

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

WORK SESSION

County Government Center Board Room

September 24, 2002

4:00 P.M.

A. CALL TO ORDER

B. ROLL CALL

C. BOARD DISCUSSION

1. Plan to Adopt a Multiyear Commemorative Decal for Motor Vehicles
2. Financial Results - FY 2002
3. Real Property Assessments
4. Erosion and Sediment Control - Civil Penalties - Deferred from September 10, 2002

D. ADJOURNMENT

092402bswk.age

MEMORANDUM

DATE: September 24, 2002

TO: The Board of Supervisors

FROM: Ann Davis, Treasurer
Richard Bradshaw, Commissioner of the Revenue

SUBJECT: Plan to Adopt a Multiyear Commemorative Decal for Motor Vehicles

Attached is a copy of the proposed policy and procedures to distribute a multiyear *Commemorative Decal* for motor vehicles garaged in James City County. If the Board wishes, all necessary ordinance amendments will be brought to the Board at the October 8, 2002, meeting.

Benefits will include cost savings to the County from the elimination of annual mass distribution of decals and an increased convenience for citizens who will no longer be required to scrape off and replace motor vehicle decals every year. Compliance with both County and State regulations will be enhanced by issuing decals only at the time of local registration.

It is anticipated that there will be no impact to enforcement procedures by the Police Department and no changes are required to our regional enforcement agreements.

No impacts are expected upon property tax assessments. Discovery issues will remain for vehicles which are not properly registered with the Virginia Division of Motor Vehicles. Impact upon collections of delinquent taxes is addressed in the attached document. Revenue and compliance will be closely monitored.

This proposal will keep James City County at the forefront of innovative policies which benefit its citizens.

Ann Davis

Richard Bradshaw

AD/tlc
multiyrdecal.mem

Attachment

MEMORANDUM

DATE: September 24, 2002
TO: The Board of Supervisors
FROM: Suzanne R. Mellen, Director of Budget and Accounting
SUBJECT: Financial Results - FY 2002

The County's books have been turned over to the independent auditors for review and audit.

FY 2002 Current Year revenues exceeded Current Year budget by approximately 2.9 percent or \$2.9 million. Current Year Expenditures were under budget by approximately 1.4 percent or \$1.4 million. Of these variances, almost \$4 million had already been appropriated to the FY 2003 Capital Improvement budget. The remaining \$300,000 would be applied to the reserve in accordance with the financial advisor's recommendations.

The major sources of variances are detailed below.

Revenues

Real Estate - Current and Delinquent

Real Estate collections were approximately \$1.3 million over FY 2002 projections. This is attributed mostly to higher supplemental billings due to growth. Those supplemental billing values are included in the FY 2003 landbook values.

Personal Property - Current and Delinquent

Personal Property collections were approximately \$1.5 million over FY 2002 projections. These collections have already been accounted for in the projections for FY 2003; however, the first supplemental billing in FY 2003 was lower than projected. Mid-year review of personal property collections will provide more information regarding any change in trend.

Machinery and Tools

Machinery and Tools collections were approximately \$150,000 over FY 2002 projections. FY 2003 projections had included a 5 percent increase from the 2002 budget; however, with the closing of the John Deere factory, taxes are expected to stay flat.

Meals Taxes

Meals tax collections were approximately \$200,000 over FY 2002 projections. Continued strong attendance at Busch Gardens and the opening of the Ruby Tuesday restaurant should keep these collections healthy.

Local Sales Taxes

Local Sales Tax collections were approximately \$400,000 under budget. Reviews are underway to ensure that the County is receiving sales tax receipts from businesses that are located in the County; however, collections continue to decrease in most business sectors. Increases have been noted in the food group; however, with the opening of the Wal-Mart in York County, decreases in this area can be expected.

State Revenues

State Sales Tax for Education was approximately \$400,000 under budget. For the FY 2003 budget, State estimates were used. The State has recently revised its total State sales tax forecast for FY 2003, down by about 3.6 percent, which, if applied to the County forecast, would result in a \$200,000 shortfall.

