



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

MCPB
ITEM # 3
April 14, 2011

TO: Montgomery County Planning Board

FROM: Mark Pfefferle, Acting Chief, DARC *MP*

DATE: April 6, 2011

SUBJECT: Forest Conservation Application Fees
In-lieu Forest Conservation Fees
Civil Administrative Penalty Rate

STAFF RECOMMENDATION: Approval

BACKGROUND

Staff is required by Montgomery County Council Resolution 15-1271 to assess the forest conservation in lieu fee amount and the maximum administrative civil penalty every odd numbered year. The County Resolution indicates that this increase must be made by May 1 of each odd numbered year and applicable on July 1. The in lieu fee amount is currently \$1.00 per square foot and the maximum civil administrative penalty is currently \$9.55 per square foot. These rates became effective on July 1, 2009.

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 application fees at different times throughout the review process. Staff is not proposing to increase the existing application fee at this time but is requesting a change as to when the application fee is submitted.

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. The County resolution indicates that increases shall only be based on the two most recent calendar years. The United States Bureau of Labor Statistics indicates that the Consumer Price Index increased by 4.89 percent between January 2009 and January 2011 for the Baltimore-Washington area (Attachment 2).

- Based on Consumer Price Index the increase in the forest conservation in lieu amount is \$0.0489 ($\$1.00 \times 4.89\% = \0.0489) per square foot. The new rate would be \$1.0489 per square foot ($\$1.00 + \0.0489).
- Based on the Consumer Price Index the increase in the maximum forest conservation administrative civil penalty is \$0.466 ($\$9.55 \times 4.89\% = \0.466) per square foot. The new rate would be \$10.016 per square foot ($\$9.55 + \$0.466 = \10.016).

The Council resolution requires the adjustment to the nearest multiple of 5 cents. Common rounding practices will round the in lieu amount from \$1.0489 to \$1.05 per square foot and the maximum administrative civil penalty rate will be rounded from \$10.016 to \$10.00 per square foot.

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

- In lieu amount = \$1.05 per square foot
- Maximum administrative civil penalty = \$10.00 per square foot.

These new amounts will become effective July 1, 2011. 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, 2011 must pay at a rate equal to \$1.05 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.

Forest Conservation Application Fees

When the fees were last adjusted, in 2009, a representative of the Maryland National Capital Building Industry Association (MNCBIA) requested and the Planning Board agreed to allow phased application fees for forest conservation plans. The current fee structure permits applicants to pay 70% of the application fee at the time of preliminary forest conservation plan submission, 20% at the time of final forest conservation plan submission, and 10% at time of final approval. This payment scheme has increased administrative costs and requires greater oversight to ensure all payments are received. Staff is recommending that the application fee payment return to a 100 percent payment with the submission of first preliminary forest conservation plan. This will reduce administration costs for fewer checks will be processed, no double checking to ensure the payments are received with subsequent submissions, and that the combined checks equal 100 percent of the application fee.

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

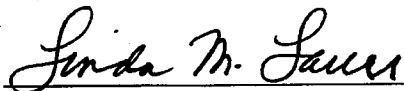
The County Council for Montgomery County, Maryland approves the following resolution:

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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Consumer Price Index Historical Tables for Washington-Baltimore, DC-MD-VA-WV (PDF)

Consumer Price Index for All Urban Consumers (CPI-U) Washington-Baltimore, DC-MD-VA-WV - All Items - November 1996=100

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2001	108.9		109.7		110.1		110.8		111.7		110.9	
2002	110.9		111.9		112.8		113.4		114.0		114.0	
2003	114.6		115.9		115.7		116.8		117.2		116.7	
2004	117.1		118.1		118.9		120.2		120.8		120.9	
2005	121.3		122.7		123.6		125.0		126.7		125.4	
2006	126.3		126.8		128.8		130.7		130.2		129.3	
2007	129.956		131.945		132.982		134.442		134.678		135.151	
2008	136.293		138.090		139.649		142.065		142.036		138.547	
2009	137.598		138.620		139.311		140.810		140.945		140.718	
2010	141.124		141.741		142.025		141.966		142.738		142.915	
2011	144.327											

Consumer Price Index for All Urban Consumers (CPI-U) Washington-Baltimore, DC-MD-VA-WV - All Items - November 1996=100 Percent Change from 12 Months Ago

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2001	3.3		2.4		3.2		2.2		2.8		2.2	
2002	1.8		2.0		2.5		2.3		2.1		2.8	
2003	3.3		3.6		2.6		3.0		2.8		2.4	
2004	2.2		1.9		2.8		2.9		3.1		3.6	
2005	3.6		3.9		4.0		4.0		4.9		3.7	
2006	4.1		3.3		4.2		4.6		2.8		3.1	
2007	2.9		4.1		3.2		2.9		3.4		4.5	
2008	4.9		4.7		5.0		5.7		5.5		2.5	