

ORDINANCE NO. 85

AN ORDINANCE TO AMEND AND REORDAIN THE CODE OF THE COUNTY OF JAMES CITY BY ADDING A NEW CHAPTER, CHAPTER 5A, ENTITLED EROSION AND SEDIMENTATION CONTROL ORDINANCE; REQUIRING A PERMIT BE OBTAINED PRIOR TO ANY PERSON, FIRM OR CORPORATION COMMENCING ANY DEFINED LAND DISTURBING ACTIVITY; SETTING FORTH THE PROCEDURE FOR OBTAINING A PERMIT AND AFFECTING AN EROSION AND SEDIMENTATION CONTROL PLAN; AND PROVIDING PENALTIES FOR FAILURE TO COMPLY THEREWITH.

NOW THEREFORE BE IT ORDAINED, by the Board of Supervisors of James City County that the Code of the County of James City be and the same is, hereby, amended and reordained by adding a new chapter, Chapter 5A, entitled, "Erosion and Sedimentation Control Ordinance; Requiring a Permit Be Obtained Prior to Any Person, Firm or Corporation Commencing Any Defined Land Disturbing Activity; Setting Forth the Procedure for Obtaining a Permit and Affecting an Erosion and Sedimentation Control Plan; and Providing Penalties for Failure to Comply Therewith.

CHAPTER 5A

EROSION AND SEDIMENTATION CONTROL ORDINANCE

Section 5A-1. Purpose.

In order to insure the proper development of the County of James City and in order to promote and insure the health, safety, morals and general welfare of the inhabitants of said County, and pursuant to the authority granted in Section 21-89.1, et. seq., of the Code of Va., 1950, as amended, the Board of Supervisors of James City County deems it necessary to adopt this ordinance providing, during and following construction, for the control of erosion and sedimentation, and for the establishment of procedures for the administration and enforcement of such controls.

Section 5A-2. Application.

Except as provided for in Section 4 of this ordinance, no person may engage in any land disturbing activity until such person has submitted an erosion and sediment control plan for such land disturbing activity for review and approval by the Administrator or his designee.

It is the intent of this ordinance to be an adjunct to both the County's Subdivision and Zoning Ordinances wherein such apply to the development and subdivision of land within the County of James City or wherein such apply to development on previously subdivided land within the County of James City.

Section 5A-3. Definitions.

For the purpose of this ordinance, certain terms and words used herein shall be interpreted as follows:

- (a) "Administrator" shall mean the official designated by Governing Body to serve as its agent to administer this ordinance.
- (b) "Clearing" shall mean any activity which removes the vegetative ground cover including but not limited to the removal of root mat and/or topsoil.
- (c) "District or Soil and Water Conservation District" shall mean a governmental subdivision of the State organized in accordance with the provisions of the Soil Conservation Districts Law Title 21, Chapter 1, Code of Virginia, 1950, as amended.
- (d) "Erosion and Sedimentation Control Plan" or "Plan" shall mean a document containing material for the conservation of soil and water resources of a unit or a group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The Plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.
- (e) "Excavating" shall mean any digging, scooping or other methods of removing earth materials.
- (f) "Filling" shall mean any depositing or stockpiling of earth materials.
- (g) "Governing Body" shall mean the Board of Supervisors of James City County.
- (h) "Grading" shall mean any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.
- (i) "Land Disturbing Activity" shall mean any land change which may result in soil erosion from water and/or wind and the movement of sediments into waters or into lands, including, but not limited to, clearing, grading, excavating, transporting and filling of land.
- (j) "Land Disturbing Permit" shall mean a permit issued by the County of James City for Clearing, filling, excavating, grading or transporting, or any combination thereof.
- (k) "Person" shall mean any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission board, public or private institution, utility, cooperative, or any other legal entity.

- (l) "Plan Approving Authority" shall mean the Department of Public Works.
- (m) "Transporting" shall mean any moving of earth materials from one place to another, other than such movement incidental to grading when such movement results in destroying the vegetative ground cover, either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Section 5A-4. Non-Controlled Activities.

In no instance shall the provisions of this Ordinance be construed to apply to the following:

- (a) such minor land disturbing activities as home gardens and individual home landscaping, repairs and maintenance work;
- (b) individual service connections and construction or installation of public utility lines;
- (c) septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system;
- (d) surface or deep mining;
- (e) construction, repair, or rebuilding of the tracks, right-of-way bridges, communication facilities and other related structures and facilities of a railroad company;
- (f) preparation for single-family residences separately built, unless in conjunction with multiple construction in subdivision development;
- (g) disturbed land areas for commercial or noncommercial uses of less than ten thousand square feet in size;
- (h) installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (i) emergency work to protect life, limb or property, and emergency repairs; provided that if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirement of the local plan approving authority;
- (j) agricultural, horticultural or forestry activities or such activities as are essentially related thereto when such operations are

carried on as a part of a program of continuing such agricultural, horticultural or forestry operations or represent a conversion from one such activity to another specified in this paragraph.

