

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A SALVAGE YARD PERMIT SYSTEM AND PROMULGATING REASONABLE RULES AND REGULATIONS WHICH MUST BE MET PRIOR TO THE ISSUANCE OF SUCH PERMIT BY THE COUNTY COMMISSION; PROVIDING FOR THE APPLICATION PROCEDURE BY PROPOSED OPERATORS; ESTABLISHING FEES FOR SUCH PERMITS; AND ESTABLISHING PENALTIES FOR ANY PERSONS WHO FAIL TO COMPLY WITH THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED BY THE NICHOLAS COUNTY COMMISSION OF NICHOLAS COUNTY, WEST VIRGINIA, as follows:

ARTICLE 1. AUTHORITY, PURPOSE, TITLE & EFFECTIVE DATE

Section 1.0 General Authority

By the authority of the Code of West Virginia, Chapter 17, Article 23, Section 4, the Nicholas County Commission is empowered to adopt administer and enforce reasonable rules and regulations for the establishment of a salvage yard.

Section 1.1 Purpose

The purpose of this ordinance is to carry out the intent and purpose of the Code of West Virginia relating to licensing and operation of salvage yards within the State of West Virginia. The further purpose of this ordinance is to authorize the Nicholas County Commission to promulgate such reasonable rules and regulations including, but not limited to, determining the effect of the proposed salvage yard on residential, business or commercial property investment and values, and the social, economic and environmental impact on community growth and development in utilities, health, education, recreation, safety, welfare and convenience, if any, before issuing such approval permit.

Chapter 8, Article 24 of the Code of West Virginia further authorizes counties and their County Commissions to perform such administrative services for the appropriate use of land to protect the health, safety, comfort, convenience and general public welfare of its citizens.

Section 1.2 Title

This ordinance shall be known and may be cited and referred to as the "NICHOLAS COUNTY SALVAGE YARD PERMIT ORDINANCE".

Section 1.3 Permit Required

On and after the first day of July, one thousand nine hundred eighty-four, any owner or operator establishing, operating or maintaining a salvage yard for which a license is required under provisions of Chapter 17, Article 23 of the Code of West Virginia is hereby required to obtain a permit from the Nicholas County Commission.

Section 1.4 Exempt Activities

The following activity is expressly exempt from the provisions of this ordinance:

a. Any new or used motor vehicle dealer licensed by the State of West Virginia or any commercially established motor vehicle repair shop, provided that any junked motor vehicle on site are serving a reasonable functional use in the operation of the business and would not otherwise constitute a salvage yard.

This ordinance, established by action of the Nicholas County Commission shall take effect immediately upon adoption and shall apply to all salvage yards within the unincorporated territory of Nicholas County.

ARTICLE 2. DEFINITIONS

Section 2.0 Definitions

For the purpose of this ordinance, the following definitions shall apply:

a. BUILDING PERMIT OFFICER -- shall refer to the person or persons authorized to review salvage yard permit applications; make inspections of proposed site and its affects on other properties and investments; and make recommendations for consideration of the County Commission.

b. COMMISSION -- Shall refer to the governing body of the county in which such salvage yard is to be located.

c. COMMUNITY IMPACT STATEMENT -- A report prepared by an applicant assisted by the County Commission Staff describing the scope and the feasibility of the proposed salvage yard. The Community Impact Statement also describes the physical, social and economic impacts a proposal may bring to the County and to the immediate area.

d. FENCE -- Shall mean an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the Commissioner and located, placed or maintained so as effectively to screen at all times salvage yards and the salvage therein contained from the view of persons passing upon the public roads of this county.

e. OWNER OF OPERATOR -- Shall include an individual, firm, partnership, association or corporation or the plural thereof.

f. COUNTY COMMISSION -- Shall refer to the designated agency to administer this ordinance within the county.

g. SALVAGE -- Shall mean old or scrap copper, brass, rope, rags, batteries, paper, rubber, trash, waste, junked, dismantled or wrecked machinery, machine or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles, iron, steel and other old or scrap ferrous, or nonferrous materials.

h. SALVAGE YARD -- Shall mean any place which is maintained, operated or used for the storing, keeping, buying, selling, or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard. and the term shall also include garbage dumps and sanitary landfills.

i. SKETCH PLAN -- An informal drawing of a salvage yard proposal design and layout which is prepared according to the provisions of this Ordinance and which assists the County Commission and the applicant in reviewing the general scope, feasibility and impact of a proposed project.

