box 500, Richmond, Virginia 23218-0500

or any one of them to act as my true and lawful attorney-in-fact for and in my name, place and stead with full power and authority I would have if acting personally to seek rezoning, amendment to planned unit development, amendment to conditional use permit, special exception, or change of conditions or proffers of my above described property and to set forth and negotiate conditions and/or proffers including any additions, amendments, modifications or deletions thereto that in his discretion are deemed reasonable, appropriate and necessary.

[SEE ATTACHED SIGNATURE PAGE]

In witness thereof, I have hereto set my hand and seal this 16th day of December, 2014.

COLONIAL HOLDINGS, INC.,  
a Virginia corporation, f/n/a Colonial Downs  
Holdings, Inc.

By: *Ian M. Stewart*  
Ian Stewart, President

NOTE: This document with original signatures shall be filed with the rezoning case application and become a permanent part thereof.

COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF New Kent, to-wit:

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of December, 2014, by Ian Stewart, in his capacity as President of Colonial Holdings, Inc. f/n/a Colonial Downs Holdings, Inc., on behalf of the corporation.

*Maiane C. Farrak*  
Notary Public

My commission expires: NOV 30 2017  
Notary Registration No.: 357655

[SEAL]



**CONDITIONAL USE PERMIT AMENDMENT APPLICATION  
COLONIAL HOLDINGS, INC.**

1. Colonial Holdings, Inc. ("Colonial Downs") desires to continue to operate its facility at 10515 Colonial Downs Parkway as a horse racing facility. Colonial Downs would also like to continue to host accessory events and uses at this facility. These accessory events and uses (collectively, the "Accessory Uses") include:

- Special exhibitions and shows of equipment, articles for sale or display, and educational programming;
- Circuses, concerts, musical events, light and firework displays, and carnivals;
- Parties and family events, weddings, reunions, conferences and conventions;
- Animal shows, animal fairs, animal contests of skill, and polo matches; and
- Athletic events, but excluding motorized vehicle racing unless permitted by separate Conditional Use Permit.

Colonial Downs requests the ability to continue these Accessory Uses whether or not it holds a pari-mutuel horseracing license from the Virginia Racing Commission. Permitting these accessory uses will allow continued use of this facility for horse racing events and for the County Fair, rodeo events, running races, community gatherings, exhibitions and other events.

To permit the continuation of the Accessory Uses, Colonial Downs is applying for a Conditional Use Permit Amendment ("Amendment") to amend CUP-2-02 to eliminate the requirement that Colonial Downs hold a current and valid pari-mutuel horseracing license from the Virginia Racing Commission. This Amendment would not change the underlying zoning for the property as a horse racing facility and would not modify the requirement that Colonial Downs obtain separate Conditional Use Permits for motorized vehicle racing.

Visitors to Colonial Downs come from across Virginia, the Mid-Atlantic and the nation, many of whom are exposed for the first time to the County's rich history, wineries, golf courses, restaurants, lodging establishments, and other attractions. Approving the Amendment will allow Colonial Downs to continue the success of its previous Accessory Uses and will allow the County to continue to realize and expand upon the economic impact these Accessory Uses have had and will continue to have on the County.

2. The proposed Amendment will have little or no impact on surrounding properties. All currently-permitted uses will remain in place; therefore, there will be no change experienced or perceived by the community. Colonial Downs was designed, developed, and is operated professionally to handle the uses permitted by the underlying zoning and the accessory uses and entertainment events permitted by CUP-2-02. Furthermore, Colonial Downs is equipped to handle all event aspects and to provide all necessary accommodations and event services for the number of expected attendees. Colonial Downs will continue to work in partnership with New Kent County (the "County") and the New Kent County Sheriff's Office to ensure that all necessary community services are in place to accommodate the number of expected attendees for the events and to ensure the safe arrival and departure of each attendee.

3. Colonial Downs and the associated utility infrastructure provided by Colonial Downs and the County were designed to handle the Accessory Uses. The existing utility infrastructure has proven to be more than capable of handling such uses and events in the past. The continuation of the Accessory Uses will require no changes to the existing utility infrastructure, and all sources, permits, construction, ownership and maintenance responsibility will remain as they exist currently .

4. There will be no negative environmental impact from the continuation of these Accessory Uses. Colonial Downs is an existing event facility. No new construction or development activity is required. There will be no new impacts on air, water, and stormwater. As with all events at Colonial Downs, all waste generated by attendees will be disposed of properly.

5. Colonial Downs and the transportation and parking infrastructure serving Colonial Downs were designed to handle the Accessory Uses. The existing transportation infrastructure has proven to be more than capable of uses and events in years past. This Amendment will require no changes to the existing transportation infrastructure. Colonial Downs engages the New Kent County Sheriff's Office and the Virginia State Police to plan for and provide traffic control as necessary for certain uses and events.

6. Colonial Downs is an existing event facility with uses that do not impact County schools and the continuation of the Accessory Uses will likewise have no impact on County schools.

7. Colonial Downs is an existing event facility designed to handle the Accessory Uses. Approval of this Amendment will not result in any additional impact on public services than is typically experienced for uses and events held at Colonial Downs. Public water and sewer are in place and are designed to handle these Accessory Uses. Solid waste disposal procedures and services are in place and have proven to be more than capable of handling the Accessory Uses. There is no impact on libraries. Colonial Downs will pay for any additional fire, rescue and law enforcement needs that the County determines are necessary for any specific uses and events held at the facility.

8. Colonial Downs is an existing event facility and there will be no impact on any historic sites or structures on the property or in the vicinity as a result of this Amendment.

9. Colonial Downs is an existing event facility and there will be no impact on any rare, endangered or irreplaceable species or natural areas as a result of this Amendment.

10. Colonial Downs is an existing event facility and there will be no impact on the scenic or natural beauty of the County as a result of this Amendment.

**NEW KENT COUNTY  
Notice of Mailing**

Applicant Name: Colonial Holdings, Inc  
Application Number: CUP-03-14  
Public Hearing Date: Tuesday, January 20, 2015

**STATE OF VIRGINIA  
COUNTY OF NEW KENT, to wit**

I, Kelli L. Z. Le Duc, of the New Kent County Planning Division, do make oath that notices as required by Section 15.1-431 of the Code of Virginia, 1950, as amended, were mailed on the 8<sup>th</sup> day of January 2015, by first class mail, postage prepaid, to the persons whose names and addresses are attached.

Kelli LeDuc  
Signed

Subscribed and sworn to before me this 8<sup>th</sup> day of January, 2015.



Catherine N. Williams  
Notary Public

My commission expires: May 31, 2017

§ 15.2-2204. Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments.

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth hereinabove. If a joint hearing is held, then public notice as set forth above need be given only by the governing body. The term "two successive weeks" as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000

feet of the affected property as may be required by the commission or its agent. However, when a proposed amendment to the zoning ordinance involves a tract of land not less than 500 acres owned by the Commonwealth or by the federal government, and when the proposed change affects only a portion of the larger tract, notice need be given only to the owners of those properties that are adjacent to the affected area of the larger tract. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ 15.2-2240 et seq.) where such lots are less than 11,500 square feet. One notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that a representative of the local commission shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Nothing in this subsection shall be construed as to invalidate any subsequently adopted amendment or ordinance because of the inadvertent failure by the representative of the local commission to give written notice to the owner, owners or their agent of any parcel involved.

