

JUNE 12, 1975

At a special meeting of the Russell County Board of Supervisors, held at the Courthouse in Lebanon, Virginia, June 12, 1975 at 1:30 p.m.

PRESENT: R. W. Dickenson, Chairman
Miles Hillman
Dr. Roy R. Smith

R. J. Bobic, Clerk of Board

Meeting called to order.

SOIL EROSION AND SEDIMENTATION CONTROL
ORDINANCE.

WHEREAS, Notice of Public Hearing, having been advertised in local newspapers for June 12, 1975, at 1:30 p.m. at the Courthouse, pursuant to Section 15.1 of the Code of Virginia; and

WHEREAS, pursuant to section 21.89.1 thru 21.89-15 of the Code of Virginia, as amended, an ordinance intended to preserve and protect the County's land and water resources by establishing measures to prevent or reduce soil erosion by requiring a conservation plan to be followed when a land disturbing activity is to occur.

NOW, THEREFORE, BE IT RESOLVED, that the following ordinance be and hereby is adopted, effective July 1, 1975:

AN ORDINANCE FOR THE COUNTY OF RUSSELL ADOPTED PURSUANT
TO SECTION 21-89.1 THROUGH 21.89.15 OF THE CODE OF VIRGINIA, AS
AMENDED, TO PROTECT AND PRESERVE THE COUNTY'S LAND
AND WATER RESOURCES BY ESTABLISHING PROPER MEASURES
TO PREVENT OR REDUCE SOIL EROSION AND SEDIMENTATION BY REQUIRING
A CONSERVATION PLAN TO BE FOLLOWED WHEN A LAND DISTURBING
ACTIVITY IS TO OCCUR.

Section 1. Purpose and Title.

1.1 Purpose. The Russell County Board of Supervisors has determined that the lands and waters comprising the watersheds of the County are valuable and important natural resources which provide subsistence for life, and in the public interest, demand reasonable preservation. The purpose of this ordinance is to prevent to the greatest practical extent the erosion of land and sediment deposition in waters within the watersheds of the County, so that said waters remain unpolluted and undespoiled to such a degree that fish and aquatic life, recreation and other uses of the land and water will not be adversely affected, and further, to preserve the natural agricultural or forestal productivity of the land.

1.2 Title. This ordinance is identified and may be cited as the "Soil Erosion and Sedimentation Control Ordinance of the County of Russell, Virginia."

Section 2. Definitions.

2.1 List of Exempt Activities. The term "land disturbing activities" shall not include:

- (i) Such minor land disturbing activities as home gardens and individual home landscaping, repairs and maintenance work;
- (ii) Individual service connections and construction or installation of public utility line;
- (iii) 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;
- (iv) Surface or deep mining, neither shall it include tilling, planting, or harvesting of agricultural, horticultural, or forest crops;
- (v) Construction, repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and

- (vii) Disturbed land areas for commercial or noncommercial uses of less than ten thousand square feet in size;
- (viii) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (ix) 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 or the Commission when applicable.

2.2 Board of Supervisors. "Board of Supervisors" or "Board" shall mean the Russell County Board of Supervisors.

2.3 Clearing, Filling, Excavation, Grading and Transporting. As used in Section 2.7, or elsewhere in this ordinance, the following definitions shall apply:

- (i) Clearing: Any activity which removes the vegetative ground cover including but not limited to removal, root mat removal and/or topsoil removal.
- (ii) Filling: Any depositing or stock piling of earth materials.
- (iii) Excavating: Any digging, scooping or other methods of removing earth materials.
- (iv) Grading: Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.
- (v) Transporting: 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,

2.4 Conservation District. For purposes of this ordinance, "Conservation District" shall mean the Clinch Valley Soil and Water Conservation District or its successor; and "Conservation District Officials" shall refer to the directors of the Clinch Valley Soil and Water Conservation District or its staff, and their successors.

2.5 Conservation Plan. "Conservation Plan", "Erosion and Sediment Control Plan" or "Plan" shall mean a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps and appropriate soil and water plan inventory and management information with needed interpretations, and a record of decision contributing the 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.

