

# COUNTY OF YORK

## MEMORANDUM

**DATE:** December 3, 2013 (PC Mtg. 12/11/13)

**TO:** York County Planning Commission

**FROM:** J. Mark Carter, Assistant County Administrator

**SUBJECT:** Application No. ZM-148-13 (Conditional), KCCC LLC

### ISSUE

This application requests the reclassification from PD-Planned Development to RMF-Multi-Family Residential, with proffers, of two parcels with a combined area of 58 acres located in the Villages of Kiln Creek Planned Development. The two parcels formerly were occupied by a 9-hole portion of the Kiln Creek Golf and Country Club course and now stand as undeveloped open space.

### DESCRIPTION

- Property Owner: KCCC LLC
- Location:
  - Parcel No. 36-1S – 32.26 acres adjoining the southern boundary of Newport News/Williamsburg International Airport.
  - Parcel 36-1R – 25.62 acres surrounding The Sanctuary village of the Villages of Kiln Creek and with frontage on Kiln Creek Parkway.
- Total Area: Approximately 58 acres
- Frontage:
  - Parcel No. 36-1S – None
  - Parcel No. 36-1R - Approximately 890 feet on Kiln Creek Parkway (Route 1800)
- Utilities: Public water and sewer (available with extensions)
- Topography: Generally flat
- 2035 Land Use Map Designation:
  - Parcel No. 36-1S – Limited Industrial
  - Parcel No. 36-1R – High Density Residential

- **Zoning Classification:** PD–Planned Development (both parcels)
- **Existing Development:** None
- **Surrounding Development:**
  - **Parcel No. 36-1S** – Bounded by airport property to the north and west, Newport News Waterworks (NNWW) property to the east, and the Kiln Creek golf course to the south.
  - **Parcel No. 36-1R** – Bounded to the east by single-family detached residential development (Highlands section of Kiln Creek and the Foxwood subdivision), to the north by NNWW property, to the west by the Kiln Creek golf course, and to the south by Kiln Creek Parkway and the Rock Creek section of Kiln Creek. As noted, the parcel surrounds The Sanctuary section (single family attached – duplex) of Kiln Creek.
- **Proposed Development:** No conceptual development plans have been submitted by the applicant and none are required when applying for standard rezoning applications. The applicant has proffered that the two properties combined would be limited to a maximum development yield of 355 dwelling units and to request that the Villages of Kiln Creek Owners Association, Inc. make both parcels subject to the Declaration of Covenants and Restrictions for Kiln Creek.

The two parcels involved in this rezoning application are included within the terms of a pending agreement between the applicant (KCCC, LLC) and the Villages of Kiln Creek Owners Association under which they would be placed in a conservation easement and conveyed to the Owners Association (along with the 18-hole course). This potential agreement is discussed in a letter dated November 22, 2013 from the Owners Association Board President to Kiln Creek residents (copy attached). The letter notes the desire of the parties to consummate the arrangements before January 1, 2014 and, accordingly, the applicant has requested expedited processing of this application. To accommodate that request, the Board of Supervisors has scheduled its public hearing and consideration of the application for December 17, 2013 (under the assumption that the Commission will take action on December 11<sup>th</sup>).

## **CONSIDERATIONS / CONCLUSIONS**

1. The applicant owns and operates the Kiln Creek Golf and Country Club, which straddles the border between York County and the City of Newport News. Four holes of what was formerly a 27-hole golf course were previously located on a 25.6-acre parcel surrounding an existing duplex development (The Sanctuary) within the Villages of Kiln Creek Planned Development. The remaining five holes of that 9-hole layout were located on the subject parcel adjoining the airport. The 9-hole layout has been abandoned and both parcels have been allowed to return to a natural state over the past several years.

2. The open space surrounding The Sanctuary occupies land that was originally designated (along with the area occupied by The Sanctuary duplexes) for townhouses and condominium apartments when the Villages of Kiln Creek Planned Development was first approved by the Board of Supervisors in 1988. The conversion of this area from entirely residential to golf fairways surrounding a residential area was approved by the Board of Supervisors in 1991 through an amendment to the overall community concept plan for Kiln Creek and approval of an Area Plan for this property. The 1991 zoning action also rezoned the landlocked 32-acre parcel adjoining the airport from IL-Limited Industrial to PD-Planned Development and authorized its development with five (5) golf fairways/greens.
3. In addition to the limit on the total number of dwelling units, the applicant has proffered to request that the Villages of Kiln Creek Owners Association, Inc. make both parcels subject to the Declaration of Covenants and Restrictions for Kiln Creek. Doing so, if agreed to by the Owner's Association, would make any future development on the parcels subject to review and approval by the Villages of Kiln Creek Architectural Review Board (ARB).
4. The Comprehensive Plan designates the area surrounding The Sanctuary for High Density Residential development while the parcel adjoining the airport is designated for Limited Industrial use. The Comprehensive Plan indicates that the High Density Residential designation is intended to provide opportunities for