The governing body may provide that, in the case of a condominium or a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in lieu of each individual unit owner.

Whenever the notices required hereby are sent by an agency, department or division of the local governing body, or their representative, such notices may be sent by first class mail; however, a representative of such agency, department or division shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.

A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required shall waive the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map classification; or an application for special exception for a change in use or to increase by greater than 50 percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special exceptions, involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.

D. When (i) a proposed comprehensive plan or amendment thereto, (ii) a proposed change in zoning map classification, or (iii) an application for special exception for a change in use involves any parcel of land located within 3,000 feet of a boundary of a military base, military installation, military airport, excluding armories operated by the Virginia National Guard, or licensed public-use airport then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least 30 days before the hearing to the commander of the military base, military installation, military airport, or owner of such public-use airport, and the notice shall advise the military commander or owner of such public-use airport of the opportunity to submit comments or recommendations.

E. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to such adoption or amendment. Every action contesting a decision of a locality based on a failure to advertise or give notice as may be required by this chapter shall be filed within 30 days of such decision with the circuit court having jurisdiction of the land affected by the decision. However, any litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

F. Notwithstanding any contrary provision of law, general or special, the City of Richmond may cause such notice to be published in any newspaper of general circulation in the city.

G. When a proposed comprehensive plan or amendment of an existing plan designates or alters previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, written notice shall also be given by the local planning commission, or its representative, at least 10 days before the hearing to each electric utility with a certificated service territory that includes all or any part of such designated electric transmission corridors or routes.

H. When any applicant requesting a written order, requirement, decision, or determination from the zoning administrator, other administrative officer, or a board of zoning appeals that is subject to the appeal provisions contained in § 15.2-2311 or 15.2-2314, is not the owner or the agent of the owner of the real property subject to the written order, requirement, decision or determination, written notice shall be given to the owner of the property within 10 days of the receipt of such request. Such written notice shall be given by the zoning administrator or other administrative officer or, at the direction of the administrator or officer, the requesting applicant shall be required to give the owner such notice and to provide satisfactory evidence to the zoning administrator or other administrative officer that the notice has been given. Written notice mailed to the owner at the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this subsection.

This subsection shall not apply to inquiries from the governing body, planning commission, or employees of the locality made in the normal course of business.

(Code 1950, § 15-961.4; 1962, c. 407, § 15.1-431; 1964, c. 632; 1968, cc. 354, 714; 1973, cc. 117, 334; 1974, cc. 100, 570; 1975, c. 641; 1976, c. 642; 1977, c. 65; 1982, c. 291; 1990, c. 61; 1992, cc. 353, 757; 1993, cc. 128, 734; 1994, c. 774; 1995, c. 178; 1996, cc. 613, 667; 1997, c. 587; 2001, c. 406; 2002, c. 634; 2004, cc. 539, 799; 2005, c. 514; 2007, cc. 761, 813; 2011, c. 457; 2012, c. 548; 2013, cc. 149, 213.)

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**Colonial Downs Holdings, Inc.**  
**10515 Colonial Downs**  
**Parkway**  
**New Kent, VA 23124**

CUP-03-14

**Tradition Golf Club Royal N K**  
**Attn: Paul Mauk**  
**9700 Mill Pond Run**  
**Toano, VA 23168**

CUP-03-14

**Riley B Lowe TR**  
**PO Box 175**  
**Mechanicville, VA 23111**

CUP-03-14

**Stolz Family Wright Tract**  
**LLC ETAL**  
**PO Box 30**  
**North Garden, VA 22959**

CUP-03-14

**County of New Kent**  
**Public Utilities**  
**PO Box 150**  
**New Kent, VA 23124**

CUP-03-14

**Oakmont Villas Neighborhood**  
**Association Incorporated**  
**Attn: Chuck Rothenberg**  
**PO Box 500**  
**Richmond, VA 23218**  
CUP-03-14

**The Tradition Golf Club at**  
**Brickshire LLC**  
**9700 Mill Pond Run**  
**Toano, VA 23168**

CUP-03-14

**Frank D. McCreery Jr.**  
**6360 Evangeline Lane**  
**Alexandria, VA 23312**

CUP-03-14

**Brickshire Community Association**  
**Attn: Sarah Palamara**  
**15064 Carrollton Blvd.**  
**Suite H**  
**Carrollton, VA 23314**  
CUP-03-14

**PUBLIC NOTICE**  
**NEW KENT COUNTY PLANNING COMMISSION**

Notice is hereby given that the following public hearings will be held on Tuesday, January 20, 2015 at 7:00 PM or as soon thereafter as possible in the Boardroom of the New Kent County Administration Building located at 12007 Courthouse Circle, New Kent, VA, where the Planning Commission of the County of New Kent may or may not take action on the following:

1. **Application CUP-03-14 Colonial Holdings, Inc.:** Colonial Holdings, Inc. has applied for an amendment to their existing Conditional Use Permit to allow Colonial Downs to host accessory events and uses at the facility whether or not the facility holds a pari-mutuel horseracing license from the Virginia Racing Commission. The subject property is located at 10515 Colonial Downs Parkway and is further identified as Tax Map & Parcel Number 33-6 (GPIN #I18-2736-0725).
2. **Application OA-01-15:** The Planning Commission will consider ordinance changes for Section 91-127 of the New Kent County Code. This section contains special provisions for open space or cluster subdivisions. Proposed amendments include raising the minimum acreage to 50 acres, allowing deed restrictions in lieu of recorded conservation easements, requirements to connect to public water/sewer if the subdivision is in a service area, not permitting these types of subdivisions on land zoned R-1, and only allowing these subdivisions in areas designated as Rural Lands in the Comprehensive Plan.
3. **Application OA-02-15:** The Planning Commission will consider ordinance changes for Article II, Chapter 62, of the New Kent County Code. This Article concerns the Agricultural and Forestal Districts program and the process as outlined in the State Code. The proposed changes to the County Code reflect changes to the Virginia State Code concerning Agricultural and Forestal Districts.
4. **Application OA-03-15:** The Planning Commission will consider ordinance changes for Sections 91-128 and 98-871 of the New Kent County Code. These sections contain special provisions applicable for commercial and industrial subdivisions and provide site plan provisions for business, commercial, and service uses. The proposed changes will modify the exception process from an administrative procedure to a legislative procedure.

