

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: UNFINISHED BUSINESS

Meeting Date: October 20, 2020

## Item Details

Presenter(s): Mike Deaton, Water Resources Director

Department(s): Water Resources

### Requested Motion

Possible motion to reduce the Civil Penalty that was assessed to the Center Street Pharmacy property owner on March 19, 2020, from \$4,700 to \$2,000.

### Approval Recommended?

Yes

### Item Details

As discussed at the September 1, 2020 meeting, the Town Council asked staff to evaluate the assessed civil penalty of \$4,700 and come back with criteria to consider in an effort to assist in reducing the amount.

The Town's Soil Erosion and Sedimentation Control Ordinance considers the following criteria when issuing civil penalties: the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by non-compliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with requirements. Staff believes the above criteria is applicable to stormwater control measure compliance. No harm was caused by the violation. The Town has spent considerable time to rectify the problem. The violator did not save any money as compliance was eventually achieved. No willful action was committed. A long history of non-compliance has been documented at this property.

After considering the above criteria, Staff has determined that the amount of time and money spent to ensure compliance at the property is an essential criteria to consider. As such, an evaluation of staff time was completed which determined that stormwater staff spent approximately 40 to 50 hours of time over the past 11 years on this particular property. After taking into account staff average salary and benefits during that time, an approximate amount of \$2,000 can be calculated.

Town staff recommends reducing the current civil penalty assessment amount of \$4,700 to \$2,000.

To address this issue in the future, Water Resources staff will work with the Planning Department to develop UDO amendments that will be specific to Section 6.1 violations (such as failing to submit annual inspection reports) and use similar criteria as outlined above to develop new enforcement procedures that will substitute for the current \$100/day/violation criteria.

Attachments

- Notice of Civil Penalty Assessment\_3-19-2020.pdf