*"...single-family housing having a maximum density of 3.0 dwelling units per acre..."* and, further, that the *"...high-density development envisioned by this designation can be expected to generate intensive demands on public services and facilities and should be located with careful consideration given to the availability and adequacy of public services, transportation facilities, and commercial centers."*

The RMF-Multi-Family Residential zoning classification allows, as a matter of right, various types of single-family attached housing (duplexes, townhouses, multiplexes) as well as apartments (rental or condominium) with a maximum density limit of 10 units per acre (more than triple the density guidance provided by the Comprehensive Plan for the Kiln Creek area). Applying that maximum density limit to the total acreage represented by the two parcels would produce a hypothetical development yield of 580 units. Looked at individually and in gross acreage terms, the 26-acre parcel surrounding The Sanctuary would yield a maximum of 260 units under the RMF classification while the 32-acre parcel adjoining the airport would yield a maximum of 320 units. However, as noted, the applicant has proffered an upper limit of 355 units for the two parcels combined which, at a density yield of 6.12 units per acre, is still more than *double* the allowance provided for by the Comprehensive Plan. Moreover, the parcel adjoining the airport is designated for Limited Industrial use, not residential, so associating any density allowance to that property would represent an inconsistent, and very liberal, interpretation of the Comprehensive Plan.

5. The applicant has based the current zoning request on discussions and analysis that occurred in 2007 as a result of his rezoning application (eventually withdrawn) that sought approval for a 300-unit planned development to be known as Fairway Creek that was proposed to occupy the parcel surrounding The Sanctuary as well as approximately 50 acres of adjoining Newport News Waterworks property which he had contracted to purchase. At that time, staff communicated several “theoretical” observations to the applicant concerning the total acreage encompassed by the Villages of Kiln Creek and the actual number of dwelling units constructed in the development. Those observations included the following:
  - 342.6 acres of the York County portion of the existing Villages of Kiln Creek development are within the area designated for High Density Residential development in the Comprehensive Plan (i.e., this figure excludes the 32-acre parcel adjoining the airport since it is designated for Limited Industrial use);
  - The 3-units per acre density opportunity associated with the High Density Residential designation for that acreage would have allowed a theoretical maximum of 1,027 dwelling units; the original 1988 concept plan approval for the Villages of Kiln Creek set the maximum development yield at 1,378 units;
  - County records indicate that a total of 672 dwelling units were actually constructed in the Villages of Kiln Creek. Accordingly, speaking strictly from the standpoint of the Comprehensive Plan designation, one might assert that there is an “unused” density allowance of 355 dwelling units (i.e., 1,027 minus 672) which, theoretically, could be proposed to occupy some portion of the undeveloped (and “surplus”) open space within the development.

The open space represented by the two subject parcels is “surplus” in that its area does not need to be retained in order for the minimum 25% open space requirement of the PD-Planned Development standards to be met.

This analysis was strictly mathematical and staff cautioned the applicant that it did not take into account the numerous issues – such as traffic, school and public facility impacts, compatibility with existing parts of Kiln Creek, compatibility with the airport, impact on the 80,000 target build-out policy, etc. – that would need to be evaluated if a zoning application were to be submitted. Regarding the maximum build-out population, it was noted that in the periodic assessments of the County’s progress toward meeting that goal the population potential of the Villages of Kiln Creek was derived using the existing development (i.e., 672 dwelling units) and not what the maximum under the Comprehensive Plan High Density Residential designation might be (i.e., 1,027 units). Thus, any zoning action that effectively modifies the approved Kiln Creek Master Plan to enable additional residential development to occur would increase the probability that the ultimate build-out goal would be exceeded.

6. Staff has concerns about the impact of RMF-Multi-family development on the adjoining single-family residential properties in The Sanctuary and The Highlands.