Questions concerning these public hearings may be directed to the Department of Community Development at 804-966-9690. All interested persons may appear and present their opinions at the above time and place. If a member of the public cannot attend the hearing, comments may be submitted in writing to the New Kent County Department of Community Development, P.O. Box 150, New Kent, VA 23124; by fax to 804-966-8531, or by email to [planning@newkent-va.us](mailto:planning@newkent-va.us). Comments received by 12:00 P.M. on the day of the hearing will be distributed to Planning Commission members and made a part of the public record. Copies of applications, proposed resolutions, and staff reports may be viewed approximately one week prior to the hearings in the New Kent County Department of Community Development at 12007 Courthouse Circle, New Kent, VA 23124 during regular business hours or at <http://www.co.new-kent.va.us/index.aspx?NID=143>. Anyone needing assistance or accommodation under the provisions of the Americans with Disabilities Act should call the County Administrator's Office at (804)966-9683 at least 24 hours in advance of the hearing. If a meeting cannot be held due to inclement weather, the meeting will be held on the next business day that the New Kent County offices are open.

**PLANNING COMMISSION**

**PLANNING COMMISSION  
COUNTY OF NEW KENT  
VIRGINIA**

**PC-01-15**

At the regular meeting of the Planning Commission of the County of New Kent, in the Boardroom of the New Kent Administration Building in New Kent, Virginia, on the 20<sup>th</sup> day of January, 2015:

Present:	Vote:
Katherine Butler	
Jack Chalmers	
Joanne Schmit	
Charna Moss-Gregory	
Laura Rose	
Michael Lane	
Edward Pollard	
Richard Kontny	
Tommy Tiller	
Patricia Townsend	
Joyce Williams	

---

Motion was made by \_\_\_\_\_, which carried \_\_\_\_\_, to adopt the following resolution:

**A RESOLUTION TO RECOMMEND APPROVAL OF  
APPLICATION CUP-03-14 TO ALLOW AMENDMENTS TO CONDITIONAL  
USE PERMIT CUP-02-02, A RESOLUTION TO  
APPROVE A USE PERMIT TO AUTHORIZE  
VARIOUS ENTERTAINMENT USES FOR  
TAX MAP & PARCEL 33-6 (COLONIAL DOWNS)**

WHEREAS, representatives from Colonial Holdings, Inc. ("Colonial Downs") have submitted a "Conditional Use Permit Amendment Application" dated December 16, 2014; and

WHEREAS, said application requests an amendment to the original Colonial Downs Conditional Use Permit (CUP-02-02) to allow Colonial Downs to host accessory events and uses at the facility whether or not the facility holds a pari-mutuel horseracing license from the Virginia Racing Commission; and

WHEREAS, subsequent to receiving a complete application and within the timeframes established by Code, the Planning Commission scheduled and conducted

a formal and duly advertised public hearing, carefully considering the public comment received; and

WHEREAS, the Commission finds that this application is appropriate because the Conditional Use Permit process includes an application submittal, public advertisement and notice to adjacent property owners, a public hearing by the Planning Commission, a recommendation by the Planning Commission, a public hearing by the Board of Supervisors, and a vote by the Board of Supervisors; and

WHEREAS, the New Kent Planning Commission finds that approval of this application would address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County;

NOW THEREFORE, BE IT RESOLVED that on this, the 20<sup>th</sup> day of January, 2015, by the New Kent County Planning Commission, that Application CUP-03-14 submitted by Colonial Holdings, Inc., be forwarded to the New Kent County Board of Supervisors with a recommendation of approval.

Resolution R- -15 with proposed amendments

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 \_\_\_ day of \_\_\_\_\_ 2015:

Present:

Vote:

Thomas W. Evelyn  
James H. Burrell  
C. Thomas Tiller  
Ron Stiers  
W. R. "Ray" Davis, Jr.

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Motion was made by \_\_\_\_\_, which carried \_\_\_\_, to adopt the following resolution:

A RESOLUTION TO APPROVE A USE PERMIT TO  
AUTHORIZE VARIOUS ENTERTAINMENT USES FOR  
TAX MAP PARCEL 33-6 (COLONIAL DOWNS)

WHEREAS, representatives from Colonial Holdings, Inc. ("Colonial Downs") have submitted a "Conditional Use Permit Amendment Application" dated December 16, 2014; and

WHEREAS, said application requests an amendment to the original Colonial Downs Conditional Use Permit (CUP-02-02) to allow Colonial Downs to host accessory events and uses at the facility whether or not the facility holds a pari-mutuel horseracing license from the Virginia Racing Commission; and

WHEREAS, the Board finds that the facilities at Colonial Downs are ideally suited for such proposed uses; and

WHEREAS, the County Comprehensive Plan designates the property for Commercial Recreation encompassing a full range of events and activities; and

WHEREAS, this application was referred to and considered by the New Kent County Planning Commission; and

WHEREAS, after conducting a duly advertised public hearing, the Planning Commission voted to recommend approval of the application subject to conditions; and

WHEREAS, this application has been advertised for public hearing before the Board in full accord with applicable provisions of the Code of Virginia; and

WHEREAS, approval of this application would address, protect, and promote public convenience, necessity, general welfare and good zoning practices in the County,

NOW THEREFORE BE IT RESOLVED this, the \_\_\_\_ day of \_\_\_\_\_ 2015, by the New Kent County Board of Supervisors that Application No. CUP-03-14 be, and it is hereby, approved authorizing the following uses for the facilities and grounds at Colonial Downs, comprising 345 acres, located at 10515 Colonial Downs Parkway and further identified as tax map parcel 33-6 subject to the following conditions:

A. Permitted uses

The following uses and entertainment events and programs shall be permitted on tax map parcel 33-6 under the conditions set forth in paragraph B below ~~provided that Colonial Downs holds a current and valid pari-mutuel horseracing license from the Virginia Racing Commission:~~

1. Special exhibitions and shows of equipment, articles for sale or display; and educational programming;
2. Circuses, concerts, musical events, light and firework displays, and carnivals;
3. Parties and family events, weddings, reunions, conferences, and conventions;

4. Animal shows, animal fairs, animal contests of skill, and polo matches; and
5. Athletic events, but excluding motorized vehicle racing.

**B. Restrictions on permitted uses**

1. Uses permitted in paragraph A above and all entertainment events and programs not expressly enumerated above whether indoors or outdoors held on tax map parcel 33-6 shall only be conducted under a permit issued under Chapter 6.
2. On-site camping accessory to and in conjunction with a permitted event and/or activity will be deemed a permitted use only after written approval by the Health Department of appropriate and adequate water, sanitary, and public health facilities is given. Nothing in this shall be interpreted to permit the operation of a campground on the property or the use of the property for camping beyond the dates of the event or activity with which it is associated.
3. The preparation and sale of food and/or gift and souvenir items is permitted in conjunction with and as an accessory to one of the permitted events. If food will be prepared and/or sold, a permit from the Health Department for each food preparer or vendor will be required. All vendors are subject to the requirements of Article VI of Chapter 66 of the Code of New Kent County (Business License Taxes)

BE IT FURTHER RESOLVED, that the Commissioner of Revenue, Director of Public Safety and the Sheriff are hereby empowered to develop such forms, plans and fee structures as may be necessary to carry out the provisions of this permit.

Attested:

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Chair of the New Kent County  
Planning Commission



## MEMORANDUM

DATE: January 13, 2015

TO: New Kent County Planning Commission

FROM: Kyle Flanders, Planner I

SUBJECT: Consideration of proposed amendments to Section 91-127 of the New Kent County Code

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### **REQUEST:**

Consider the proposed amendments to Section 91-127 of the New Kent County Code. The proposed amendments will modify certain requirements of the Cluster or Open Space Subdivision provisions of the New Kent County Code.