The State share of expense for the Constitutional Officers was approximately \$300,000 over budget. However, the budget for FY 2003 was not increased to account for the first round of State budget cuts. Further cuts to these budgets are anticipated but not yet known.

Investment Income

Earnings from investments were approximately \$600,000 under budget. Interest rates over the past fiscal year have fallen by 50 percent. As of June 30, 2002, investments in the core portfolio were earning an average of 3.2 percent while overnight interest rates are earning less than 2 percent. Although prior economic forecasts included a projection of higher interest rates, the current projection includes a possible "double dip" recession and further possible interest rate cuts.

Expenditures

Underspending among departments is consistent with policy that no division shall overspend its operating budgets and Operating Contingency that was not used would fall to reserves. Most notable areas in underspending were the Police and Emergency Communications divisions who experienced high turnover during FY 2002 and the Solid Waste division where the recycling contract came in under projection.

I would be happy to answer any questions that you may have.

Suzanne R. Mellen

SM/tlc

FY02finresults.mem

MEMORANDUM

DATE: September 24, 2002

TO: The Board of Supervisors

FROM: Richard J. Sebastian, Director of Real Estate Assessments

SUBJECT: Real Property Assessments

The Code of Virginia authorizes localities in Virginia to levy taxes on real property. There is no upper limit on the tax rate that may be imposed. The Code also provides that all general reassessments or annual reassessments shall be at market value.

Cities with a population over 30,000 must reassess at least every other year and counties with a population over 50,000 must have a general reassessment at least every four years. Localities can choose to reassess more frequently. James City County created the Office of Real Estate Assessments in 1972, electing a general reassessment on an annual basis.

Each locality sets a nominal tax rate based on \$100 of assessed value. The Virginia Department of Taxation conducts an annual assessment / sales ratio study for each locality that evaluates actual sales against the assessed values. Ratio data are analyzed in two ways to measure the quality of assessments. Measures of central tendency, such as the median ratio provide a measure of the general level of the assessments. While the coefficient of dispersion measures the average percentage that the individual ratios vary from the median ratio. The coefficient of dispersion, is the chief measure of uniformity and should not exceed fifteen percent. The assessment ratio study evaluates how successful each locality is in reaching 100 percent of market value. The nominal tax rate multiplied by the "assessment/sales" or "median" ratio produces the effective tax rate. The State publishes annual listings of localities with nominal tax rates, the median ratio, and the effective tax rates.

Combined, the ratio of assessments and the coefficient of dispersion are important in determining the relative equity of the payment of real property taxes. A ratio of 94 percent, and a coefficient of five, means that the median assessment of all properties sold was at 94 percent of the actual sales prices and 50 percent of all the assessments were within 89 percent and 99 percent of the sales prices. This has been a consistent target of the County, a mid-90s assessment ratio and a coefficient of dispersion that, combined with the assessment ratio, is under 100 percent.

In FY 2003, as you'll recall, the Board of Supervisors of James City County balanced a budget at the current rate of \$0.87 but eliminated the additional levy of \$0.10 for the Transportation Improvement District.

James City County has stayed with an annual assessment process for a number of reasons:

The first is the predictability of an annual revenue increase in committing to long-term borrowing or to contractual payments such as those required under the City/County school contract. That annual revenue increase takes some pressure off the tax rate in the annual budget process.

The second is that it helps facilitate an open market in real property; annual updates to property information and estimated values help both sellers and purchasers of property in James City County. Real estate brokers, mortgage lenders, and property insurers depend on updated information for real property to offer residents the most efficient, and least expensive, services.

The third is that is the best method of maintaining equity among real property taxpayers; annual updates keep the playing field level in estimating the proportionate share of tax revenue expected from each taxpayer. According to the International Association of Assessing Officer' , Standard on Property Tax Policy, The Principal of Annual Assessment, "Current market value implies annual reassessment of all property. This does not necessarily mean that every property must be reappraised each year. In annual assessment , the assessing officer should consciously reevaluate the factors that affect value, express the interactions of those factors mathematically, and use mass appraisal techniques to estimate property values. Thus, it is necessary to observe and evaluate, but not always to change, the assessment of each property each year to achieve current market value." The obvious advantage of annual reassessments is the ability to review assessments every year and to react to market changes that affect property values.

The fourth is that it keeps the effective tax rate more closely aligned with the nominal rate since public service property is taxed at the effective rate, and not the nominal rate; this is important for both annual revenues and tax equity.

Finally, by trying to incrementally adapt to an active market, it avoids the much larger surges that might occur in a less frequent cycle.

Even with an annual reassessment process, the County (and most other jurisdictions in the "urban crescent" over the past four years) has seen a steady erosion in the median ratio – actual sales prices increasing at a rate faster than reassessments. The County's median ratios for the last four years:

<u>Year</u>	<u>Percent</u>
1997	94.39
1998	93.99
1999	93.83
2000	90.22

In addition to taxes defined by an assessment process relating to estimates of market value, the County has created a series of exemptions and deferrals to recognize that quality of life can be enhanced by alternatives to a market-based valuation of real property.

Land use taxation is a viable option where tax payments are based on agriculture, horticulture, or forestry uses rather than market value for thousands of acres in the County. The County has adopted a tax rebate system for qualifying commercial and industrial economic development investments that produce tax revenue and jobs. Tax exemption programs are offered to elderly and disabled homeowners whose net worth and income are below certain thresholds. The County has taken advantage of most of the alternatives to estimated market value allowed by the State Code.

I believe this memorandum is responsive to the specific issues raised by the Board. We would be happy to get into as much detail as needed to address other issues or questions.

Richard J. Sebastian

RJS/gb
assessment.mem

Attachments:

1. Hampton Roads Communities - Real Property Taxation
2. Counties with Annual Assessment Cycles
3. All Localities with Annual Assessment Cycles

Regionally, as taken from the Weldon Cooper Center for Public Service publication of Tax Rates in 2001, the most recent available, the cities and counties of Hampton Roads have the following characteristics:

HAMPTON ROADS COMMUNITIES - REAL PROPERTY TAXATION

Community	Nominal Tax Rate	Frequency of Median Assessment	Median Ratio	Coeff of Dispers	Effective Tax Rate
Chesapeake (a)	\$1.26	Annual	95.27	3.943	\$1.20
Hampton (b)	\$1.25	Annual	95.41	7.06	\$1.19
James City (d)	\$0.87	Annual	93.83	5.93	\$0.82
Newport News	\$1.24	Annual	94.95	4.05	\$1.18
Norfolk	\$ \$1.40	Annual	93.24	9.12	\$1.31
Poquoson	\$1.12	Biennial	96.10	6.42	\$1.08
Portsmouth	\$1.42	Annual	93.51	7.84	\$1.33
Suffolk (e)	\$1.03	Annual	91.47	14.74	\$0.94
Virginia Beach (f)	\$1.22	Annual	92.09	7.05	\$1.12
Williamsburg	\$0.54	Annual	91.43	9.42	\$0.49
York	\$0.86	Biennial	94.62	5.12	\$0.81

- (a) Chesapeake also levies \$0.02 in a mosquito control district
- (b) Hampton also levies a Business Improvement District tax of \$0.04 at Coliseum Central and \$0.20 in Downtown Hampton.
- (d) James City also levies a \$0.10 Transportation Improvement District tax
- (e) Suffolk also levies a \$0.16 Suffolk District tax and a \$0.26 Route 17 District tax
- (f) Virginia Beach also levies a Sandbridge Special District Tax of \$1.28

1997

Locality	Assmt Cycle	Median Ratio %	COD %
PRINCE WILLIAM COUNTY	ANNUAL	94.88	6.87
ARLINGTON COUNTY	ANNUAL	94.74	9.76
LOUDOUN COUNTY	ANNUAL	94.74	8.69
JAMES CITY COUNTY	ANNUAL	94.39	5.70
ROANOKE COUNTY	ANNUAL	94.09	6.17
CHESTERFIELD COUNTY	ANNUAL	93.60	6.34
PRINCE GEORGE COUNTY	ANNUAL	91.81	13.10
FAIRFAX COUNTY	ANNUAL	90.71	6.24
HANOVER COUNTY	ANNUAL	90.49	10.71
HENRICO COUNTY	ANNUAL	90.25	8.21
ACCOMACK COUNTY	ANNUAL	81.97	26.32