Presumably, the owners of those properties purchased with an expectation that they would remain next to a golf course, or at least a substantial open space area. Allowing the conversion of that open space to a matter-of-right multi-family residential use, even with the open space buffer that would be required by the RMF classification around such a development (25 feet in width if developed as single-family attached units / 50 feet in width if developed as apartments), would represent a substantial change in the character of the surrounding area. If this area is to be considered for "infill" residential development within the existing Villages of Kiln Creek Planned Development, staff is of the opinion that it should be accomplished through the PD-Planned Development process whereby the Planning Commission and Board of Supervisors are afforded the opportunity to review a conceptual layout plan, and to accept public comments concerning that plan before its approval. However, the applicant's desire to expedite consideration of an application requesting residential use of the parcels precluded submission as a PD-Planned Development request since that would have required preparation of a proposed conceptual layout plan for the properties and community and traffic impact studies, as well as a two-month lead time for scheduling the application.

7. The parcel adjoining the airport is bounded on the south by the 15<sup>th</sup> fairway and green of the 18-hole golf course. Single family detached homes in the Lexington section of Kiln Creek are situated on the south side of that fairway and would be over 300 feet away from any multi-family development – a sizeable and adequate buffer between single-family detached and an RMF development. However, RMF development of that parcel would be problematic in other respects, including:
  - The airport: The Comprehensive Plan's Limited Industrial designation recognizes the proximity of the runway and the noise and other impacts that would be certain to generate complaints and concerns from residences that would be located closer than any of the existing Kiln Creek homes, whether in York County or Newport News. In fact, much of the parcel falls within the 65 dB noise contour (both for existing and future airport conditions) where residential development is considered an incompatible land use (see attached noise contour map);
  - Access: The only York County access to this parcel, per the approved Kiln Creek Master Plan, is via an easement that extends from Lennox Court in Lexington across a narrow parcel owned by the Villages of Kiln Creek Owners Association and then across the 18-hole golf course between the 15<sup>th</sup> green and 16<sup>th</sup> tee box, all of which is and would continue to be zoned Planned Development. This access arrangement was satisfactory when the property was part of the 9-hole golf course and it remains appropriate today with the property standing in open space. However, one of the performance standards set out in the Zoning Ordinance [Section Nos. 24.1-403(1)(4)a. and 404(j)(2)] for both townhouse and apartment development stipulates that access for such developments "*shall not be through a single-family detached residential subdivision.*" With connection to Lennox Court not being an option, the only other apparent alternative would be across airport property, if permission and access easements to do so could be negotiated. However, even if that could be arranged, it would create an untenable situation

with respect to York County's ability to provide public services to that parcel (e.g., school bus access, emergency services response, etc.).

8. According to the average trip generation rates contained in the Institute of Transportation Engineers' (ITE) *Trip Generation* manual (7<sup>th</sup> edition), 355 multi-family dwelling units could be expected to generate approximately 2,343 vehicle trips per day. However, as noted above, it appears highly unlikely that traffic generated from the 32-acre parcel adjoining the airport would feed onto Kiln Creek Parkway. Accordingly, it would appear that the maximum potential direct impact on Kiln Creek Parkway would be 260 units (i.e., the maximum that could be developed at 10-units/acre on the parcel surrounding The Sanctuary). Absent a detailed traffic study, which would be required at the site plan submittal stage of any proposed RMF development, it is not possible to accurately assess potential Level of Service (LOS) impacts. However, in its analysis of the 300-unit "Fairway Creek" proposal six years ago, VDOT expressed concerns that the projected additional traffic would reduce the PM peak-hour Level of Service (LOS) at the signalized intersection of Kiln Creek Parkway and Victory Boulevard from LOS C, which is acceptable, to LOS D, which is unacceptable. Additionally, VDOT expressed concerns and reservations about any development scenario that would involve a new street connection to Kiln Creek Parkway, preferring instead that an arrangement be negotiated to allow any new development around The Sanctuary to tie into Cleek Boulevard (a private street owned by The Sanctuary HOA) rather than creating a new access point along Kiln Creek Parkway that would not be aligned with any existing median break.
9. Staff estimates that a RMF development of 355 multi-family units (apartments) would generate approximately 117 school-age children (57 elementary / 28 middle / 32 high). The property is located in the attendance zones for Grafton Bethel Elementary School, Grafton Middle School, and Grafton High School. As members of the Commission may recall, staff recommended that the Commonwealth Green PDMU, which is in the same attendance zone, not be approved based in part on concerns about potential school enrollment and capacity deficit impacts. That project was approved, development is underway, and if projections hold true its elementary-age residents would essentially consume virtually all of the "surplus" capacity at that level. In other words, approval of this application would have the potential to add to an already looming elementary capacity issue in this attendance zone.
10. On a positive note, the Kiln Creek Owners Association letter suggests that the ultimate disposition of these two properties might be placement in a conservation easement and ownership by the Association. Perpetuation of the open space area represented by these two parcels would be consistent with their current standing under the approved Villages of Kiln Creek Master Plan and, in staff's opinion, would be beneficial. However, the County is not a party to nor does staff know the details of the agreement(s) between the applicant and the Owners Association and, absent a zoning proffer to indicate that even if rezoned to RMF the parcels either would not be developed or would be placed under the terms of a conservation easement, multi-family development with up to 355 units would remain as a potential outcome.

