BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA

O-12-09

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 13th day of July 2009:

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

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

AN ORDINANCE TO APPROVE AMENDMENTS TO SECTION 91-127(f) OF THE SUBDIVSION ORDINANCE TO REQUIRE CONSERVATION EASEMENTS FOR OPEN SPACE IN CLUSTER SUBDIVSIONS

WHEREAS, the Board of Supervisors of New Kent County wishes to amend the open space requirements for cluster subdivisions in order to require the establishment of conservation easements to protect the open space; and

WHEREAS, the Code of Virginia, §15.2.2286.1 permits the Board of Supervisors to enact provisions to ensure preservation of open space; and

WHEREAS, the Board of Supervisors upon motion and vote initiated this amendment; and

WHEREAS, the Planning Commission conducted a duly advertised public hearing on this matter and after carefully considering the facts presented and comment received voted 10:0:1 to recommend approval of the amendments; and

WHEREAS, the proposed amendment has been properly advertised for public hearing before the Board of Supervisors; and

WHEREAS, the Board of Supervisors finds that the adoption of these text amendments would support the public necessity, convenience, general welfare, and good zoning and subdivision practices in the County of New Kent;

NOW THEREFORE BE IT ORDAINED, this the 13th day of July, 2009 by the New Kent County Board of Supervisors that Section 91-127(f) of the County Code of New Kent County be amended to read and provide as follows:

(f) 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, forestal, recreational, or open-space uses by establishment of a permanent open space conservation easement.*

(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.*
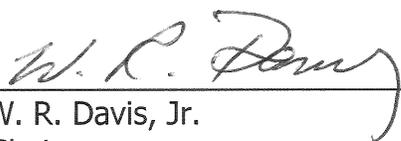
(5) *Conservation Easement Requirements*

    a. *Designated open space in cluster subdivisions shall be protected from any future subdivision or development by the establishment of a permanent conservation easement 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, Title 10 Chapter 10.1 of the Code of Virginia.*

c. *The conservation easement 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.*

       BE IT FURTHER ORDAINED that this amendment shall be effective immediately upon adoption.

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John A. Budesky   W. R. Davis, Jr.
County Administrator   Chairman