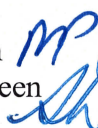




MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
ITEM
April 30, 2009

TO: Montgomery County Planning Board

FROM: Mark Pfefferle, Acting Chief, Environmental Planning/Green 
Steve Federline, Master Planner, Environmental Planning/Green

DATE: April 17, 2009

SUBJECT: Proposed increases to the forest conservation in-lieu fee and the civil administrative penalty rate.
New fees associated with forest conservation plans

STAFF RECOMMENDATION: Approval

BACKGROUND

Staff is required by Montgomery County Council Resolution 15-1271 to assess the forest conservation in lieu amount and the maximum administrative civil penalty every odd numbered year. Furthermore, the County Resolution indicates that this increase must be made by May 1 of each odd numbered year and applicable on July 1.

Section 22A-27(d) Montgomery County Code allows the Planning Board to charge fees to partially cover the costs of administering the forest conservation program. The Commission currently collects a one-time application fee for all new plan submissions. Staff is not proposing to increase the existing application fee but recommending new fees for selected activities that result from administering the forest conservation program.

Council Resolution 15-1271

Montgomery County Council Resolution 15-1271 (Attachment 1) requires the Planning Board to adjust the forest conservation in lieu amount and administrative civil penalty based on the Consumer Price Index for the Baltimore-Washington Area (Attachment 2). Based on data collected by the United States Bureau of Labor Statistics the Consumer Price Index increased by 5.88 percent between January 2007 and January 2009 for the Baltimore-Washington area. County Council Resolution 15-1271 established a \$0.90 per square foot in lieu amount and a maximum administrative civil penalty amount at \$9.00 per square foot. In 2007, staff did not propose changes to either the in lieu amount or the maximum administrative civil penalty even though the Consumer Price Index showed a 7.1 percent increase for the Baltimore-Washington area from 2005 to 2007. The County resolution indicates that increases shall only be based on the two most recent calendar years.

- Based on data from the Consumer Price Index the increase in the forest conservation in lieu amount is \$0.0529 ($\$0.90 \times 5.88\% = \0.0529).
- Based on data from the Consumer Price Index the increase in the maximum forest conservation administrative civil penalty is \$0.529 ($\$9.00 \times 5.88\% = \0.529).

The Council resolution requires the adjustment to the nearest multiple of 5 cents. Common rounding practices will round the in lieu amount from \$0.9529 to \$1.00 per square foot and the maximum administrative civil penalty rate will be rounded from \$9.529 to \$9.55 per square foot.

Based on the direction provide in County Council Resolution 15-1271 staff recommends the in lieu rate and the maximum administrative civil penalty be set at the following amounts:

- In lieu amount = \$1.00 per square foot
- Maximum administrative civil penalty = \$9.55 per square foot.

According to the Council resolution these new amounts will become effective July 1, 2009. The resolution does not include a grandfathering clause therefore, applicants desiring to meet their forest conservation requirements via an in lieu fee payment after July 1, 2009 must pay at a rate equal to \$1.00 per square foot regardless of when the plan was approved. Similarly, violations to the Chapter 22A of the County code can be assessed civil administrative penalties based on the higher rate.

New Forest Conservation Fees

As previously mentioned, the Planning Department assesses an application fee for new plan submissions. Today staff is recommending new fees to offset the costs for additional plan reviews that arise after a natural resource inventory or forest conservation plan is approved. Staff is recommending new fees to cover: amendments to approved Natural Resource Inventories/Forest Stand Delineations; amendments to approved Forest Conservation Plans; financial security reduction or releases; fence permits within a conservation easement; and finally review and approval of forest conservation banks and timber harvest plans. Each of these will be described in greater detail and justification for their need.

Several review services associated with the forest conservation program are currently provided free of charge. Often they involve changes outside the normal review process initiated at the discretion of an applicant (e.g., change in form of financial security) . Some reviews are provided free yet involve significant field and office review and documentation (e.g., establishment of forest conservation banks).

Depending on the service provided, additional efforts beyond the initial review are conducted which may include, but are not limited to : 1) additional field work ; 2) preparation of Planning Board staff report ; 3) additional staff/legal review associated with change/request for release of financial security; and 4) research as to implications/effect of an action on MNCPPC's interests.

Staff is not recommending any increases in current fee –based services charges at this time. Staff is recommending fees to cover increasingly time consuming tasks which are currently provided free of charge and are outside the initial review and approval process. It is not unreasonable to expect requests for plan changes over time, due to the maturation and perpetual nature of the forest conservation program. However, the costs of those reviews

should be directed to the current applicant, and not carried by fees garnered earlier as part of the initial review process.