1998

PRINCE WILLIAM COUNTY	ANNUAL	94.44	7.50
JAMES CITY COUNTY	ANNUAL	93.99	5.76
CHESTERFIELD COUNTY	ANNUAL	93.62	6.34
LOUDOUN COUNTY	ANNUAL	93.43	7.50
ARLINGTON COUNTY	ANNUAL	91.33	10.44
ROANOKE COUNTY	ANNUAL	91.30	7.51
HENRICO COUNTY	ANNUAL	89.27	7.58
HANOVER COUNTY	ANNUAL	89.15	11.03
PRINCE GEORGE COUNTY	ANNUAL	89.11	10.81
FAIRFAX COUNTY	ANNUAL	88.53	6.57
ACCOMACK COUNTY	ANNUAL	79.76	24.24

1999

JAMES CITY COUNTY	ANNUAL	93.83	5.93
PRINCE WILLIAM COUNTY	ANNUAL	92.98	7.06
CHESTERFIELD COUNTY	ANNUAL	92.16	6.96
ROANOKE COUNTY	ANNUAL	90.75	7.41
LOUDOUN COUNTY	ANNUAL	89.57	7.60
PRINCE GEORGE COUNTY	ANNUAL	89.56	10.78
HENRICO COUNTY	ANNUAL	87.30	7.64
ARLINGTON COUNTY	ANNUAL	86.87	10.36
HANOVER COUNTY	ANNUAL	86.87	9.96
FAIRFAX COUNTY	ANNUAL	85.50	6.84
ACCOMACK COUNTY	ANNUAL	78.24	21.38

ROANOKE COUNTY	ANNUAL	90.75	7.41
CHESTERFIELD COUNTY	ANNUAL	90.55	6.77
JAMES CITY COUNTY	ANNUAL	90.22	8.94
PRINCE GEORGE COUNTY	ANNUAL	89.19	16.85
PRINCE WILLIAM COUNTY	ANNUAL	88.96	7.42
HENRICO COUNTY	ANNUAL	86.59	9.40
HANOVER COUNTY	ANNUAL	86.06	10.77
LOUDOUN COUNTY	ANNUAL	82.45	9.40
FAIRFAX COUNTY	ANNUAL	80.19	6.62
ARLINGTON COUNTY	ANNUAL	79.75	11.33
ACCOMACK COUNTY	ANNUAL	74.10	26.29

1997

Locality	Assmt Cycle	Median Ratio %	COD %
CITY OF FALLS CHURCH	ANNUAL	100.85	14.23
CITY OF MANASSAS PARK	ANNUAL	98.76	9.00
CITY OF ALEXANDRIA	ANNUAL	98.56	6.57
CITY OF HAMPTON	ANNUAL	98.10	6.23
CITY OF CHARLOTTESVILLE	ANNUAL	97.55	8.93
CITY OF MANASSAS	ANNUAL	97.50	7.09
CITY OF NEWPORT NEWS	ANNUAL	96.58	4.21
CITY OF CHESAPEAKE	ANNUAL	95.56	4.01
CITY OF NORFOLK	ANNUAL	95.43	8.91
PRINCE WILLIAM COUNTY	ANNUAL	94.88	6.87
ARLINGTON COUNTY	ANNUAL	94.74	9.76
LOUDOUN COUNTY	ANNUAL	94.74	8.69
CITY OF PETERSBURG	ANNUAL	94.42	7.99
JAMES CITY COUNTY	ANNUAL	94.39	5.70
CITY OF PORTSMOUTH	ANNUAL	94.12	7.52
ROANOKE COUNTY	ANNUAL	94.09	6.17
CHESTERFIELD COUNTY	ANNUAL	93.60	6.34
CITY OF WILLIAMSBURG	ANNUAL	93.19	11.71
CITY OF ROANOKE	ANNUAL	93.01	8.17
PRINCE GEORGE COUNTY	ANNUAL	91.81	13.10
CITY OF RICHMOND	ANNUAL	91.77	11.81
CITY OF VIRGINIA BEACH	ANNUAL	91.66	7.73
CITY OF SUFFOLK	ANNUAL	90.98	16.18
FAIRFAX COUNTY	ANNUAL	90.71	6.24
HANOVER COUNTY	ANNUAL	90.49	10.71
HENRICO COUNTY	ANNUAL	90.25	8.21
ACCOMACK COUNTY	ANNUAL	81.97	26.32