**RECOMMENDATION**

Based on the Comprehensive Plan, land use, transportation, and school enrollment considerations and conclusions as noted, staff recommends that the Commission forward this application to the Board of Supervisors with a recommendation of denial, which can be accomplished by denying proposed Resolution No. PC13-30.

JMC

**Attachments:**

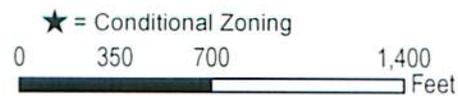
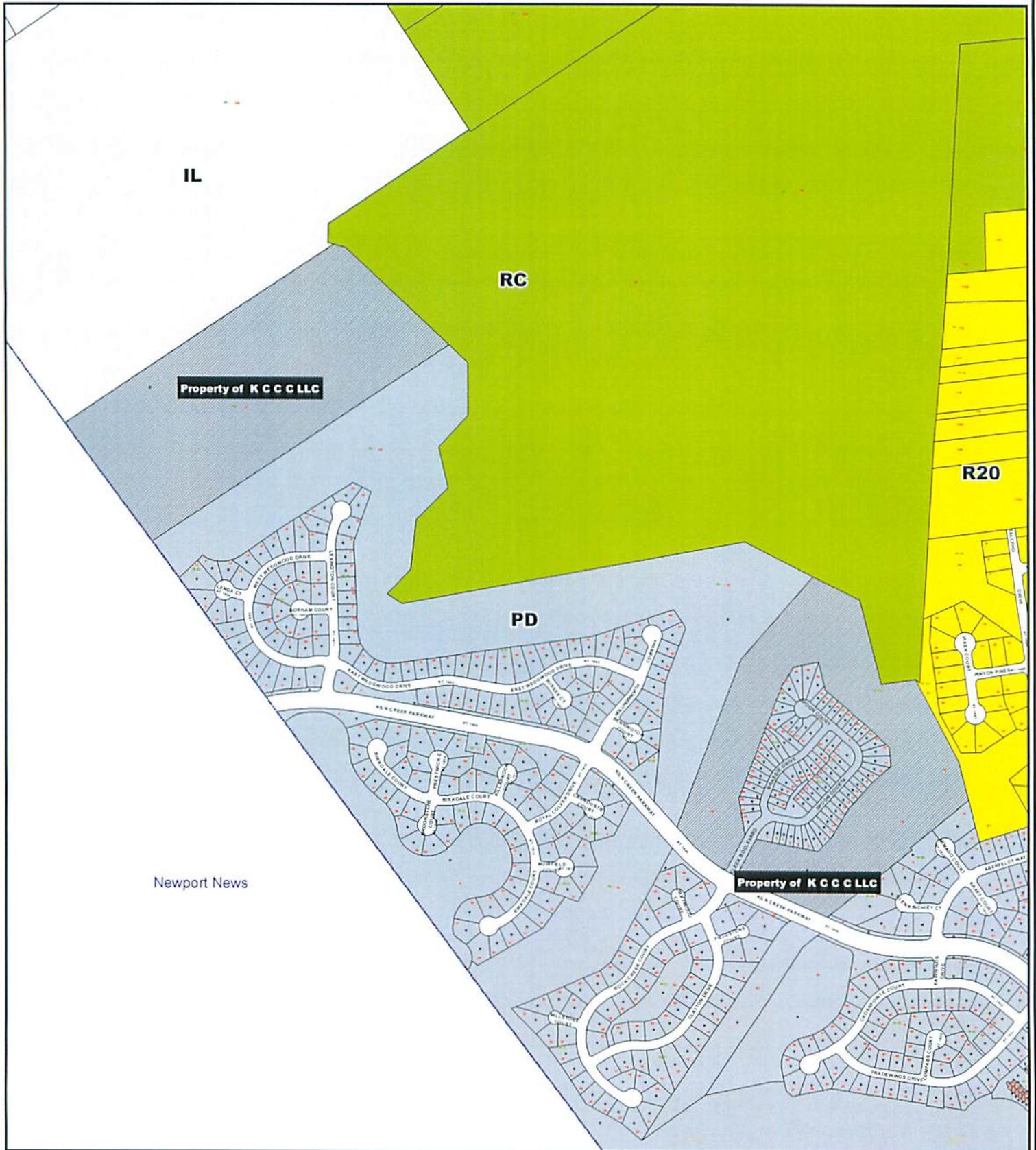
- Zoning Map
- Aerial Photo
- November 22, 2013 letter from President, Village of Kiln Creek Owners Association, to residents
- Airport Noise Contour Map
- Proffer Statement dated November 14, 2013
- Supplemental Proffer Statement dated November 18, 2013
- Proposed Resolution No. PC13-30