### **PUBLIC HEARINGS:**

Planning Commission: January 20, 2015 at 7:00 p.m., County Boardroom  
Board of Supervisors: Tentatively scheduled for the February XX, 2015 meeting at 7:00 p.m., County Boardroom

### **BACKGROUND:**

In order to make the County Code consistent with current practice, staff, under direction from the Board Supervisors and the Planning Commission has proposed amendments to the Cluster or Open Space Subdivision Ordinance. Proposed amendments were previously discussed at the Planning Commission Meeting on May 19, 2014 and then referred to the Planning Commission for a public hearing at the Board of Supervisor's work session on November 19, 2014.

The first change allows for the cluster subdivision to be used only in areas designated as rural lands by the Comprehensive Plan and not in any area within the R-1 zoning district. Also, if the cluster subdivision is within a water or sewer service district as outlined by the Department of Public Utilities, all residential units must connect to public water and/or sewer. Additionally, easements or covenants must be submitted if the development proposes

to locate principal buildings within ten (10) feet of the rear or side property line; this number has been increased from five (5) feet. Further, the minimum area required for a cluster subdivision is proposed to increase from ten (10) to fifty (50) acres. Additionally, the amendments will allow for the open space to be held by any entity if it is used for appropriate purposes as outlined in the County Code. The last proposed change allows restrictions on the deed rather than requiring the open space be placed in a permanent conservation easement.

**SUGGESTED MOTION:**

**In order to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County, I move to adopt Resolution No. PC-02-15 to forward Ordinance Amendment OA-01-15 to the New Kent County Board of Supervisors with a favorable recommendation.**

Attachments:

- Resolution, PC-02-15

PLANNING COMMISSION  
COUNTY OF NEW KENT  
VIRGINIA

PC-02-15

At the regular meeting of the Planning Commission of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 20<sup>th</sup> day of January, 2015:

Present:

C. Thomas Tiller, Jr.  
Jack Chalmers  
Joanne Schmit  
Laura Rose  
Michael B. Lane, Sr.  
Charna Moss-Gregory  
Edward W. Pollard  
Richard Kontny, Jr.  
Katherine Butler  
Patricia E. Townsend  
Joyce B. Williams

Vote:

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Motion was made by \_\_\_\_\_, which carried \_\_\_\_\_, to adopt the following resolution:

**A RESOLUTION TO RECOMMEND APPROVAL OF OA-01-15 AMENDING  
CHAPTER 91, SECTION 127, ENTITLED SPECIAL PROVISIONS FOR OPEN SPACE OR  
CLUSTER SUBDIVISIONS**

WHEREAS, the Commonwealth of Virginia has enacted Virginia Code Section 15.2-2286.1 which requires New Kent to have an open space or cluster subdivision ordinance; and

WHEREAS, pursuant to Virginia Code Section 15.2-4300 et. seq., the New Kent County Board of Supervisors has the authority to amend Chapter 91 of the County Code; and

WHEREAS, the Commission finds the proposed changes to Section 91-127 of the New Kent County Code are to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County and the health, safety, and general welfare of the Citizens in the County; and

NOW THEREFORE, BE IT RESOLVED that the New Kent County Code be repealed, amended, restated and readopted as follows:

**Sec. 91-127. Special provisions for open space or cluster subdivisions.**

(a) The intent of the residential open space or cluster development technique is to provide design flexibility to make efficient use of topography and develop residential communities with significant permanent reservations of open space that preserve the look and feel of a rural area while exploiting economics of scale and compact design forms. *This technique is only allowed in areas designated as*

*rural lands by the Comprehensive Plan and is not allowed in the R-1 zoning district regardless. Design details are crucial and a higher level of review and approval is appropriate to this technique.*

(b) The minimum gross area for an open space or cluster subdivision is ~~ten-fifty~~ acres. Additions of less than ~~ten-fifty~~ acres to existing open space developments may be approved if the agent finds that such an addition forms a logical extension.

(c) Density calculations shall be based on total developable acreage (gross acreage less Chesapeake Bay Resource Protection Areas) divided by the minimum lot size of the zoning district in which located. Fractional units are rounded up to the next whole number. The result is the maximum lot yield for the development.

(d) Lots created in open space or cluster subdivisions must access an internal road system. No lots may directly access existing public streets. Where lots abut an existing public street, a restricted access easement extending the entire distance shall be established and recorded contemporaneously with the record plat of the subdivision.

*(e) If the proposed subdivision is in a water or sewer service district as outlined by the Department of Utilities, public water and/or sewer must be utilized in the subdivision. The installation of all necessary facilities to connect to public water and/or sewer is the responsibility of the developer/builder/owner.*

(e) (f) Yard, size and dimension requirements.

(1) There are no lot width or area requirements.

(2) The above notwithstanding, any lots abutting the exterior boundary of the open space development shall be of the same size as would be required of conventional development. Unless separated by an area of common open space that is not less than 75 feet in width, a lot shall be considered to be abutting.

(3) The rear and side yards may be reduced to zero provided that easements or covenants clearly establish the rights of the two abutting properties where principal buildings are to be constructed on or within ~~five~~ ten feet of a property line.

(4) The minimum setback from external public streets shall be twice that which is prescribed in the underlying zoning district.

(5) The minimum setback from internal public streets shall be 20 feet; from internal private driveways, streets or alleys the setback shall be established on the plan of development.

(6) The minimum distance between any two buildings within the open space development shall be governed by the building code, provided, however, that the fire chief shall approve the fire protection measures for any development where principal buildings are separated by less than 20 feet.

(7) There are no minimum house sizes or house footprint requirements.

(8) Where flag lots are utilized, the “staff” portion shall be 20 feet or greater in width. A single shared access for two abutting flag lots is required; the width of the “staff” portion shall be 30 feet or greater in width.

(9) In the case of shared access arrangements, an easement establishing the right-of-way and maintenance responsibilities shall be recorded at such time as the lots are created and the existence of such easement shall be noted on the face of the plat creating the lots.

(f) (g) Open space requirements.

(1) No less than 50 percent of the gross area of an open space development shall be preserved as open space assuring its availability for agricultural, forestall, recreational, or open-space uses by establishment of a permanent open space conservation easement *or deed restriction*.

(2) All areas not included in lots or public street rights-of-way shall be incorporated into open space.

(3) The open space shall be arranged and designed so as to facilitate its use, ensure, continuity of design, and preserve all of the sensitive environmental features within the development. Failure to achieve these goals shall be sufficient reason for the agent to deny applications for open space development plan approval or to require modifications that may include loss of lots.

(4) With the approval of the board of supervisors, open space other than the required recreational space within an open space or cluster subdivision may be held by an owner ~~other than a duly constituted property owners’ association~~ when the open space is used for agriculture, forestry, historical preservation, or other similar uses. The board of supervisors may not approve any use of the open space not allowed under the terms of the conservation easement.