1998

Locality	Assmt Cycle	Median Ratio %	COD %
CITY OF HAMPTON	ANNUAL	98.00	9.56
CITY OF FALLS CHURCH	ANNUAL	97.40	8.73
CITY OF ALEXANDRIA	ANNUAL	97.39	7.88
CITY OF MANASSAS PARK	ANNUAL	96.75	7.08
CITY OF NEWPORT NEWS	ANNUAL	96.28	4.56
CITY OF MANASSAS	ANNUAL	96.17	6.94
CITY OF CHESAPEAKE	ANNUAL	95.77	3.96
PRINCE WILLIAM COUNTY	ANNUAL	94.44	7.50
CITY OF PETERSBURG	ANNUAL	94.12	11.85
CITY OF ROANOKE	ANNUAL	94.03	7.57
JAMES CITY COUNTY	ANNUAL	93.99	5.76
CITY OF NORFOLK	ANNUAL	93.97	10.45
CITY OF PORTSMOUTH	ANNUAL	93.87	10.19
CHESTERFIELD COUNTY	ANNUAL	93.62	6.34
LOUDOUN COUNTY	ANNUAL	93.43	7.50
CITY OF CHARLOTTESVILLE	ANNUAL	92.57	13.76
CITY OF WILLIAMSBURG	ANNUAL	92.53	7.27
CITY OF SUFFOLK	ANNUAL	92.52	11.81
CITY OF RICHMOND	ANNUAL	92.17	15.43
CITY OF VIRGINIA BEACH	ANNUAL	92.03	7.44
ARLINGTON COUNTY	ANNUAL	91.33	10.44
ROANOKE COUNTY	ANNUAL	91.30	7.51
HENRICO COUNTY	ANNUAL	89.27	7.58
HANOVER COUNTY	ANNUAL	89.15	11.03
PRINCE GEORGE COUNTY	ANNUAL	89.11	10.81
FAIRFAX COUNTY	ANNUAL	88.53	6.57
ACCOMACK COUNTY	ANNUAL	79.76	24.24

1999

Locality	Assmt Cycle	Median Ratio %	COD %
CITY OF HAMPTON	ANNUAL	95.41	7.06
CITY OF CHESAPEAKE	ANNUAL	95.27	3.94
CITY OF NEWPORT NEWS	ANNUAL	94.95	4.05
CITY OF FALLS CHURCH	ANNUAL	94.51	8.05
JAMES CITY COUNTY	ANNUAL	93.83	5.93
CITY OF MANASSAS	ANNUAL	93.75	7.19
CITY OF PORTSMOUTH	ANNUAL	93.51	7.84
CITY OF NORFOLK	ANNUAL	93.24	9.12
PRINCE WILLIAM COUNTY	ANNUAL	92.98	7.06
CITY OF ROANOKE	ANNUAL	92.93	8.09
CITY OF ALEXANDRIA	ANNUAL	92.80	8.19
CITY OF MANASSAS PARK	ANNUAL	92.76	6.81
CHESTERFIELD COUNTY	ANNUAL	92.16	6.96
CITY OF VIRGINIA BEACH	ANNUAL	92.09	7.05
CITY OF SUFFOLK	ANNUAL	91.47	14.74
CITY OF WILLIAMSBURG	ANNUAL	91.43	9.42
CITY OF PETERSBURG	ANNUAL	91.37	14.42
CITY OF CHARLOTTESVILLE	ANNUAL	90.88	12.21
ROANOKE COUNTY	ANNUAL	90.75	7.41
LOUDOUN COUNTY	ANNUAL	89.57	7.60
PRINCE GEORGE COUNTY	ANNUAL	89.56	10.78
HENRICO COUNTY	ANNUAL	87.30	7.64
ARLINGTON COUNTY	ANNUAL	86.87	10.36
HANOVER COUNTY	ANNUAL	86.87	9.96
FAIRFAX COUNTY	ANNUAL	85.50	6.84
CITY OF RICHMOND	ANNUAL	84.91	15.29
ACCOMACK COUNTY	ANNUAL	78.24	21.38

