

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

O-26-04

At the regular meeting of the Board of Supervisors of the County of New Kent in the Board Room of the County Office Building in New Kent, Virginia, on the 13th day of December, 2004:

Present:	Vote:
D. M. "Marty" Sparks	Aye
Stran L. Trout	Aye
W. R. "Ray" Davis, Jr.	Aye
Mark E. Hill	Aye
James H. Burrell	Aye

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

**AN ORDINANCE TO AMEND
CHAPTER 62 (SPECIAL DISTRICTS)
OF THE CODE OF NEW KENT COUNTY TO REVISE THE
AGRICULTURAL AND FORESTAL DISTRICT REGULATIONS**

WHEREAS, the Code of New Kent County, Chapter 62, provides for the creation, addition to, withdrawal from, and review of Agricultural and Forestal Districts ("AFD"); and

WHEREAS, it has become necessary to update these ordinances to comply with the Code of Virginia; and

WHEREAS, the Board wishes to increase the efficiency of the process by which AFDs are reviewed and considered; and

WHEREAS, the Board desires for this amendment to be codified in the Code of New Kent;

NOW THEREFORE BE IT ORDAINED that in the interest of public health, safety, and welfare and pursuant to the authority granted to it under §§ 15.2-4300 et seq. of the Code of Virginia that sections 62-33, 62-34, 62-35, 62-43, 62-44, and 62-45 of the Code of the New Kent County be amended and enacted to read as follows:

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

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

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

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

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

Any owner or owners of land in the county may submit an application to the board of supervisors of the county for the creation of a district within county. Each district shall have a core of no less than 200 acres in one parcel or in contiguous parcels. A parcel not part of the core may be included in a district if the nearest boundary of the parcel is within one mile of the boundary of the core, or if it is contiguous to a parcel in the district the nearest boundary of which is within one mile of the boundary of the core. No land shall be included in any district without the signature on the application, or the written approval of all owners thereof. A district may be located in more than one locality, provided that (i) separate application is made to each locality involved, (ii) each local governing body approves the district, and (iii) the district meets the size requirements of this section. In the event that one of the local governing bodies disapproves the creation of a district within its boundaries, the creation of the district within the adjacent localities' boundaries shall not be affected, provided that the district otherwise meets the requirements set out in this chapter. In no event shall the act of creating a single district located in two localities pursuant to this subsection be construed to create two districts.

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 nonfarm structures, shall at least 90 days prior to such action file a notice of intent with the board of supervisors containing such information and in such manner and form as the board of supervisors may prescribe. Such notice of intent shall contain a report detailing all reasons for the proposed action including, but not limited to, an evaluation of alternatives which would not require action within the district.
- (b) Upon receipt of a notice filed pursuant to subsection (a) of this section, the board of supervisors, in consultation with the planning commission and the advisory committee, shall review the proposed action to determine: (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district; (ii) the policy of this article and the necessity of the proposed action to provide service to the public in the most economical and practicable manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district. If requested to do so by any owner of land that will be directly affected by the proposed action of the agency, corporation, or political subdivision, the Director of the Department of Conservation and Recreation, or his designee, may advise the local governing body on the issues listed in clauses (i), (ii) and (iii) of this subsection.
- (c) If the board of supervisors finds that the proposed action might have an unreasonably adverse effect upon either state or local policy, it shall issue an order within 90 days from the date the notice was filed directing the agency, corporation or political subdivision not to take the proposed action for a period of 150 days from the date the notice was filed. During such 150-day period, the county board of supervisors shall hold a public hearing, as prescribed by law, concerning the proposed action. The hearing shall be held where the board of supervisors usually meets or at a place otherwise easily accessible to the district. The board of supervisors shall publish notice in a newspaper having a general circulation within the district, and mail individual notice of the hearing to the political subdivisions whose territory encompasses or is part of the district, and the agency, corporation or political subdivision proposing to take the action. Before the conclusion of the 150-day

period, the board of supervisors shall decide whether the proposed action will have an adverse effect upon state or local policy and whether the proposed action is necessary to provide service to the public in the most economical and practicable manner, and it shall, by the issuance of a final order, report its decision to the agency, corporation or political subdivision proposing to take the action. If the agency, corporation or political subdivision is aggrieved by the final order of the board of supervisors, an appeal shall lie to the circuit court having jurisdiction of the territory wherein a majority of the land affected by the acquisition is located. However, if such public service corporation is regulated by the state corporation commission, an appeal shall be to the state corporation commission.