- (k) engineering operations recommended or approved by the soil and water conservation districts on privately owned, occupied or operated agricultural, horticultural or forest lands such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation, rotation of crops, soil stabilization with trees, grasses, legumes, and other thick growing, soil holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gulled or otherwise eroded;
- (l) shore erosion control projects on tidal waters recommended by the soil and water conservation districts in which the projects are located or approved by the Marine Resources Commission;

Section 5A-5. Procedures For Plan Submission and Review, Inspection and Enforcement.

These procedures are set forth in a separate document which is attached hereto and made a part hereof entitled, "Procedures For Plan Submission and Review, Inspection and Enforcement," adapted from the Virginia Erosion and Sedimentation Control Handbook, Section IV, April, 1974.

Section 5A-6. Erosion and Sedimentation Control Plan.

An erosion and sedimentation control plan is required under this ordinance. The erosion and sedimentation control plan shall detail those methods and techniques to be utilized in the control of erosion and sedimentation.

As a minimum, the erosion and sedimentation control plan shall follow the format detailed in Part II of the Virginia Erosion and Sediment Control Handbook, pages II-3 through II-13 inclusive, dated April, 1974, and as may be amended from time to time, which is adopted by reference as fully as if set forth herein in its entirety, as part of this ordinance.

Approved standards and specifications for control techniques to be utilized in preparing this plan are set forth in Part III of the Virginia Erosion and Sediment Control Handbook, dated April, 1974, and as may be amended from time to time, which is adopted by reference, as fully as if set forth herein in its entirety as part of this ordinance.

Section 5A-7. Approval.

Any erosion and sedimentation plan submitted under the provisions of this ordinance will be acted on in thirty (30) calendar days from receipt by either approving or disapproving in writing and giving specific reasons for disapproval. If no formal action has been taken by the plan approving authority in thirty (30) calendar days after receipt of plan, the plan shall be deemed approved.

Section 5A-8. Certification: Bonding of Performance.

All control measures required by the provisions of this ordinance shall be undertaken at the expense of the owner or his agent; and pending such actual provision thereof, the owner or his agent shall execute and file with the Administrator, prior to issuance of the Land Disturbing Permit an escrow fund or letter of credit, in an amount determined by the administrator, equal to the approximate total cost of providing erosion and sedimentation control improvements, which documents shall be approved by the County Attorney, guaranteeing that the required control measures will be properly and satisfactorily undertaken.

Within 60 days of the completion of the land disturbing activity, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the owner or his agent or terminated, as the case may be.

Section 5A-9. Issuance of Land Disturbing Permit; Term of Permit.

Except as provided in Section 4 of this Ordinance, no person shall engage in any land disturbing activity as defined in Section 3 of this Ordinance within the County of James City until he has acquired a land disturbing permit.

Issuance of a land disturbing permit is conditioned on an approved erosion and sediment control plan which or certification of such shall be presented at the time of application for such a permit and in addition, the requirements of Section 8 of this Ordinance concerning a performance bond, cash escrow, or a letter of credit or such other legal arrangement as is acceptable under the provisions of Section 8, must be complied with.

Any approved erosion and sedimentation control plan shall become null and void one hundred and eighty days after the date of approval and no further work subject to this chapter shall be allowed unless and until an additional or updated erosion and sedimentation control plan has been submitted and approved in accordance with the provisions of this chapter or unless all requirements of the approved control plan have been completed in less than one hundred and eighty days in accord with said plan and verified by the on-site inspection by the Director of Public Works or his designee.

Section 5A-10. Amendment.

An approved erosion and sedimentation plan may be amended by the Plan Approving Authority if on-site inspection indicates that the approved control measures are not effective in controlling erosion and sedimentation or, because of changed circumstances, the approved plan cannot be carried out; provided, however, that where the amendments are not the result of acts or omissions of the person responsible for carrying out the plan, these said amendments must be agreed to by such person.

Section 5A-11. Penalties, Injunctions, and Other Legal Actions.

A violation of this ordinance shall be deemed a misdemeanor and upon conviction shall be subject to a fine not exceeding one thousand dollars or thirty days imprisonment or both for each violation.


Section 5A-12. Liability.

Compliance with the provisions of this article 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.


Section 5A-13. Severability.

Should any provision of this ordinance be held to be unconstitutional or invalid, such declaration shall not affect or impair the remainder of this ordinance.

This ordinance shall be in effect thirty (30) days from the date of its passage.


John E. Donaldson, Chairman
Board of Supervisors
James City County, Virginia

ATTEST:


Thomas R. McCann, Jr.
Clerk to the Board

ADOPTED

MAR 10 1975

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA