

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

O-12-05

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 11th day of April, 2005:

| Present: | Vote: |
|------------------|--------|
| D. M. Sparks | Absent |
| James H. Burrell | Aye |
| Stran L. Trout | Aye |
| Mark E. Hill | Aye |
| W. R. Davis, Jr. | Aye |

Motion was made by Mr. Burrell, which carried 4:0, to adopt the following Ordinance:

**AN EMERGENCY ORDINANCE
AMENDING § 98-782 OF
THE CODE OF NEW KENT COUNTY
FOR THE PURPOSE OF CORRECTING UNAUTHORIZED
CHANGES MADE DURING THE 2001 RECODIFICATION**

WHEREAS, the New Kent County Code (the "County Code") was recodified in 2001;
and

WHEREAS, the Board of Supervisors (the "Board") has determined that during the recodification of the County Code, the Municipal Code Corporation incorrectly altered section 98-272 (formerly section 9-252) of the County Code, thereby prohibiting New Kent County (the "County") from accepting proffers of cash or real property; and

WHEREAS, this alteration was not authorized by the Board; and

WHEREAS, pursuant to § 15.2-2298 of the *Code of Virginia*, the County may accept proffers of cash and real property; and

WHEREAS, the Board has deemed it to be of utmost importance to the citizens of New Kent County to correct this error as quickly as possible; and

WHEREAS, an emergency exists because applications for rezoning have been submitted and the property owners desire to proffer cash and real property to the County.

NOW THEREFORE BE IT ORDAINED this, the 11th day of April, 2005, by the New Kent County Board of Supervisors by authority granted to it under § 15.2-2298 of the Code of Virginia that § 98-782 of the County Code be amended and reenacted to provide as follows:

Sec. 98-782. Proffer of conditions.

(a) Any owner of property making application for rezoning or amendment to the zoning map as part of the application may voluntarily proffer in writing reasonable conditions prior to any public hearing before the board of supervisors, which shall be in addition to the regulations provided for the applicable zoning district or zone by this chapter, provided that:

(1) The rezoning itself must give rise for the need for the conditions;

(2) The conditions shall have a reasonable relation to the rezoning;

(3) ~~The conditions shall not include a cash contribution to the county;~~

(4) ~~The conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in Code of Virginia, § 15.2-2241;~~

(5) ~~The conditions shall not include payment for or construction of off site improvements except those provided for in Code of Virginia, § 15.2-2241;~~

(6) ~~No condition shall be proffered that is not related to the physical development or physical operation of the property; and~~

(7) ~~All such conditions shall be in conformity with the New Kent County Ceomprehensive Pplan as defined in Code of Virginia, § 15.2-2223.~~

~~Once proffered and accepted as part of an amendment to this chapter, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions. However, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.~~

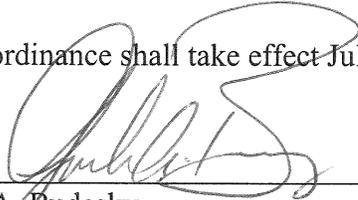
(b) If proffered conditions include the dedication of real property or payment of cash, such property shall not transfer and such payment of cash shall not be made until the facilities for which such property is dedicated or cash is tendered are included in the capital improvement

program, provided that nothing in this section shall prevent the acceptance of proffered conditions which are not normally included in the capital improvement program.

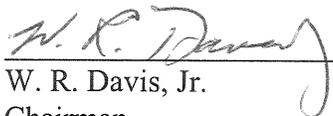
(c) If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of the property or cash payment if the property or cash payment is not used for the purpose for which proffered.

(d) If proffered conditions include a requirement for the dedication of real property of substantial value or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the board of supervisors, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety or welfare.

This ordinance shall take effect July 1, 2005.



John A. Budesky
County Administrator



W. R. Davis, Jr.
Chairman