ARTICLE 3. PERMIT PROCEDURES AND REQUIREMENTS

Section 3.0 PERMIT APPLICATION PROCEDURES

Application for a salvage yard permit shall be made, in writing, to the Nicholas County Commission, and shall include all information requested in the approved application form provided by the County Commission.

a. An application conference with the County Commission Staff shall be scheduled to assist applicant in preparation of the Community Impact Statement for presentation to the County Commission as its appropriate regular meeting.

b. County Commission places a notice in a newspaper having general circulation within the affected area no less than ten (10) days prior to the meeting, advising the public of the Community Impact evaluation and public hearing on the application.

c. The County Commission shall approve, approve with conditions or disapprove a salvage yard proposal within forty-five days from completion of the public hearing. Failure to take action within the forty-five days shall result in the approval of the application, unless a waiver of this time period is granted to the County Commission by the applicant.

d. If the salvage yard application is disapproved, the applicant is advised in writing of the County Commission action and of the specific reasons upon which the action was based.

e. Where a salvage yard proposal appears to the County Commission to be a major concern, the applicant may be required to submit a detailed site plan prepared by a licensed surveyor or engineer indicating the specific site characteristics, proposed storm water management plans, erosion and sediment controls and detailed construction plans for all improvements.

Section 3.1 Application

The basic format of the Salvage Yard Permit Application shall include, but no necessarily be limited to the following:

- a. Name and Address.
- b. Name and Address of owner of the land on which proposed salvage yard is to be established.
- c. Site location map.
- d. Sketch Plan
- e. A Community Impact Statement as to the effects of the salvage yard on:

- (1) Description of proposed contents of salvage yard.
- (2) Residential, business or commercial property investments and values,
- (3) Impact on community growth and development.
- (4) Impact on utilities, health, education, recreation, safety, welfare and convenience within the community.
- (5) Hours of operation
- (6) Identification of possible storage or discharge of hazardous wastes.
- (7) Economic and social impacts on the community.
- (8) Sketch of proposed storm water run-off and control.
- (9) Evidence that an application has been made for other required permits and/or licenses.

Section 3.2 Fees

The fee for the approval permit shall be twenty-five (\$25.00) dollars, payable upon the filing of the application.

The approved permit shall be displayed along with license from the Commissioner of the West Virginia Department of Highways in a place readily accessible for general public inspection.

ARTICLE 4 SITE DESIGN STANDARDS

Section 4.0 Site Design Standards

In establishing a salvage yard, all of the following requirements and standards must be met:

a. Setbacks

1. All salvage yard areas shall be set back a minimum of 300 feet from a State road right-of-way and 100 feet from a private road right-of-way. Where greater setbacks are required by State or Federal Law, the more restrictive shall apply.

b. Fencing and Screening

1. All outdoor storage of salvage material shall be conducted entirely within an enclosed fence, wall, or other solid screen. All driveways through the fence shall be similarly screened.

Such solid screen shall be constructed on the front, sides, and rear of the storage area, in accordance with the setbacks above, and shall be constructed in such manner that no salvage material is visible from an adjacent property, private road or State road.

2. The construction of fences or screening shall be uniform and no patchwork type of construction shall be permitted.

ARTICLE 5. ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

Section 5.0 Administration

This ordinance shall be administered by the Nicholas County Commission. It shall also be the duty of the Commission to function as enforcement officer as it becomes necessary to initiate administrative or judicial remedies against salvage yard ordinance violators.

The County Commission, or any other representatives of the County Commission shall have the right to inspect the premises of any salvage yard, either announced or unannounced, and at any reasonable time, for the purposes of enforcing this ordinance.

Section 5.1 Appeal

Any person aggrieved by a decision of the County Commission with respect to the provisions of this ordinance may appeal that decision to the Circuit Court of Nicholas County. Such appeal must be filed, in writing, within thirty (30) days after the determination by the County Commission.