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

- (a) At any time after the creation of a district within the county, any owner of land lying in such district may file with the board of supervisors a written request to withdraw all or part of his land from the district for good and reasonable cause. A request to withdraw land from a district is not favored and therefore withdrawals will only be allowed for good and reasonable cause shown, to include, but not be limited to:
1. The proposed new land use will not have an adverse impact on agricultural or forestal operations on other property within and adjacent to the district;
 2. The withdrawal is consistent with the Comprehensive Plan and/or the zoning ordinance;
 3. The proposed land use is consistent with the public interest of the County in that it promotes the health, safety or general welfare of the County, rather than only the proprietary interest of the owner;
 4. The environmental benefits assessed in creating the district will not be adversely affected;
 5. The proposed land use could not have been anticipated at the time the land was included in the district and a change in circumstances places an undue hardship on the owner should the land remain in the district; and
 6. Agricultural and/or forestal production is no longer practicable or feasible due to changes in soil, climate, water, topography, incompatible land uses adjacent to the property, and other relevant changes that would impact agricultural and/or forestal production on this land.
- (b) The board of supervisors shall refer the request to the planning commission and the advisory committee for their recommendations and shall hold a public hearing. Land proposed to be withdrawn may be reevaluated through the state or county land evaluation and site assessment (LESA) system. The landowner seeking to withdraw land from a district, if denied favorable action by the board of supervisors, shall have an immediate

right of appeal de novo to the county circuit court. This section shall in no way affect the ability of an owner to withdraw an application for a proposed district or withdraw from a district pursuant to Code of Virginia, §§ 15.2-4307(1)(v) or 15.2-4311.

- (c) Upon termination of a district or withdrawal or removal of any land from a district created pursuant to this article, land that is no longer part of a district shall be subject to roll-back taxes as are provided in Code of Virginia, § 58.1-3237. Sale or gift of a portion of land in a district to a member of the immediate family as defined in Code of Virginia, § 15.2-2244 shall not in and of itself constitute a withdrawal or removal of any of the land from a district.
- (d) Upon termination of a district or upon withdrawal or removal of any land from a district, land that is no longer part of a district shall be subject to those local laws and ordinances prohibited by the provisions of Code of Virginia, § 15.2-4312(B).
- (e) Upon the death of a property owner, any heir at law, devisee, surviving, cotenant or personal representative of a sole owner of any fee simple interest in land lying within a district shall, as a matter of right, be entitled to withdraw such land from such district upon the inheritance or descent of such land, provided that such heir at law, devisee, surviving cotenant or personal representative files written notice of withdrawal with the board of supervisors and the commissioner of the revenue within two years of the date of death of the owner.
- (f) Upon termination or modification of a district, or upon withdrawal or removal of any parcel of land from a district, the board of supervisors shall submit a copy of the ordinance or notice of withdrawal to the commissioner of the revenue, the state forester and the state commissioner of agriculture and consumer services for information purposes. The commissioner of the revenue shall delete the identification of such parcel from the land book and the tax map, and the board of supervisors shall delete the identification of such parcel from the zoning map, where applicable.
- (g) The withdrawal or removal of any parcel of land from a lawfully constituted district shall not in itself serve to terminate the existence of the district. The district shall continue in effect and be subject to review as to whether it should be terminated, modified or continued pursuant to Code of Virginia, § 15.2-4311.

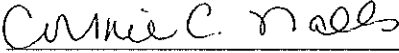
Section 62-45 Application form and general guidelines

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

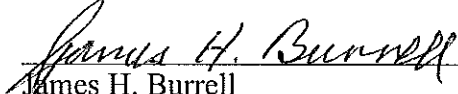
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AND NOW THEREFORE BE IT FURTHER ORDAINED that if any section, sentence, paragraph, term, or provision of this Ordinance is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision of this Ordinance, all of which will remain in full force and effect.

This Ordinance shall become effective immediately upon its adoption by the Board of Supervisors.



Connie C. Nalls
Clerk of the Board



James H. Burrell
Chairman