**APPLICANT**  
**KCCC, LLC**

Rezone approximately 58 acres from PD to RMF  
R04c-1305-2400, R04d-4731-0192

# ZONING MAP

APPLICATION NUMBER: ZM-148-13



Printed on November 19, 2013



SOURCE: YORK COUNTY  
GIS PARCEL DATA and  
ZONING COVERAGE

THIS IS NOT A LEGAL PLAT  
This map should be used for  
information purposes only. It is  
not suitable for detailed site planning.





VILLAGES OF  
KILN  
CREEK  
OWNERS  
ASSOCIATION®

November 22, 2013

Dear Residents:

In my letter of November 7, 2013 I stated that I would keep you updated on any significant developments regarding our discussions with Mr. Dick Ashe, the owner of the Kiln Creek Golf and Country Club and associated properties.

After several years of extensive study by the Association during which time there has been much dialogue between the Association's Board of Directors and Mr. Ashe, I am pleased and excited to inform the community that the Board of Directors has reached an agreement with Mr. Ashe regarding the terms of a possible purchase of the golf courses (i.e. the 18 hole course and the closed 9 hole course) and associated facilities. The terms will be subject to conservation easements to the 18 hole course and the 9 hole course, which will protect the community from further development. Changes in tax laws which go into effect January 1, 2014 have compelled Mr. Ashe to seek an expedited closing date on such a purchase and sale.

Following on and off discussions for several years, the tax law change has clearly provided the catalyst to reach compromise on issues that had previously prevented an arrangement from being reached. At this point the board has signed a tentative agreement to purchase the property, buildings and all furnishings and equipment, and the Association has begun a study period. We are now conducting due diligence and further studies, including inspections to determine the condition of the property and title, prior to becoming obligated to purchase the property, and we have the ability to terminate the agreement without penalty during this time.

The Association has engaged Charlottesville-based Affinity Management – a reputable Golf Course Management Company - to assist us with the due diligence along with the Association's legal counsel, and advise us in this potential transaction.

During the next few weeks we will be holding a series of information sessions for all homeowners who wish to attend. It is likely that these information sessions will occur in early December. We will have more information to share with you during these meetings and there will be an opportunity for questions and answers. The main topics for the presentations will include:

- The basis for the Board's decision to enter into such an agreement
- Benefits for all homeowners of a KCOA purchase
- An overview of the Vision and Business Strategy for operating the Golf Course & Club House
- The possible impact of this purchase on future assessments

The dates, times and locations for these information meetings will be posted on our Reader Boards and on our website at [KilnCreek.org](http://KilnCreek.org).

We will periodically update you on additional progress as we move through the due diligence and study period. On behalf of the KCOA Board, I encourage each homeowner to become informed about this possible purchase and to attend one of the information sessions.