(5) Conservation easement *and Deed Restriction* requirements:

a. Designated open space in cluster subdivisions shall be protected from any future subdivision or development by the establishment of a permanent conservation easement *or deed restriction* that must be recorded at the time of final plat subdivision approval.

b. The easement shall comply with the requirements of the Virginia Conservation Easement Act, Code of Virginia Tit. 10, Ch. 10.1 *or contain similar provisions*.

c. The conservation easement *or deed restriction* shall be in a form approved by the county attorney and shall provide that the eased portion of an open space subdivision shall be maintained by the owner of the property and that the county shall bear no responsibility or liability for such maintenance.

d. The board of supervisors, in its sole discretion, may approve a suitable alternative plan for maintaining the open space.

(g) (h) . Recreational space requirements.

(1) Recreational space equivalent to at least five percent of the gross land area, but no less than one acre, shall be provided and shall be suitable, as determined by the agent, for recreation purposes and the

development of recreational facilities that are appropriate to the size, scale, and market orientation of the development.

(2). Recreational areas shall not abut the exterior boundary of the open space development unless entirely adjacent to a publicly-owned facility or community recreation facility of an adjoining residential development.

(3) The agent may modify the requirement for recreational space in any manner deemed appropriate or necessary, other than reducing the area required to be set aside, for the purpose of ensuring that adequate recreation facilities are available to serve the development given its size, scale, and market orientation.

(4) Adequate pedestrian and bicycle facilities shall be provided which fully interconnect the development and its recreation areas both internally and with existing, planned or desirable external pedestrian and bicycle facilities.

~~(h)~~ (i) Applications for open space developments shall be made in the same manner as prescribed for conventional subdivisions. In determining whether or not to grant approval, the applicant shall be required to show how the proposed open space cluster development provides superior protection of rural views from existing public roadways to that which would be effected by conventional subdivision of the subject property.

~~(i)~~ (j) Final plats recorded for an open space development utilizing the cluster technique and all deeds for lots within such development shall bear a statement indicating that the land is within an approved residential open space (cluster) subdivision and shall also bear a statement indicating the ownership status of the development's open space system and shall reference the covenants creating a property owners association which shall also be recorded at the time final plats were put to record.

Attested:

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Chairman, New Kent County Planning Commission



## Office of the County Attorney

Post Office Box 150  
12007 Courthouse Circle  
New Kent, Virginia 23124-0050  
Tel: (804) 966-8559  
Fax: (804) 966-8756

### MEMORANDUM

TO: New Kent County Planning Commission

FROM: Michelle M. Gowdy  
County Attorney

DATE: January 8, 2015

SUBJECT: Ordinance Amendment OA-02-15: Chapter 62, Article II of County Code, Agricultural and Forestal Districts

The Board of Supervisors has discussed necessary changes to the Agricultural and Forestal Districts program and code at several meetings in 2013. Portions of the code referring to the taxation part of the program were amended by the Board of Supervisors on October 30, 2013. There have been several changes to the state code which should be reflected in the County Code.

Most of the changes to the code are just to match the changes which have occurred in the state code.

The Agricultural and Forestal Districts advisory committee reviewed the changes and recommended approval at their meeting on December 2, 2013. We have made some minor changes since the advisory committee meeting.

There are two changes to Sec. 62-34. The first change is the addition of "unless an additional appropriation is made by the board of supervisors." This is to make it clear that the committee could ask for and receive an additional appropriation if the amount originally appropriated was not sufficient. Also, we have eliminated part b which stated that the board of supervisors could designate the planning commission to act for and in lieu of an agricultural and forestal districts advisory committee. This language was copied from the state code which provides for both options. New Kent County has appointed a committee. Also Sec. 62-34 starts with "The board of supervisors hereby establishes an advisory committee..." Therefore the other option is not necessary and could be confusing if left in the code.

There is an addition at the end of Sec. 62-35 where we have added "as defined herein." This is to clarify the phrase agriculturally and forestally significant land.

January 9, 2015

Lastly, we have eliminated the change in Sec. 62-39(c) which changed “the date the application was submitted” to March 1. This will provide greater flexibility for landowners. All applications will need to be acted upon within the 180 day window.

Additionally, the committee reviewed and recommended the use of forms to detail the agricultural or forestal significance of the lands which were being put into the program. These forms are being developed in accordance with section 62-45 of the County Code.

**Recommended Motion: In order to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County, I move to adopt PC Resolution PC-03-15, to forward Ordinance Amendment OA-02-15 to the New Kent County Board of Supervisors with a favorable recommendation.**

**ORDINANCE AMENDMENT OA-02-15**

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

**O-\_\_-15**

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 \_\_<sup>th</sup> day of \_\_\_\_\_, 2015:

Present:

Vote:

Thomas W. Evelyn  
C. Thomas Tiller  
James H. Burrell  
Ron Stiers  
W. R. Davis, Jr.

Motion was made by \_\_\_\_, which carried \_\_: \_\_, to adopt the following ordinance:

**AN ORDINANCE AMENDING CHAPTER 62 SPECIAL DISTRICTS, ARTICLE II  
AGRICULTURAL AND FORESTAL DISTRICTS TO  
THE NEW KENT COUNTY CODE OF ORDINANCES**

**WHEREAS**, the Commonwealth of Virginia through the General Assembly updated Virginia Code Sections 15.2-4300, et. seq. which allow New Kent County to create Agricultural and Forestal Districts; and

**WHEREAS**, the Board of Supervisors desires to continue the Agricultural and Forestal District program; and

**WHEREAS**, Code changes are necessary to ensure that the program be compliant with State Code; and

**WHEREAS**, the Board of Supervisors desires to protect the health, safety, welfare, and property of New Kent County citizens;

**NOW THEREFORE BE IT ORDAINED** that the New Kent County Code be repealed, amended, restated, and readopted as follows:

**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.

*Program Administrator means the local governing body or local official designated by the governing body to administer the agricultural and forestal districts program.*

**Cross reference**— 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~~ program administrator upon the application forms provided in the department of community development ~~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 March 1. Applications for withdrawal from, or termination of, a district shall be received by the department of community development on or before March 1.

*(Ord. No. O-26-04, 12-13-2004; Ord. No. O-03-09, 2-18-2009; Ord. No. O-09-10, 11-10-2010)*

**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. Any expenditures of the committee shall be within the amounts appropriated for such purpose by the board of supervisors unless an additional appropriation is made by the board of supervisors. 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 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; Ord. No. O-09-10, 11-10-2010)*

**Cross reference**— 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.**

(a) Any owner or owners of land in the county may submit an application to the program administrator ~~board of supervisors~~ of the county for the creation of a district or addition of land to an existing district within the 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 (i) if the nearest boundary of the parcel is within one mile of the boundary of the core, (ii) ~~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., or (iii) if the local governing body finds, in consultation with the advisory committee and planning commission, that a parcel not part of the core or within one mile of the boundary of the core contains agriculturally and forestally significant land as defined herein.

(b) 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:~~ the program administrator shall refer such application to the advisory committee.

The advisory committee shall review and make recommendations concerning the application or modification thereof to the local planning commission, 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~~ Notify, adjacent property owners as shown on the maps of county, used for tax assessment purposes~~ and where applicable, any political subdivision

whose territory encompasses or is part of the district, of the application 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 program administrator 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 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) Hold a public hearing as prescribed by law;
- (3) 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;
- (4) ~~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.

(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.

*(Ord. No. O-09-10, 11-10-2010)*

**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 50 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 [section 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 60 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.

*(Ord. No. O-09-10, 11-10-2010)*

**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.~~ notify the local governing body and all of the owners of land within the district pursuant to the guidelines listed in Virginia Code Section 15.2-4313.

(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. Unless the governing body, by an affirmative vote of a majority of all the members elected to it, determined that the proposed action is necessary to provide service to the public in the most economic and practical manner and will not have an unreasonably adverse effect upon state or local policy, the order shall prohibit the agency, corporation or political subdivision from proceeding with the proposed 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 program administrator 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.

The program administrator shall refer the request to the advisory committee for its recommendation. The advisory committee shall make recommendations concerning the request to withdraw to the local planning commission, which shall hold a public hearing and make recommendations to the Board of Supervisors. Land proposed to be withdrawn may be reevaluated through the Virginia or local Land Evaluation and Site Assessment (LESA) system. The landowner seeking to withdraw land from a district, if denied favorable action by the governing body, shall have an immediate right of appeal de novo to the circuit court serving the territory wherein the district is located. 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 clause (v) of subdivision 1 of 15.2-4307 or 15.2-4311 of the Code of Virginia.

(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~~ *program administrator* with the assistance of the AFD Advisory Committee and the planning commission ~~is~~ *are* 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 to be effective immediately.

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Rodney A. Hathaway  
County Administrator

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Chairman

PLANNING COMMISSION  
COUNTY OF NEW KENT  
VIRGINIA

PC-03-15

At the regular meeting of the Planning Commission of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 20th day of January, 2015:

Present:

C. Thomas Tiller, Jr.  
Jack Chalmers  
Joanne Schmit  
Laura Rose  
Michael B. Lane, Sr.  
Charna Moss-Gregory  
Edward W. Pollard  
Richard Kontny, Jr.  
Katherine Butler  
Patricia E. Townsend  
Joyce B. Williams

Vote:

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Motion was made by \_\_\_\_\_, which carried \_\_\_\_\_, to adopt the following resolution:

**A RESOLUTION TO RECOMMEND APPROVAL OF ORDINANCE  
AMENDMENT OA-02-15,  
AMENDING Ch. 62, Article II entitled "Agricultural and Forestal Districts."**

WHEREAS, the Agricultural and Forestal District advisory committee has reviewed the amendments to Ch. 62, Article II of the County Code;

WHEREAS, pursuant to Virginia Code Section 15.2-4300 et. seq., the New Kent County Board of Supervisors has the authority to amend Chapter 62 of the County Code; and

WHEREAS, the Commission finds the proposed changes to the Agricultural and Forestal Districts are to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County and the health, safety, and general welfare of the Citizens in the County; and

NOW THEREFORE, BE IT RESOLVED that on this, the 20th day of January, 2015, that the New Kent County Planning Commission hereby recommends amending Ch. 62, Article II – Agricultural and Forestal Districts.

Attested:

\_\_\_\_\_  
Chairman



## MEMORANDUM

DATE: January 13, 2015

TO: New Kent County Planning Commission

FROM: Matthew J. Smolnik, Director of Community Development

SUBJECT: Consideration of proposed amendments to Sections 91-128 and 98-871 of the New Kent County Code

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### **REQUEST:**

Consider the proposed amendments to Sections 91-128 and 98-981 of the New Kent County Code. The proposed amendments will modify the exception process from an administrative procedure to a legislative procedure for commercial and industrial subdivisions and for site plans requirements for business, commercial and service uses.

### **PUBLIC HEARINGS:**

Planning Commission: January 20, 2015 at 7:00 p.m., County Boardroom  
Board of Supervisors: Tentatively scheduled for the February 9, 2015 meeting at 7:00 p.m., County Boardroom

### **BACKGROUND:**

Staff was requested to explore alternative options for the placement of underground utilities within commercial and industrial developments. Based on the requirements and exception processes of surrounding municipalities, staff recommended to the Board of Supervisors at their November 19, 2014 work session that the exception process for underground utilities, along with the other requirements outlined in Section 91-128, go through a legislative process versus an administrative process, meaning that exception requests will no longer be considered and granted by the Director of Community Development, but rather the Board of Supervisors will decide on whether or not to grant an exception, following a recommendation by the Planning Commission. Following staff's presentation of the draft amendments, the Board of Supervisors moved to send the proposed amendments as drafted to the Planning Commission for a public hearing in January of 2015.

**SUGGESTED MOTION:**

In order to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County, I move to adopt Resolution No. PC-04-15 to forward Ordinance Amendment OA-05-15 to the New Kent County Board of Supervisors with a favorable recommendation.

Attachment:

- Resolution, PC-04-15

**PLANNING COMMISSION  
COUNTY OF NEW KENT  
VIRGINIA**

**PC-04-15**

At the regular meeting of the Planning Commission of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 20<sup>th</sup> day of January, 2015:

Present:

C. Thomas Tiller, Jr.  
Jack Chalmers  
Joanne Schmit  
Roger Gregory  
Michael B. Lane, Sr.  
Charna Moss-Gregory  
Edward W. Pollard  
Richard Kontny, Jr.  
Katherine Butler  
Patricia E. Townsend  
Joyce B. Williams

Vote:

---

Motion was made by \_\_\_\_\_, which carried \_\_\_\_\_, to adopt the following resolution:

**A RESOLUTION TO RECOMMEND APPROVAL OF OA-03-15 AMENDING  
CHAPTER 91, SECTION 128, ENTITLED SPECIAL PROVISIONS FOR COMMERCIAL AND  
INDUSTRIAL SUBDIVISIONS AND CHAPTER 98, SECTION 871 ENTITLED SPECIFIC  
CONDITIONS APPLICABLE TO BUSINESS, COMMERCIAL AND SERVICE USES.**

WHEREAS, pursuant to Virginia Code Section 15.2-4300 et. seq., the New Kent County Board of Supervisors has the authority to amend Chapters 91 and 98 of the County Code; and

WHEREAS, the Commission finds the proposed changes to Sections 91-128 and 98-871 of the New Kent County Code are to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County and the health, safety, and general welfare of the Citizens in the County; and

NOW THEREFORE, BE IT RESOLVED that the New Kent County Code be repealed, amended, restated and readopted as follows:

**Sec. 91-128. - Special provisions for commercial and industrial subdivisions.**

Commercial subdivisions and industrial subdivisions shall comply with all of the requirements of this chapter, provided, however, that the Board of Supervisors following a recommendation by the Planning Commission agent may, upon a determination that the public interest is equally well served, waive or modify the following requirements:

- (1) The requirement that each lot created front on a public street or roadway provided that a notation to this effect shall be clearly shown on the final plat.
- (2) The requirement for street widths exceeding 30 feet for subcollector and minor collector streets provided that on-street parking is clearly prohibited as indicated by posted signs and/or painted curbs.
- (3) The requirement that through lots have access to only the roadway with the lesser traffic volume, provided, however, that the Board of Supervisors agent may require that access to the road with the lesser traffic volume be restricted or prohibited.
- (4) The requirement that new electric utility service be placed underground in industrial subdivisions provided, however, that this shall apply only to three-phase electrical service in industrial subdivisions in which unscreened outdoor storage is permitted. It shall also only apply to commercial subdivisions that do not front a major collector, minor arterial, major arterial as defined in section 91-91 of this chapter. In granting such a waiver or modification, the agent shall review and determine the appropriate location for such overhead utility placement. Nothing in this subsection shall be interpreted to waive or modify any requirement of the zoning ordinance with respect to the location of on-site utilities.

The applicant shall provide the agent with a letter stating their justification for the waiver request to the standards of this section along with accompanying documentation including, but not limited to, proposed site design layout, location of existing utilities, street layout with traffic volumes or signage plans. Upon receipt of all items deemed necessary by the agent, the agent shall prepare a staff report for the Planning Commission and Board of Supervisors for their review and consideration. Upon approval of a waiver or modification to the standards outlined in this section by the Board of Supervisors, the agent shall determine that that the approved development plan or plat is consistent with the Board of Supervisors' approval.

(Ord. No. O-03-05, 3-14-2005, Ord. No. O-03-2015, TBD)

NOW THEREFORE, BE IT FURTHER RESOLVED that the New Kent County Code be repealed, amended, restated and readopted as follows:

**Sec. 98-871. Specific conditions applicable to business, commercial and service uses in business, economic opportunity, and industrial zoned classifications.**

- (a) Standards for all business, commercial and service uses.
  - (7) All utilities serving any business, commercial or service use shall be placed underground, unless a waiver or modification has been granted in accordance with section 91-128 (4) of the New Kent County Code. Existing overhead utilities that require relocation or expansion for any reason shall be removed and placed underground.

(Ord. No. O-18-07, 7-23-07; Ord. No. O-02-14, 1-13-2014)

(Ord. No. O-07-12, 7-9-2012, Ord. No. O-03-2015, TBD)

Attested:

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Chairman, New Kent County Planning Commission



## 2014 ANNUAL REPORT

### New Kent County Planning Commission

#### Planning Commissioners

Mr. Jack Chalmers - Chairman

Mr. Michael Lane - Vice-Chairman

Ms. Katherine Butler

Mr. Howard Gammon

Mr. Roger Gregory

Mr. Richard Kontny, Jr.

Mrs. Charna Moss-Gregory

Mr. Edward Pollard

Mrs. Laura Rose

Mrs. Patricia Townsend

Mrs. Joyce Williams

Honorable Tommy Tiller - Board of Supervisors Representative

#### Staff Support

Mr. Rodney Hathaway, County Administrator

Mr. Jonathan Stanger, Asst. County Administrator

Mr. Matthew Smolnik, Director of Community Development

Mrs. Michele Gowdy Esq., County Attorney

Mrs. Kelli Le Duc, Planning Manager

Mr. Matthew Venable, Environmental Planning Manager

Mr. Kenneth Vaughan, Zoning Official

Mr. Kyle Flanders, Planner

Mrs. Cathy Williams, Recording Secretary

## MEETING SYNOPSES

### Meeting Date: February 18, 2014

- Mr. Jack Chalmers was elected as the 2014 Chair.
- Mr. Michael Lane was elected as the 2014 Vice Chair.
- Mrs. Patricia Townsend was elected as the 2014 Public Hearing Chair.
- Ms. Katherine Butler was elected as the 2014 Public Hearing Vice Chair.
- Mr. Edward Pollard was re-elected as the 2014 Representative to the Richmond Regional Planning District Commission.
- Minor changes to the Bylaws were discussed.
- The 2014 meeting schedule was adopted.
- There was a presentation from the Liberty Landing representatives.
- The 2013 Annual Report was adopted.
- Mr. Hathaway presented the FY 2015 CIP and changes to the Land Development Fees.
- Mr. Stanger presented proposed changes to the family subdivision ordinance.
- Ms. Gowdy gave an update on proposed changes to the Stormwater Ordinance.

### Meeting Date: March 17, 2014

- The 2014 Bylaws were adopted.
- A **public hearing** was held regarding ZM-01-14, Liberty Landing. The Planning Commission voted to forward an unfavorable recommendation to the Board of Supervisors.
- A **public hearing** was held on the FY 2015 CIP. The Planning Commission recommended approval of the CIP to the Board of Supervisors.
- A **public hearing** was held on FY 15 Land Development Fees and Zoning and Subdivision Fees. The Planning Commission recommended approval of the fees to the Board of Supervisors.

### Meeting Date: May 19, 2014

- A **public hearing** was held on OA-01-14, Amendments to the AFD Ordinance, but action was deferred until a future meeting.
- A **public hearing** was held on OA-02-14, Amending, Restating, and Readopting Stormwater Management to the New Kent County Code of Ordinances. The Planning Commission recommended approval of the ordinance amendment to the Board of Supervisors.
- Ms. Gowdy presented possible changes to the Cluster Subdivision Ordinance.

### Meeting Date: June 23, 2014 joint meeting with the Board of Supervisors

- Before the Board of Supervisors and Planning Commission for a joint **public hearing** were Ordinance O-09-14 repealing, amending, restating, and readopting Chapter 82 "Environment" to the New Kent County Code of Ordinances, and Ordinance O-10-14 amending Chapter 94, Waterways, Article II, Chesapeake Bay Preservation Areas to the New Kent County Code of Ordinances, to comply with the Stormwater Management Programs, Section 62.1-44.15.27 of the Code of Virginia. The Planning Commission recommended approval of both Ordinance Amendments to the Board of Supervisors.

### Meeting Date: July 21, 2014

- A presentation from Kim Turner, Director of Parks and Recreation, was given to the Commission on the concept plans for a future park being planned along Pine Fork Road.
- The Planning Commission voted to recommend approval of Application OA-01-14, Ordinance Changes for the AFD Program, to the Board of Supervisors.

**Meeting Date: August 18, 2014 at New Kent Middle School**

- It was announced that Mr. Gregory had resigned from the Planning Commission.
- A **public hearing** was held regarding Application PUD-01-14, Patriots Landing. Action was deferred on this application to gather more information and to allow the applicant and PL Homeowner’s Association time to confer.
- There were **sixteen public hearings** held on AFD Applications.

**Meeting Date: September 15, 2014**

- It was announced that Mrs. Laura Rose was appointed to take Mr. Gregory’s vacant spot for District 1.
- Action on Application PUD-01-14 was deferred again.
- A **public hearing** was held regarding Application CUP-01-14, Pilot Travel Centers, LLC. The Planning Commission voted to send a favorable recommendation to the Board of Supervisors on the application.
- Mr. Hathaway gave a presentation regarding a possible Overlay Zoning District for Bottoms Bridge. A Subcommittee consisting of Mr. Lane, Mr. Gammon, Mrs. Rose, Mr. Kontny, and Mrs. Townsend was formed to work on this.