2.6 Erosion Control Handbook. The terms "Erosion Control Handbook" or "Handbook" shall mean the locally adopted Erosion and Sediment Control Handbook with such amendments, modifications and supplements as may, from time to time, be properly adopted.

2.7 Land Disturber. A person who engages in land disturbing activity as defined herein.

2.8 Land Disturbing Activities. Any land change which may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the State, including, but not limited to clearing, grading, excavation, transporting and filling of land, other

- 2.9 Local Erosion and Sediment Control Program. "Local Erosion and Sediment Control Program" or "Local Control Program" means an outline or explanation of the various methods employed by the Conservation District and County to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the State program and may include such items as a local ordinance, policies and guidelines, technical materials, inspection, enforcement and evaluation.
- 2.10 Permit Issuing Authority. The permit issuing authority shall be the Office of Building Official as indicated in Section 8.1.
- 2.11 Person. Any individual, partnership, firm, association, joint venture, public or private institution, utility, cooperative, county city, town or other political subdivision of this State, any interstate body, or any other legal entity.
- 2.12 Plan Approving Authority. The Clinch Valley Soil and Water Conservation District shall be the plan approving agency for determining the adequacy of a conservation plan designed to control land disturbing activities on a unit or units of land within Russell County. The plan approving authority shall approve such plan if the plan is determined to be adequate.
- 2.13 Specifications. The written procedures, requirements or plans to control erosion and sedimentation as officially adopted by the Board of Supervisors, by the conservation district officials or by the State Conservation Commission or its administrative head.
- 2.14 Standards. "Standards" or "conservation standards" shall mean standards adopted by the conservation district officials and by the County pursuant to Sections 21-89.5 of the Code of Virginia.
- Section 3. Local Erosion and Sediment Control Program.
- 3.1 Content of Program. This ordinance, the "Guidelines for Erosion and Sediment Control Planning", the "Guidelines for Erosion and Sediment Control Plans", and the "Procedures for Plan Submission and Review, On-Site Inspection, and Ordinance Enforcement" shall be an integral part of the Russell County Erosion and Sediment Control Program and included in the Russell County Erosion and Sediment Control Handbook.
- 3.2 Standard of Program. To carry out the local control program, conservation standards shall be established. Such standards include criteria, guidelines, techniques, and methods for the control of erosion and sedimentation. The conservation standards are included in Part III of the Russell County Erosion and Sediment Control Handbook.
- 3.3 Use of Program. The "Guidelines for Erosion and Sediment Control Planning", the "Guideline for Erosion and Sediment Control Plans" and the conservation standards are to be used by the applicant, making a submittal under the provisions of this ordinance, in preparing his erosion and sediment control plan. The Clinch Valley Conservation District in considering the adequacy of such submitted plan shall be guided by the same guidelines and standards.

Section 4 Approval Required for Proposed Land Disturbing Activity.

- 4.1 Approval Required. Erosion and Sediment Control Plans are to be submitted except as provided for in Sections (i), (ii) and (iii) below. No person shall engage in any land disturbing activity (as defined in Sections 2.2 and 2.7 after July 1, 1975, until he has submitted to the Office of Building Official, pursuant to Section 6.1 and Section 6.2 an erosion and sediment control plan for such land disturbing activity and until that plan has been reviewed and approved by the Conservation District and a land disturbing permit issued therefor.
- (i) Agricultural, Horticultural and Forest Lands. Any person who owns, occupies, or operates private agricultural, horticultural or forest lands shall not be deemed to be in violation of this ordinance for land disturbing activities which result from the tilling, planting or harvesting of agricultural, horticultural or forest crops or products or engineering operations 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, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion preventing plants, trees 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 gullied or otherwise eroded. Any person who owns, occupies, or operates private agricultural, horticultural or forest lands shall comply with the requirements of this ordinance wherever that person proposes to conduct grading, excavation or filling operations.
- (ii) State Agencies. Any State agency that undertakes a project involving a land disturbing activity pursuant to Section 21.89.6(f) of the Code of Virginia.
- (iii) Multi-jurisdictional Land Disturbing Activities. Any person whose land disturbing activities involve lands which extend into the jurisdiction of another local erosion and sediment control program; provided, such person has a plan approved by the Virginia Soil and Water Conservation Commission. Such persons shall comply with the requirements of this ordinance concerning a performance bond, cash escrow, letter of credit, any combination thereof, or such other legal arrangement as is acceptable to the Board of Supervisors.
- 4.2 Owner Responsibility. Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

- 4.3 Existing Land Disturbances. Nothing in this ordinance shall be construed to effect any land disturbing activity which is commenced prior to 7-1-75.