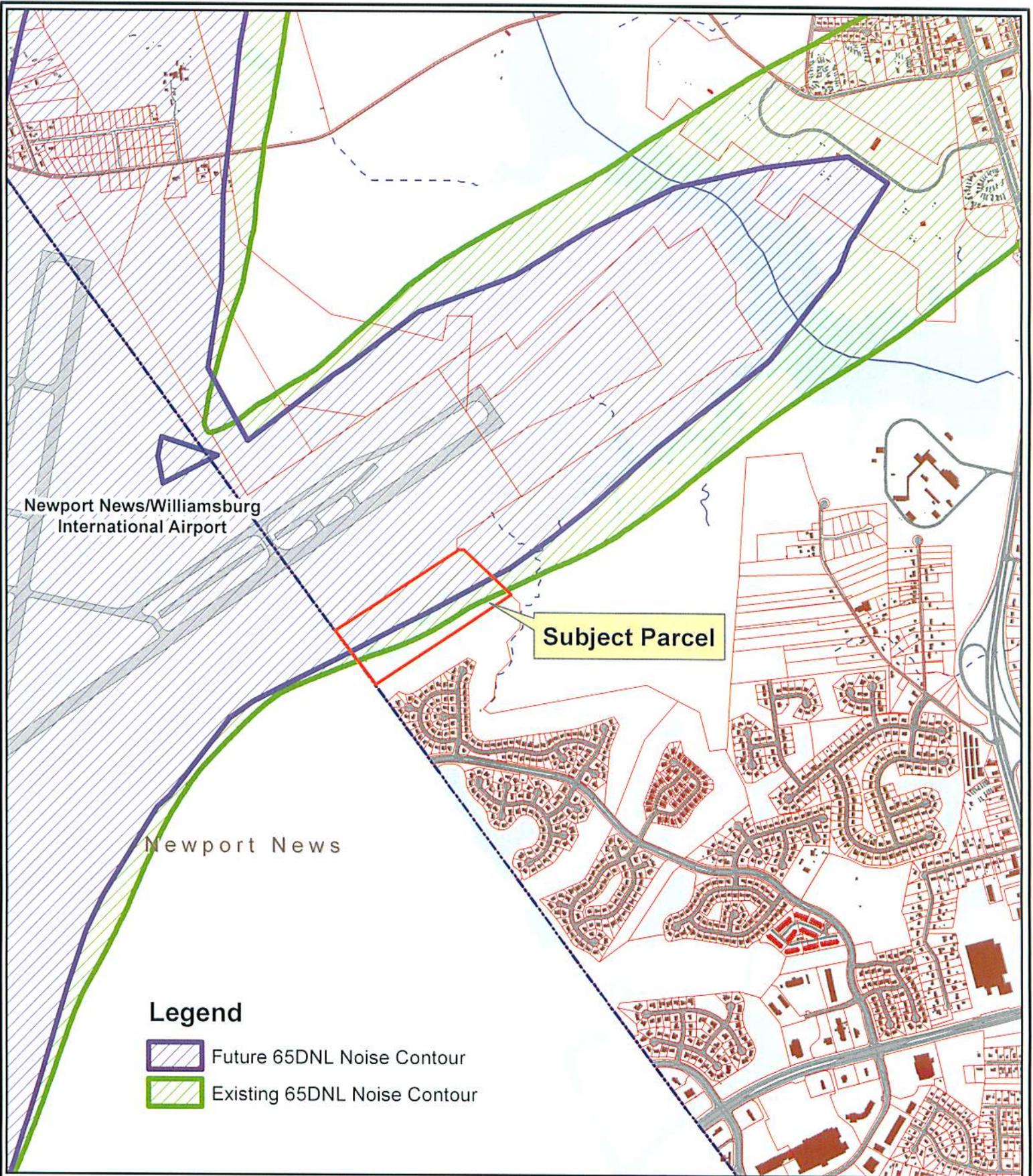
Thank you for your continued support.

Sincerely,

David Radcliffe, Board President,  
Villages of Kiln Creek Owners Association

1405-C Kiln Creek Parkway • Newport News, VA 23602 • (757) 877-9835 • FAX (757) 877-9862

*"To Protect, Enhance, and Maintain a Community of Excellence"*



Newport News/Williamsburg  
International Airport

Subject Parcel

Newport News

**Legend**

-  Future 65DNL Noise Contour
-  Existing 65DNL Noise Contour

*Airport Noise Contours*



GEOGRAPHIC INFORMATION SYSTEMS  
Division of Computer Support Services  
Department of Planning & Management Services  
WWW.YORKCOUNTY.GOV

Image Taken: March, 2009

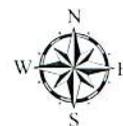
Copyright: Commonwealth of Virginia

HORIZONTAL ACCURACY: +/- 2.5 feet  
VERTICAL ACCURACY: +/- 1 foot  
DATE OF ELEVATION INFORMATION: 2007  
DATUM: VA State Plane South, NAD 83  
DATUM: NAVD 1988

This map should NOT be used for engineering or other design purposes without full verification having been undertaken by a qualified surveyor.

The County of York, Virginia assumes no responsibility for the accuracy of this map or the information contained herein or derived here from. The buyer and/or user assumes all risks and liabilities whatsoever resulting from, or arising out of the use of this map.

There are no oral agreements or warranties relating to the sale and/or use of this map.



THIS IS NOT A LEGAL PLAT.  
This map should be used for  
information purposes. It is not  
suitable for detailed site planning.



**Conditions voluntarily proffered for the reclassification of property identified as Assessor's Parcel Nos. 36-15 (GPIN R04c-1305-2400) and 36-1R (GPIN R04d-4731-0192).**

**I hereby voluntarily proffer that the development of the property owned by me and proposed for reclassification from PD - Planned Development to RMF – Residential Multi-Family under this application shall be in strict accordance with the conditions set forth below.**

- 1. Notwithstanding the otherwise allowable density pursuant to the RMF – Residential Multi-Family District regulations, the maximum number of residential units allowed on the subject properties combined shall be 356.**

*KCC, LLC*

*HR Aske M.M.*

Property Owner

*11-14-13*

Date

**PROFFERS  
KILN CREEK GOLF CLUB AND RESORT  
NINE (9) HOLE GOLF COURSE**

THESE PROFFERS are made this 18th day of November, 2013, by and among:

**KCCC, LLC**, a Virginia limited liability company ("KCCC") (to be indexed as grantor);

**COUNTY OF YORK, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("County") (to be indexed as grantee).

**RECITALS**

R-1. KCCC is the owner of certain real property located in the County of York, Virginia, shown and depicted as "Parcel G," on sheet number 27 of the attached plat, containing approximately 25.652 acres, entitled Kiln Creek Golf and Country Club, the Villages of Kiln Creek City of Newport & the County of York, Virginia, Updated ALTA/ACSM Land Title Survey and dated August 26, 1999 (the "Plat") attached hereto and made a part hereof ("Parcel 1").

R-2. KCCC is the owner of certain real property located in the County of York, Virginia, shown and depicted as "Portion of Industrial 1," on sheet number 22 and 23 of the Plat, containing approximately 32.260 acres, attached hereto and made a part hereof ("Parcel 2").

R-3. Parcel 1 and Parcel 2 shall collectively be known as the Property.

R-4. KCCC has filed an Application for rezoning (the "Application") of the Property. The Application has been designated by the County as Case No. ZM-148-13.

R-5. In the Application, KCCC requested that the zoning of the Property be changed from PD Planned Development District to RMF Residential Multi-Family District as described in Section 24.1-326 et seq. of the County's zoning ordinance in effect on the date hereof (the "Zoning Ordinance").

R-6. KCCC acknowledges the following proffered development conditions (each, a "Proffer," and collectively, the "Proffers"), are reasonable, pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 24.1-114 of the York County Zoning Ordinance.

R-7. The provisions of the Zoning Ordinance may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, KCCC in furtherance of the Application of rezoning, desires to proffer certain conditions which are limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the provisions of Section 15.2-2296, et seq. of the Code of Virginia (1950), as amended (the "Virginia Code") and Section 24.1-326 of the York County Zoning Ordinance.

**NOW, THEREFORE, for and in consideration of the approval by the County of the Application, and pursuant to Section 15.2-2296, et seq., of the Virginia Code and Section 24.1-326 of the York County Zoning Ordinance, KCCC hereby agrees that if the Application is approved and the Board of Supervisors of York County rezones the Property from PD Planned Development District to RMF Residential Multi-Family District, then any subsequent development of the Property shall be in conformance with the following proffers:**

## **PROFFERS:**

As used in these Proffers, the following capitalized terms shall have the following meanings:

“ARB” shall refer to the Architectural Review Board of the Association as such Board is defined and described in Article VI of the Declaration (other capitalized terms defined below).

“Association” shall refer to the Villages of Kiln Creek Owners Association, Inc., a Virginia non-stock corporation.

“Improvements” shall mean any building, patio, deck, wall, animal pen or shelter, sign, fence, exterior lighting, pool, deck, mailbox, or any other structure or physical improvement, including landscaping and tree and shrub planting.

“Declaration” shall refer to the Second Amended Declaration of Covenants and Restrictions of Villages of Kiln Creek Owners Association, Inc., dated August 25, 2009, as amended and supplemented by instruments of record in the Clerk’s Office of the Circuit Court of Newport News, Virginia and in the Clerk’s Office of the Circuit Court of York County, Virginia (the “Declaration”).

Any capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration.

