

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

O-01-07

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 16th day of January, 2007:

Present:	Vote:
Mark E. Hill	Aye
David M. Sparks	Aye
James H. Burrell	Nay
W. R. Davis, Jr.	Aye
Stran L. Trout	Aye

Motion was made by Mr. Hill which carried 4:1:0, to adopt the following resolution:

**AN ORDINANCE AMENDING CHAPTER 98, NEW KENT COUNTY CODE
TO PROHIBIT CERTAIN LAND USES**

WHEREAS, it is appropriate to amend the Zoning Ordinance to prohibit certain land uses that are entirely inconsistent with the Vision 2020 Comprehensive Plan and for which no acceptable conditions can be established that would reduce this inconsistency; and

WHEREAS, the Board of Supervisors finds that Section 15.2-2280 of the Code of Virginia specifically authorizes a locality to prohibit the use of land, buildings and structures for specific uses; and

WHEREAS, the New Kent County Board of Supervisors (herein after referred to as "the Board") forwarded an initiating resolution to the Planning Commission (herein after referred to as "the Commission") to consider if certain land uses shall be prohibited in Chapter 98 of the New Kent County Code; and

WHEREAS, the Commission together with the Board scheduled and conducted a formal and duly advertised joint public hearing on 16 January 2007, and each body has carefully considered the public comment received; and

WHEREAS, the Commission voted 6:3:1 to forward a favorable recommendation to amend Chapter 98 of the new Kent County Code to prohibit certain land uses; and

WHEREAS, the Board finds that the public necessity, convenience, general welfare and good zoning practices in the County of New Kent require adoption of these text amendments to prohibit certain uses;

NOW THEREFORE BE IT ORDAINED this, the 16th day of January 2007, by the New Kent County Board of Supervisors that Chapter 98 of the New Kent County Zoning Ordinance be amended to read and provide as follows:

A. *Restate and readopt the following section:*

Sec. 98-64. Prohibited land uses:

Certain uses have been determined to be entirely inconsistent with the Comprehensive Plan and for which no acceptable conditions can be established that would reduce the inconsistency. These uses, enumerated below, are prohibited in the County.

- (1) Smelting on an industrial scale
- (2) Operating an adult business or use when located within three thousand (3,000) feet of any school, place of worship, public or community park, public building, or another adult business or use
- (3) Manufacturing nuclear materials
- (4) Processing, storing or disposing of nuclear waste
- (5) Manufacture of biologically accumulative poisons or other poisons that are, or ever were, registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136, et seq., as that section may be amended or superseded from time to time)
- (6) Operation of a municipal solid waste landfill or sanitary landfill or solid waste management facility
- (7) Operation of a construction debris landfill
- (8) Hazardous waste incinerators
- (9) Medical waste incinerators
- (10) Transportation, storage and disposal (TSD) facilities

B. *Restate and reinsert the following definitions in proper alphabetical order:*

Sec. 98-2. Definitions and rules of construction.

Adult business means a use, such as an adult bookstore/video store, adult motion picture theater, a business providing adult entertainment or any other establishment, including without limitation any adult modeling studio, adult cocktail lounge or adult nightclub, that regularly emphasizes an interest in matter relating to specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

Adult bookstore/adult video store means an establishment having as its principal purpose or one which derives in excess of 20% of its gross sales from the stock-in-trade of books, magazines and other periodicals and/or videotapes, computer disks, CD-ROMs, DVD-ROMs, virtual reality devices or any other similar media that are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities", or "specified anatomical areas" or are intended for the sexual stimulation or titillation of patrons.

Adult entertainment means dancing, modeling, or other live performances if the performers' performance is characterized by an emphasis on specified anatomical areas or specified sexual activities, or is intended for the sexual stimulation or titillation of patrons. This definition also includes the showing of films, motion pictures, video cassettes, slides, photographic reproductions, virtual reality devices, internet sites, or files transmitted over the internet, or other media that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

Adult merchandise means magazines, books, other periodicals, videotapes, movies, photographs, slides, CD-ROMs, DVD-ROMs, virtual reality devices or other similar media that are characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas or are intended for the sexual stimulation or titillation of patrons. This definition also includes toys, novelties, instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs and lingerie or leather goods marketed or presented in a context to suggest their use for sadomasochistic practices.