Section 5 Procedure for Preparation of a Conservation Plan.

Guidelines for content and preparation of a conservation Plan shall be found in Section II of the Official Handbook as amended and supplemented.

Section 6 Submission of Conservation Plans.

- 6.1 Proposed Development and Land Disturbing Activity. Any person who intends to undertake land disturbing activity, excepting proposed buildings as provided for in section 6.2, or other specific exemptions cited within this ordinance, shall submit to the Office of Building Official four (4) copies of a conservation plan for control of soil erosion in conformity with the Handbook. Upon receipt of the plan, one copy of such plan shall be referred to the Conservation District, except that when such plan is submitted in conjunction with a subdivision plat, the conservation plan shall be referred to the Conservation District after approval by the Planning Commission of a tentative subdivision plat.
- 6.2 Proposed Buildings. Any person who applies for a building or demolition permit, the implementation of which will result in land disturbing activity, shall submit to the Office of Building Official with such application, four (4) copies of such plans for control of soil erosion in conformity with the Handbook. Upon receipt of the plan, one copy of such plan shall be referred to the Conservation District.

Section 7 Action on Erosion and Sediment Control Plans.

- 7.1 Responsibility of Plan Approving Authority. The Conservation District shall, within 45 days, approve any erosion and sediment ~~and sediment~~ control plan submitted to it if it determines that the plan meets the conservation standards of the local control program and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this ordinance.
- 7.2 Action by Plan Approving Authority. The Conservation District shall act on all plans submitted to it within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving the specific reasons for its disapproval.
- When a plan submitted for approval pursuant to this ordinance is found, upon review by the Conservation District, to be adequate, the Conservation District shall specify such modifications, terms, and conditions as will permit approval of the plan and shall communicate these requirements to the applicant. If no action is taken by the Conservation District within the time specified above, the plan shall be deemed approved and the person shall be authorized to proceed with the proposed activity.

7.3 Modification of Approved Plan. An approved plan may be changed by the Conservation District which has approved the plan in the following cases:

- (i) Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the plan, and appropriate modifications to correct the deficiencies of the plan are agreed to by the Conservation District and the person responsible for carrying out of the plan; or
- (ii) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot effectively be carried out, and proposed amendments of the plan, consistent with the requirements of this ordinance, are agreed to by the Conservation District and the person responsible for carrying out the plan.

Section 8. Issuance of Land Disturbing Permit; Fees.

8.1 Permit. No person shall engage in any land disturbing activity until he has acquired a land disturbing permit from the Office of Building Official pursuant to Section 6.1 and Section 6.2. The land disturbing permit shall be issued after approval of a conservation plan by the Conservation District and certification by the permit issuing authority that all requirements of County ordinances have been met and such fees as required pursuant to Section 8.2 have been paid to the County Treasurer.

8.2 Land Disturbing Permit Fee. There shall be a charge for the cost of review and approval of conservation plans collected from the land disturber according to the fee schedule adopted for this purpose by resolution of the Board of Supervisors. Such costs shall be payable to The Building Official and delivered by him to the County Treasurer with receipt for same delivered to the permit issuing authority from the land disturber at the time the conservation plans are submitted.

Section 9. Certification and Performance Bonding.

9.1 Certification of Plan Approval. After July 1, 1975, (effective date of this ordinance), the Office of Building Official shall not issue any permits for land disturbing activities unless the applicant therefor submits with his application the erosion and sediment control plan or certification of such approved plan from the Conservation District, and certification that such plan will be followed.