1. **Subjection to Declaration.** As to any portion of the Property containing or planned for residential units, residential lots, open space, golf course, recreational amenities, commercial development, industrial development, or natural areas, the Owner shall submit to the Association a request to subject the Property to the covenants, easements, and restrictions of the Declaration in accordance with the provisions of Article II of the Declaration. The Owner shall not proceed with any development on the Property without first having obtained the Association’s approval to subject to the Declaration the portion of the Property planned for development; provided, however, that the Association shall not be obligated to bring all or any part of the Property within the scheme of development established by the Declaration.

2. **ARB Review.** Prior to recording any subdivision or boundary line adjustment plats or submitting concept plans, development plans, site plans, or building plans for any residential, commercial, or industrial development planned for the Property (collectively and individually referred to as the “Plans”) to applicable County planning or building personnel for review, the Owner shall submit the Plans to the ARB for review pursuant to Section 6.1 of the Declaration. The Owner covenants that no Improvement shall be constructed on the Property without prior approval of the ARB pursuant to and in accordance with Section 6.5 of the Declaration, which may be withheld in the ARB’s sole and absolute discretion.

3. **Successors and Assigns.** These Proffers shall run with the title to the Property and shall be binding on the parties hereto and their respective successors and assigns; provided, however,

once a party ceases to own all or any portion of the Property, such party shall have no personal liability hereunder.

4. Severability. In the event that any clause, sentence, paragraph, subparagraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, subparagraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, subparagraph, section or provision hereof.

5. Headings. All paragraph and subparagraph headings of the Proffers herein are for convenience only and are not a part of these Proffers.

6. Conflicts. In the event that there is any conflict between these proffers and the Zoning Ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Zoning Appeals and the Courts as otherwise provided by law.

7. Void if Application not Approved. In the event that the Application is not approved by the County these Proffers shall be null and void.

8. Incorporation of Recitals. The Recitals set forth above shall be included and read as a part of these Proffers and are incorporated herein by reference.

**[SIGNATURES CONTINUE ON FOLLOWING PAGES]**

WITNESS the following signature, thereunto duly authorized:

KCCC, LLC

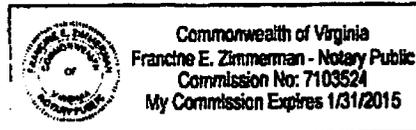
By: *HR Ashe*  
Name: HR ASHE  
Title: MM

COMMONWEALTH OF VIRGINIA  
~~CITY~~/COUNTY OF James City, to wit:

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of November, 2013 by H.R. Ashe as Managing Member of KCCC, LLC, a Virginia limited liability company, on its behalf.

*Francine E. Zimmerman*  
NOTARY PUBLIC

My commission expires: 01-31-2015  
Registration No.: 7103524



PLANNING COMMISSION  
COUNTY OF YORK  
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Planning Commission held in the Board Room, York Hall, Yorktown, Virginia, on the \_\_\_\_ day of \_\_\_\_\_, 2013:

Present

Vote

Mark B. Suiter, Chair  
Melissa S. Magowan, Vice Chair  
Glenn A. Brazelton  
Timothy D. McCulloch  
Todd H. Mathes  
Richard M. Myer, Jr.

On motion of \_\_\_\_\_, which carried \_\_\_, the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATION NO. ZM-148-13 REQUESTING RECLASSIFICATION FROM PD-PLANNED DEVELOPMENT TO RMF-MULTI-FAMILY RESIDENTIAL, WITH PROFFERED CONDITIONS, OF TWO PARCELS WITHIN THE VILLAGES OF KILN CREEK PLANNED DEVELOPMENT

WHEREAS, KCCC LLC has submitted Application No. ZM-148-13, which seeks to amend the York County Zoning Map by reclassifying from PD (Planned Development) to RMF (Multi-family Residential), with proffered conditions, approximately 58 acres of land located in the Villages of Kiln Creek Planned Development and further identified as Assessor's Parcel Nos. 36-1R (GPIN R04d-4731-0192) and 36-1S (GPIN R04c-1305-2400); and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the \_\_\_ day of \_\_\_, 2013, that Application No. ZM-148-13 (Conditional) be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to amend the York County Zoning Map by reclassifying from PD (Planned Development) to RMF (Multi-family Residential), with proffered conditions, approximately 58 acres of land located in the Villages of Kiln Creek Planned Development and further identified as Assessor's Parcel Nos. 36-1R (GPIN# R04d-4731-0192) and 36-1S (GPIN# R04c-1305-2400), subject to the proffers voluntarily submitted by the applicant and set forth in two separate statements, one dated November 14, 2013 and the other dated November 18, 2013.