Adult motion picture theater means an enclosed building or open area, such as a drive-in theatre, used for presenting material for observation by patrons distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

Compost means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, and/or applied to the land without adversely affecting public health or the environment. Composted sludge shall be as specified in 12 VAC 5-581-630.

Composting means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

Construction debris landfill (also called "Construction/Demolition/Debris landfill" or "CDD landfill") means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, or combinations of the above solid wastes. Facilities that recycle such waste into useable products are not considered construction debris landfills. The use of inert materials to provide structural and load-bearing fill for future construction is not considered to constitute a construction debris landfill.

Construction waste means solid waste which is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction wastes. Vegetative wastes are not construction wastes.

Hazardous waste means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Medical waste means waste that meets either of the two criteria of this section:

1. Any solid waste, as defined in this chapter is a regulated medical waste if it is suspected by the health care professional in charge of being capable of producing an infectious disease in humans. A solid waste shall be considered to be capable of producing an infectious disease if it has been or is likely to have been contaminated by an organism likely to be pathogenic to healthy humans, such organism is not routinely and freely available in the community, and if such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. If the exact cause of a patient's illness is unknown, but the health care professional in charge suspects a contagious disease is the cause, the likelihood of pathogen transmission shall be assessed based on the pathogen suspected of being the cause of the illness.

2. Any solid waste that is not excluded from regulation is a regulated medical waste if it is listed in 9 VAC 20-120-150, as that section may be amended from time to time.

Municipal Solid Waste Landfill means any private or public area operated for the purpose of disposing of solid waste or putrescible waste in the county, not including transfer stations or convenience centers.

Nuclear Material means radioactive material, source material such as thorium or ores containing uranium or thorium; and by product material such as nuclear fuel rods which is made radioactive by exposure to the radiation incident to the process of producing or using special nuclear materials.

Nuclear Waste means any waste that results from using radioactive materials for purposes that include electricity production by nuclear power plants, defense activities and nuclear weapons manufacture, medical treatment, nuclear research, industrial processes, and mining and milling of uranium ore.

Public Building means any building or structure held, used or controlled exclusively for public purposes by any department or branch of the Federal Government, Commonwealth of Virginia, or the New Kent County government under the direct authority of the Board of Supervisors, or the New Kent County School Board without reference to the ownership of the building or structures or the realty upon which it is situated.

Putrescible waste means solid waste which contains organic material capable of being decomposed by micro-organisms and capable of causing odors.

Sanitary landfill means a disposal facility for solid waste or putrescible waste.

Sludge means any solid, semisolid, or liquid wastes with similar characteristics and effects generated from a public, municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, air pollution control facility or any other waste producing facility.

Smelting means the process of heating and melting ores and concentrates; then separating the desirable molten metals such as copper from other elements.

Smelting on an industrial scale means smelting is the principal use of the parcel or that smelting yields more than two (2) tons of metal within any twelve (12) month period.

Solid waste means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended, or (iv) compost or mulch produced from vegetative waste.

Solid waste management facility means a site used for planned treating, long-term storage, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units. Recycling facilities are not solid waste management facilities.

Specified anatomical area means the less than completely and opaquely covered human genitals; pubic region; buttock; female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means the human genitals in a state of sexual stimulation or arousal; acts or simulation of human masturbation, sexual intercourse or sodomy; and/or fondling or other erotic touching of human genital, pubic region, buttock or female breast.

Transportation, Storage and Disposal (TSD) Facilities means those facilities that transport, store and dispose of hazardous waste.

Vegetative waste means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps. Compost or mulch produced from vegetative waste is not a waste product.

C. *Amend the following section in the manner described:*

Sec. 98-62. Schedule of Uses.

In the Schedule of Uses chart inset, strike and delete the entire row containing the words "Sanitary Landfills".

D. *Amend the following section as shown:*

Sec. 98-213. Uses permitted by conditional use permit only.