Staff has reviewed comparable fee for service schedules as established by Montgomery County Department of Permitting Services and MNCPPC Prince Georges County Planning Department, and has endeavored to be consistent with their fee framework whenever feasible.

The following are free services for which fees are recommended, as provided below:

Amendment to approved NRI/FSDs

\$410 Fee equals current charge to recertify expired NRI/FSD's.

Amendments to approved forest conservation plans (No Planning Board hearing - administrative approval only)

\$750 (flat fee) County DPS charges 50% of their current review fee for similar reviews. Staff recommends flat fee rather than fee based on number of lots.

Amendments to approved forest conservation plans (Requiring Planning Board Hearing)

\$1500 (flat fee) County DPS charges full review fee for amendments to approved plans. Staff recommends flat fee rather than fee based on number of lots.

Requests to reduce, change, or release financial security instruments

\$90 For each change or replacement for any reason

Requests to install a fence within a conservation easement (admin approval)

\$135 Field and desktop reviews needed

Review and Approval of a Forest Conservation Bank (admin approval)

\$1000 Field, desktop, and legal reviews, plus Bi –County signoff

Attachment 1

Resolution No.: 15-1271

Introduced: December 6, 2005

Adopted: December 13, 2005

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Transportation and Environment Committee

SUBJECT: Resolution to set certain penalties and fees under the County forest conservation law

Background

1. The County forest conservation law, in County Code §22A-16(d)(1), authorizes the County Council to set by law or resolution the maximum amount of the administrative civil penalty authorized by §22A-16(d).
2. The County forest conservation law, in §22A-12(g)(1), authorizes the County Council to set by law or resolution the [maximum] amount of the fee that the Planning Board may charge in lieu of afforestation or reforestation under §22A-12(g).
3. At a worksession held on December 1, 2005, the Council's Transportation and Environment Committee recommended that the maximum penalty and fee be set in amounts that would effectively deter violations of the forest conservation law, particularly willful violations.

Action

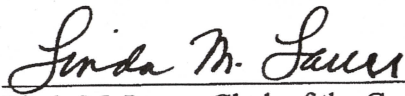
The County Council for Montgomery County, Maryland approves the following resolution:

1. The maximum amount of the administrative civil penalty authorized by County Code §22A-16(d) is \$9/square foot for any [willful] violation of Chapter 22A or regulations implementing that Chapter[, and \$3/square foot for all other violations of that Chapter or regulations].
2. The [maximum] amount of the fee that the Planning Board may charge in lieu of afforestation or reforestation authorized by County Code §22A-12(g) is \$.90/square foot of the area of required planting.
3. Without further action by the County Council, the Planning Board must adjust each dollar amount in this resolution, effective July 1 of each odd-numbered year, by the percentage amount of the annual average increase or decrease (if any) in the Consumer Price Index for all urban consumers in the Washington-Baltimore

metropolitan area, or any successor index, for the two most recent calendar years. The Board must calculate this adjustment to the nearest multiple of 5 cents. The Board must notify the public of the amount of this adjustment not later than May 1 of each odd numbered year.



4. This resolution takes effect when Expedited Bill 27-05 takes effect.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

Attachment 2

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Data extracted on: April 17, 2009 (11:43:18 AM)

Consumer Price Index - All Urban Consumers

Series Id: CUURA311SA0, CUUSA311SA0															
Not Seasonally Adjusted															
Area: Washington-Baltimore, DC-MD-VA-WV															
Item: All items															
Base Period: NOVEMBER 1996=100															
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1999	102.8		103.2		103.6		104.6		105.4		105.0		104.2	103.4	105.1
2000	105.4		107.1		106.7		108.4		108.7		108.5		107.6	106.6	108.6
2001	108.9		109.7		110.1		110.8		111.7		110.9		110.4	109.7	111.1
2002	110.9		111.9		112.8		113.4		114.0		114.0		113.0	112.1	113.9
2003	114.6		115.9		115.7		116.8		117.2		116.7		116.2	115.6	116.9
2004	117.1		118.1		118.9		120.2		120.8		120.9		119.5	118.3	120.7
2005	121.3		122.7		123.6		125.0		126.7		125.4		124.3	122.8	125.8
2006	126.3		126.8		128.8		130.7		130.2		129.3		128.8	127.7	130.0
2007	129.956		131.945		132.982		134.442		134.678		135.151		133.464	132.000	134.927
2008	136.293		138.090		139.649		142.065		142.036		138.547		139.499	138.490	140.509
2009	137.598		138.620												

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