Section 5.2 Enforcement

Enforcement of this ordinance shall be the responsibility of the County Commission, who shall make an initial interpretation that a violation has accrued. The County Commission shall prepare a written "Violation Notice and Directive to Cease and Desist" and shall transmit such notice and directive to the person responsible for the violation. Failure to comply with a Directive to Cease and Desist shall be cause for the County Commission to declare the violation a common nuisance. Upon such declaration the County Commission shall instruct the assistance of the County Prosecuting Attorney and:

- a. Seek an injunction in the Circuit Court of Nicholas County

to restrain the responsible person from continuing the violation cited or seek an injunction requiring removal of structures or land uses from the property involved.

OR

b. Proceed by criminal warrant or information against the person in violation, or both a. and b.

Section 5.3 Penalty

Any person violating any provisions of this Ordinance, whether as principal, agent or employee, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) in accord with Chapter 17, Article 23, Section 9 of the Code of West Virginia. Each month, or portion of a month in which a violation of this Ordinance is committed, continued or permitted, shall constitute a separate offense.

ARTICLE 6. AMENDMENT, CONFLICT WITH OTHER LAWS AND SEVERABILITY

Section 6.0 Amendment

By legislative procedure the Nicholas County Commission may, from time to time, amend, supplement or change the provisions of this ordinance.

Section 6.1 Conflict With Other Laws

Where the provisions of this Ordinance impose greater restrictions than those of any other ordinance or regulation, the provisions of this ordinance shall be controlling. Where the provisions of any statute, other ordinance or regulation propose greater restrictions than this ordinance, the provisions of such statute, ordinance or regulation shall be controlling. This ordinance shall not be construed in any manner that is not consistent with the purposes and provisions of State law governing the licensing and maintenance of salvage yards.

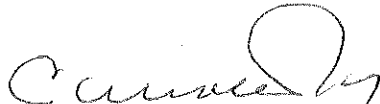
Section 6.2 Severability

If any article, section, subsection, paragraph, clause or provisions of this ordinance shall be declared by a court of competent jurisdiction to be invalid, such decisions shall not effect the validity of this ordinance as a whole or any other part thereof.


ARTICLE 7. ENACTMENT

ENACTED AND ORDAINED THIS 5 DAY OF December 1984.

THE COUNTY COMMISSION OF NICHOLAS COUNTY,
WEST VIRGINIA



CARROLL T. LAY, PRESIDENT

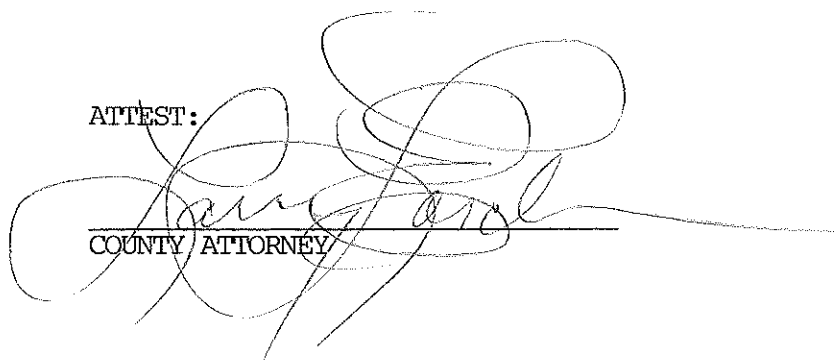


SHIRLEY J. CUTLIP, COMMISSIONER



W. DON HARTLEY, COMMISSIONER

ATTEST:



COUNTY ATTORNEY

STATEMENT OF INTENT

The Nicholas County Commission needs to update and address the issuance of salvage yard approval permits; and,

The purpose of this Addendum is to address salvage yard license renewal that upon approval by the Nicholas County Commission will be in full force and affect, and added to Nicholas County's Statement of Intent, Goals and Objectives and Application Process entered the 5 day of July, 1995 and recorded in Order Book 34, Page 407; and,

ADDENDUM NO: 1

SALVAGE YARD LICENSE RENEWAL:

All salvage yard applicants must adhere and abide by the rules and regulations of the West Virginia Department of Transportation, Division of Highways and the West Virginia Salvage Yard Laws.