2000

Locality	Assmt Cycle	Median Ratio %	COD %
CITY OF CHARLOTTESVILLE	ANNUAL	96.46	11.06
CITY OF CHESAPEAKE	ANNUAL	95.13	4.53
CITY OF HAMPTON	ANNUAL	94.39	7.55
CITY OF NEWPORT NEWS	ANNUAL	94.00	6.23
CITY OF PORTSMOUTH	ANNUAL	92.75	6.04
CITY OF ROANOKE	ANNUAL	92.08	9.41
CITY OF PETERSBURG	ANNUAL	91.87	10.39
ROANOKE COUNTY	ANNUAL	90.75	7.41
CITY OF VIRGINIA BEACH	ANNUAL	90.58	7.39
CHESTERFIELD COUNTY	ANNUAL	90.55	6.77
JAMES CITY COUNTY	ANNUAL	90.22	8.94
CITY OF NORFOLK	ANNUAL	90.18	10.49
CITY OF SUFFOLK	ANNUAL	89.76	15.30
CITY OF MANASSAS	ANNUAL	89.20	6.95
PRINCE GEORGE COUNTY	ANNUAL	89.19	16.85
PRINCE WILLIAM COUNTY	ANNUAL	88.96	7.42
CITY OF MANASSAS PARK	ANNUAL	88.59	9.03
CITY OF WILLIAMSBURG	ANNUAL	87.65	10.06
HENRICO COUNTY	ANNUAL	86.59	9.40
CITY OF ALEXANDRIA	ANNUAL	86.46	9.09
HANOVER COUNTY	ANNUAL	86.06	10.77
CITY OF FALLS CHURCH	ANNUAL	85.49	16.98
CITY OF RICHMOND	ANNUAL	84.71	18.54
LOUDOUN COUNTY	ANNUAL	82.45	9.40
FAIRFAX COUNTY	ANNUAL	80.19	6.62
ARLINGTON COUNTY	ANNUAL	79.75	11.33
ACCOMACK COUNTY	ANNUAL	74.10	26.29

MEMORANDUM

DATE: September 24, 2002

TO: The Board of Supervisors

FROM: Darryl E. Cook, Environmental Director

SUBJECT: Erosion and Sediment Control - Civil Penalties

On September 10, 2002, the Board considered an amendment to the Erosion and Sediment Control Ordinance that would allow the Environmental Division to serve a summons for civil penalties directly to an individual rather than have to go through the Clerk and Sheriff's Offices. The Board deferred action on the amendment to allow for additional consideration of the matter at a work session. To assist the Board in its determination, the following information presents the current enforcement process utilized by the Environmental Division.

When a violation is identified in the field, the responsible person is given notice of the violation with a list of corrective actions necessary to remedy the violation and a deadline for completion. The notice is in written form and is either an inspection report or a notice to comply. An inspection report is usually issued unless the violation is considered serious or it is for a single-family project. A notice to comply is a legal document that must be issued before further enforcement action can occur. The period of compliance with either document is generally set at three days. The project is then reinspected after three days and if the problem is corrected, no further action is taken. If the violation is not remedied, then further enforcement action is required.

The enforcement options are fairly limited under the Ordinance. Essentially, there are only civil penalties, stop work orders, and revocation of the land disturbing permit. The stop work order stops all land disturbing activities for seven days. If at the end of that time, the violation has not been corrected, then the stop work order can be extended to stop all work on-site except that necessary to correct the violation. This is in the form of an injunction issued by the Circuit Court. Revocation of the Land Disturbing permit puts the permittee or the person responsible for carrying out the plan in violation of the Ordinance and subject to the penalties provided in the Ordinance. These two enforcement techniques are not always effective as often violations occur when no active land disturbing activities are occurring on a site and a stop work order or revocation of the permit would have no immediate effect. However, in these cases, the use of civil penalties could be an effective tool to gain compliance.