9.2 Performance Bond. The Office of Building Official, prior to the issuance of any land disturbing permit, may require from the applicant a performance bond, cash escrow, or such combination thereof, or other legal arrangement as is acceptable to the Board of Supervisors to insure that emergency measures could be taken by the County of Russell at the applicant's expense should he fail within the time specified to initiate appropriate conservation action which may be required of him as a result of his land disturbing activity. The permit issuing authority may be advised as to the estimated cost by the Conservation District. 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 applicant or terminated, as the case may be. If the land disturber fails to comply with the approved plan, and after notification as required by Section 10.3, the permit issuing authority,

- 9.3 Other Provisions of Law. The requirements of this section are in addition to all other provisions of law which relate to the issuance of such permits and shall not be construed to otherwise affect the requirements for such permits.

Section 10. Inspections and Monitoring.

- 10.1 Inspections. The Office of Building Official may periodically inspect the land disturbing activity to insure compliance with the approved plan and to determine whether the measures required in that plan are effective in controlling erosion and sediment resulting from the land disturbing activity. The right-of-entry to conduct such inspections shall be expressly reserved in the permit. The Office of Building Official may request assistance from the District or its cooperating agencies for such inspections.

The permit holder, or his duly designated representative, shall be afforded the opportunity to accompany the inspectors.

- 10.2 Failure to Comply with Approved Plan. If the Office of Building Official determines that the permit holder has failed to comply with the plan, the Office of Building Official shall immediately serve upon the permit holder by registered or certified mail to the address specified by the permit holder in his permit application a notice to comply. The Office of Building Official may request a recommendation from the District or its cooperating agencies prior to making such determination. Such notice shall set forth specifically the measures needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to revocation of the permit; furthermore, he shall be deemed to be in violation of this ordinance and upon conviction shall be subject to the penalties provided by this ordinance.

Section II. Board Review, Court Appeal and Legal Action.

- 11.1 Board Review. Final decision of the Conservation District under this ordinance shall be subject to review and comment by the Board of Supervisors provided request for Board review is filed within 30 days from the date of any written decision by the Conservation District which adversely affects the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activity.

- 11.2 Court Appeal. Final decisions under this ordinance shall be subject to review by the court of appropriate jurisdiction within the County, provided an appeal is filed within 30 days from the date of the final written decision which adversely affects the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities.

- 11.3 Injunctive Relief. The Conservation District or the County Administrator may apply to the Circuit Court of the County of Russell for injunctive relief to enjoin a violation or a threatened violation of this ordinance, without the necessity of knowing that there does not exist

11.4 Legal Action. The Commonwealth Attorney, shall, upon request of the County Administrator, take legal action to enforce the provisions of this ordinance.

11.5 Legal Suits Involving Conservation Plans. Compliance with the provisions of this ordinance 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.

11.6 Immunity from Liability. The review, approval and enforcement of the soil erosion and sediment control plans and specifications shall not constitute a representation, guarantee or warranty of any kind by the County, or by an official or employee thereof, of the practicability or safety of any structure, use, or other plan proposed and shall create no liability upon or cause of action against such public body, official, or employee for any damage that may result pursuant thereto.

Section 12. Penalties.

Any person violating any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than Twenty-Five Dollars (\$25.00) nor more than Three Hundred Dollars (\$300.00), or imprisonment not to exceed thirty (30) days, or both, and each day during which each violation shall continue shall constitute a separate offense.

Section 13. Incorporated Towns.

This ordinance shall not apply to any land disturbing activity in any of the Incorporated Towns within the boundaries of Russell County unless and until the governing body of any such town shall by appropriate action indicate the intention to have the land disturbing activities within its boundaries covered by the terms and provisions of this Ordinance. Upon the taking of such action by the governing body of any of said Incorporated Towns the terms and provisions of this Ordinance shall apply fully to any land disturbing activity in said Incorporated Town.

Section 14. Severability.

Should any section or provision of this ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof other than the part so held to be unconstitutional or invalid.

Section 15. Effective Date.

This ordinance was duly considered, following a required public hearing held on 6-12-75, and was adopted by the Russell County Board of Supervisors, Lebanon, Virginia at its special meeting held on June 12, 1975. This ordinance shall be effective on and after 12:01 A. M. July 1, 1975.

NOTE: Proposed fee schedule to be later adopted.