**Meeting Date: December 15, 2014**

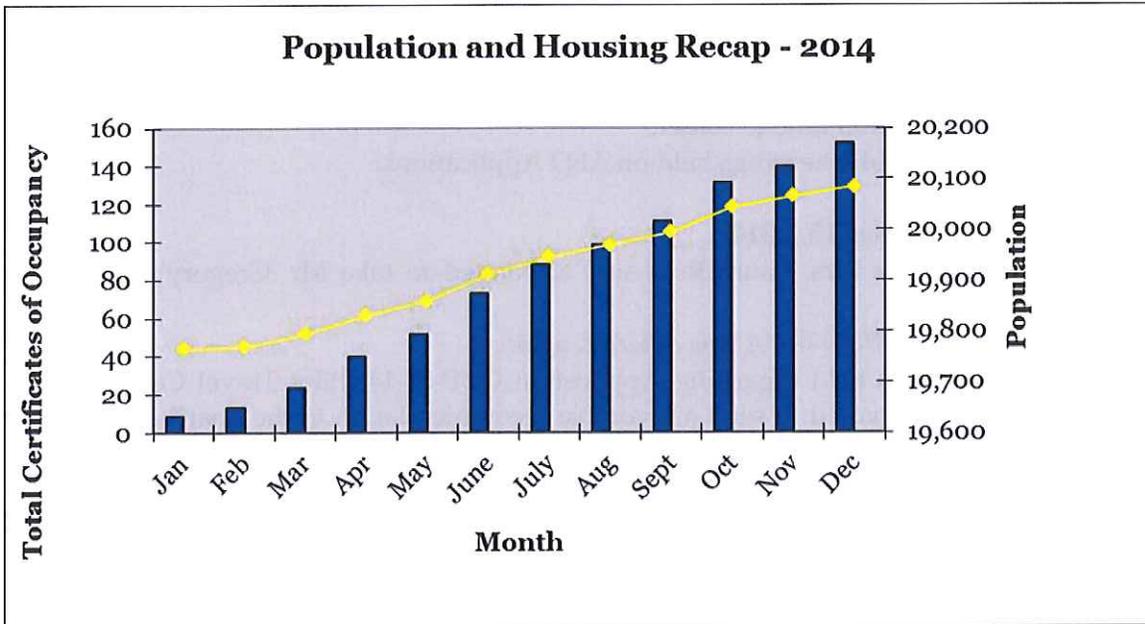
- Action was taken on Application PUD-01-14, with the Planning Commission voting to send a favorable recommendation to the Board of Supervisors on the application.
- A **public hearing** was held regarding Application CUP-02-14, Colonial Holdings, Inc. The Planning Commission voted to send a favorable recommendation to the Board of Supervisors.

**2014 Planning Commission Attendance**

	2-18	3-17	5-19	6-23	7-21	8-18	9-15	12-15
<b>Planning Commissioner</b>								
Patricia Townsend District 1	P	P	P	P	P	P	P	A
Roger Gregory District 1	P	A	P	A	P	A		
** Laura Rose District 1							P	P
Michael Lane District 2	P	P	A	P	A	P	P	P
Katherine Butler District 2	P	P	P	P	P	P	A	P
Charna Moss-Gregory District 3	P	P	P	P	P	A	A	P
Joyce Williams District 3	P	P	P	P	P	P	P	P
Jack Chalmers District 4	P	P	P	P	P	A	P	P
Richard Kontny District 4	P	P	P	P	P	P	P	P
Howard Gammon District 5	P	P	P	P	P	A	P	A
Edward Pollard District 5	P	P	P	P	P	P	P	P

P = Present      A = Absent

\*\* Mrs. Rose joined the Planning Commission in September. Mr. Gregory resigned.



Certificates of Occupancy (cumulative) are depicted with the blue bars. Population figures are depicted with the yellow line.

A total of 152 Certificates of Occupancy were issued in 2014, bringing the estimated County population figure to 20,085. In 2013, 172 Certificates of Occupancy were issued and the estimated County population was 19,743.

### 2014 Monthly Single-Family Building Permit Comparison Data

Source: UVA Weldon Cooper Center

County	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Chesterfield	68	69	50	79	83	85	80	71	65			
Gloucester	15	5	17	17	7	11	12	17	11			
Goochland	21	9	14	7	13	7	6	11	6			
Hanover	34	35	45	39	51	42	78	53	39			
Henrico	47	69	59	70	62	71	49	60	72			
James City	37	24	37	98	48	27	43	32	35			
New Kent	n/r	n/r	20	12	12	12	10	14	14			
Powhatan	n/r	n/r	9	21	17	21	19	19	20			
York	n/r	n/r	4	7	5	11	8	8	5			

\* n/r = not reported for that month

## Planning Division Applications for 2014

Application Type	Number Received
<i>Subdivisions</i>	
Parent Tract	2
Family	9
Large Lot Exempt	2
Preliminary/Final	6
Boundary Line Adjustment/Lot Consolidation	23
<i>Site Plans</i>	
Site Plan	14
Construction Plan	4
<i>Zoning</i>	
Rezoning	1
Conditional Use Permit	3
Certificate of Zoning	143
Zoning Variance	0
Zoning Violation	14
Inoperable Vehicles	8
Zoning Administrative Modification	0
Tall Grass Complaints	8
Zoning Opinion Letter	5
Notice of Zoning Violation	7
Cultural Events	24
 <i>Application Total for 2014</i>	 <b>273</b>

<b>Comparison to Previous Years</b>			
	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Certificate of Zoning</b>	107	147	143
<b>Conditional Use Permit</b>	0	4	3
<b>Rezoning</b>	2	0	1
<b>Zoning Violation</b>	42	28	14
<b>Zoning Variance</b>	0	0	0
<b>Cultural Event</b>	14	17	24
<b>Subdivisions (all)</b>	38	41	42
<b>Site Plans &amp; Construction Plans</b>	17	11	18

## Environmental Division Applications for 2014

Application Type	Number Received
<i>Land Disturbance Permit</i>	
Single Family	200
Commercial	14
Agricultural Screening Forms	2
<i>Wetland Related</i>	
CBPA Exception	4
RPA Modifications	0
Wetland Applications	8
Required Ches Bay, Wetland, or Beaches & Dunes approval	3
<i>Agricultural &amp; Forestal District</i>	
Active Districts	19
Additions to existing districts	26
Districts created	0
Withdrawals	0
<i>Application Total for 2014</i>	<b>231</b>

<b>Comparison to Previous Years</b>			
	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Single Family Land Disturbance</b>	187	199	200
<b>Commercial Land Disturbance</b>	12	15	14
<b>Agricultural Screening Forms</b>	3	2	2
<b>CBPA Permits</b>	6	11	4
<b>RPA Modifications</b>	9	5	0
<b>Wetland Applications</b>	4	2	8
<b>Applications requiring Board approval</b>	4	7	3