The civil penalty provisions are enforced by the Circuit Court with fees assessed in accordance with the fee schedule already contained in the Ordinance in Section 8-7. To start the process, a summons must be issued to the violator. Currently, a summons can only be issued by the Sheriff's Office after coordination through the Clerk's Office. The steps and time frame involved with this process are as follows: First, the Environmental Division will prepare the necessary paperwork; this will occur usually at the end of a workday when the inspector returns to the office. The paperwork is then delivered to the Clerk's Office where it generally would be processed the next day. Finally, the summons is forwarded to the Sheriff's Office where it can take three to seven days to serve the summons depending on the Sheriff's workload and how long it takes to locate the individual to be served. Therefore, a week or more can be lost in the enforcement process when the need for correction is often immediate. Neither the Clerk nor the Sheriff reviews the merits of the summons in this process.

Erosion and Sediment Control - Civil Penalties

September 24, 2002

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The proposed change in method of service of the summons is sought to eliminate this week's delay in enforcement and provide for a quicker resolution of violations providing greater protection of the environment. In order to provide more accountability and an internal review process, only supervisors in the Environmental Division would be authorized to issue the summons. The more effective use of the civil penalty provisions would be another tool available to the Environmental Division in its enforcement of the Erosion Control Ordinance after the standard notice of compliance process has been utilized.

Staff recommends adoption of the attached Ordinance.

Darryl E. Cook

CONCUR:

John T. P Horne

DEC/gb
penalties.mem

Attachment

ORDINANCE NO.

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 8, EROSION AND SEDIMENT CONTROL, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 8-7, PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 8, Erosion and Sediment Control, is hereby amended and reordained by amending Section 8-7, Penalties, injunctions, and other legal actions.

Chapter 8. Erosion and Sediment Control

Sec. 8-7. Penalties, injunctions, and other legal actions.

- (a) Schedule of civil penalties
- (1) *The erosion and sediment control administrator or his deputy may issue a summons for collection of the civil penalty to any person who violates a provision of this chapter.* ~~Any person who violates any provision of this chapter shall,~~ Upon a finding of the district court of James City County, *such person shall* be assessed a civil penalty. A civil penalty in the amount listed on the schedule below shall be assessed for each violation of the respective offenses:
 - a. Commencement of land disturbing activity without an approved erosion control plan as provided in section 8-4 shall be \$1,000.00 per day.
 - b. Vegetative measures - failure to comply with items 1, 2, 3, 5, and 7 of the Minimum Standards shall be \$100.00 per violation per day.
 - c. Structural measures - failure to comply with items 2, 4, 6, 8, 9, 10, 11, 15, and 17 of the Minimum Standards shall be \$100.00 per violation per day.
 - d. Watercourse measures - failure to comply with items 12, 13, 14, and 15 of the Minimum Standards shall be \$100.00 per violation per day.
 - e. Underground utility measures - failure to comply with item 16(a), and/or (c) of the Minimum Standards shall be \$100.00 per violation/per day.
 - f. Failure to obey a stop work order shall be \$100.00 per day.

- g. Failure to stop work when permit is revoked shall be \$100.00 per day
- h. All other violations of this chapter not specifically enumerated in items (a) through (g) of this section shall be \$100.00 per day.

(b) In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.

(c) The environmental division, or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the circuit court of James City County to enjoin a violation or a threatened violation of this chapter, without the necessity of showing that an adequate remedy at law does not exist.

However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

(d) In addition to any penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the county in a civil action for damages.

(e) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the county.

Any civil penalties assessed by a court shall be paid into the treasury of the county, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this chapter, the county may provide for the payment of civil charges for violations in specific sums, not to exceed \$2,000. Such civil charges shall be instead of any appropriate civil penalty.

(g) Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

State law reference - Code of Va., §§ 10.1-562 and 10.1-569

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of September, 2002.