In the A-1, agricultural district, all conditional uses shall require an approved site plan. Structures to be erected or land to be used for one or

more of the following uses shall be permitted only after the issuance of a conditional use permit by the board of supervisors or its agent:

- (1) Airports.
- (2) Antique shops.
- (3) Bed and breakfast/home stay establishments.
- (4) Campgrounds.
- (5) Cemeteries (with sale of lots).
- (6) Childcare centers.
- (7) Community centers.
- (8) Construction business, with storage of equipment, as a home occupation.
- (9) Distillation of ethanol from grain.
- (10) Equestrian show facility.
- (11) General store. Any retail establishment offering for sale items of a general mercantile nature including food and beverage products, household and hardware items. Such store shall not have underground tanks or pumps for dispensing fuel for on-road vehicles. Such store shall be restricted to 3,000 square feet or less of retail sales floor. Such establishment shall be restricted to existing structures with historical general mercantile use. The term shall not include truck stops, nor shall it be used for any activity commonly associated with truck stops such as storing, maintaining or parking trucks and other commercial vehicles overnight.
- (12) Group care facilities.
- (13) Helistops.
- (14) Horse racing facility.
- (15) Kennels.
- ~~(16) Landfills or dump sites.~~
- (176) Marinas.
- (187) Mining, excavation or filling, borrow pits, extraction, processing and removal of land, gravel and stripping of topsoil (but farm pond construction, field leveling or stripping of sod for agricultural purposes and excavations in connection with development which has received subdivision or site plan approval are permitted generally and without a conditional use permit).
- (198) Mobile home as storage shed in conjunction with a bona fide agricultural operation.
- ~~(2019)~~ Paint pellet competitive games.
- ~~(210)~~ Permanent mobile homes that do not meet the definition of manufactured housing under Code of Virginia, § 15.2-2290, on 25 acres or more.
- (221) Pistol ranges.
- (232) Portable sawmills.
- (243) Private clubs or hunt clubs with an approved site plan, provided that in order to maintain a tranquil environment for those residential uses

within the A-1 zoning district, hunt clubs shall be located at least 250 feet from a property line of a residential use.

(254) Private schools with approved site plan.

(265) Public or private electrical generation facilities, electrical substations with a capacity of 5,000 kilovolt amperes or more, and electrical transmission lines capable of transmitting 69 kilovolts or more.

(276) Public or private transmission pipelines, including pumping stations and accessory storage for natural gas, propane gas, petroleum products, chemicals, slurry coal and any other gases, liquids or solids, except that private connections to existing pipelines, which are intended to serve an individual residential or commercial customer and which are accessory to existing or proposed development, are permitted generally and without a conditional use permit.

(287) Public or private water and sewer facilities including, but not limited to, treatment plants, pumping stations, storage facilities and transmission mains, except that private connections to existing mains which are intended to serve an individual residential or commercial customer and which are accessory to existing or proposed development, are permitted generally and without a conditional use permit.

(298) Radio, television or communication stations and/or towers which exceed 50 feet in height.

~~(3029)~~ Railroad facilities including tracks, bridges, switching yards and stations, except that spur lines which are to serve and are accessory to existing or proposed development adjacent to existing railroad rights-of-way, and track and safety improvements in existing railroad rights-of-way, are permitted generally and without a conditional use permit.

~~(310)~~ Single-family conversion to two-family.

(321) Sporting clays.

(332) Steeplechase.

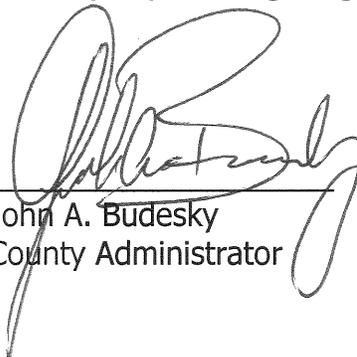
(343) Temporary storage of a mobile home.

(354) Turkey shoots.

(365) Veterinary clinics.

(376) Water impoundments for public or private use of 50 acres or more and a dam height of 25 feet or more.

(387) Zoological gardens.



John A. Budesky
County Administrator



Stran E. Trout
Chairman