All salvage yard operators must abide by the license renewal applications as subscribed by the West Virginia Department of Transportation, Division of Highways. Failure to meet the renewal deadline will result in your county permit being revoked and the need to obtain a new county permit.

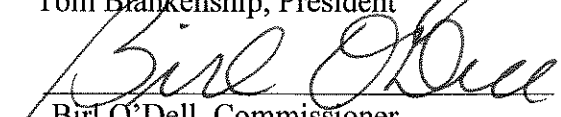
If salvage yard applicants fail to meet the required deadline for renewing their license within the period prescribed by the West Virginia Department of Transportation, Division of Highways, salvage yard applicants will have sixty (60) days from the date of their notice in which to obtain a new county permit.

Salvage yard applicants who fail to comply in obtaining a new county permit within the sixty (60) day grace period will be required to continue with the Application Process subscribed by the Nicholas County Commission.

Adopted this 2 day of June, 1999.

NICHOLAS COUNTY COMMISSION:

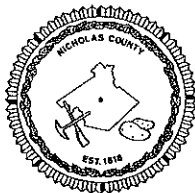

Tom Blankenship, President


Birl O'Dell, Commissioner


Mert Myers, Commissioner

ATTEST:





NICHOLAS COUNTY COMMISSION

700 MAIN STREET, SUITE 1
SUMMERSVILLE, WEST VIRGINIA 26651

SPURGEON HINKLE, President
LLOYD G. PAXTON, Commissioner
BIRL O'DELL, Commissioner

TELEPHONE
(304) 872-3630

STATEMENT OF INTENT

The Nicholas County Commission hereby wishes to update and address the issuance of salvage yard approval permits as required by Chapter 17, Article 23, Section 4 of the State Code of West Virginia, and pursuant to Nicholas County Ordinance establishing a salvage yard permit system enacted December 5, 1984.

The intent of these regulations shall include, but not be limited to, determining the effect of the proposed salvage yard on the following areas;

1. Residential, business or commercial property values and investments.
2. The social, economic and environmental impact on community growth and development in;
 - (a) Health
 - (b) Utilities
 - (c) Education
 - (d) Recreation
 - (e) Safety
 - (f) Welfare and Convenience

GOALS AND OBJECTIVES

The Nicholas County Commission will promote the maintenance of the pristine nature of the county. The natural beauty of the county needs to be preserved in order to promote tourism and recreation which in turn will provide economic growth for its residents.

The Nicholas County Commission will prevent proliferation of

salvage yards in an uncontrolled environment.

The Nicholas County Commission will promote competition and an adequate supply of salvage yard materials/products for the county's citizens and businesses.

The Nicholas County Commission will promote adequate salvage yard facilities while not proliferating small uncontrolled sites.

The Nicholas County Commission will cooperate with the West Virginia Department of Highways and the Nicholas County Prosecuting Attorney to insure the elimination of unlicensed salvage yards and promote strict fines and penalties for violation of the regulations.

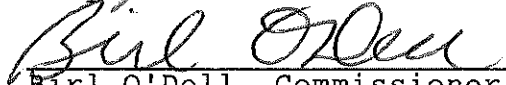
Entered this 5 day of July, 1995.



Spurgeon Hinkle, President



Lloyd G. Paxton, Commissioner



Birl O'Dell, Commissioner

ATTEST:


John Greer, County Clerk

APPLICATION PROCESS

Applications will be submitted to the Nicholas County Commission to be processed and recommendations made to the Nicholas County Commission as to whether to issue the permit or not. The final authority lies with the Nicholas County Commission.

The application must include the following:

1. Specific map showing setbacks of all structures within 1,000 feet radius from all boundaries of the proposed salvage yard, all roads, creeks and streams, schools, churches, public highways, residential wells or cisterns, and any public recreation area.
2. Plot of the proposed location, copy of deed and application must be submitted by property owner.
3. Business plan which clearly delineates total sales and number of employees.
4. List of owners and partners in the proposed salvage yard.
5. Notarized statements from all adjoining property owners within a one thousand foot radius of the site, measured from the furthest point of the site. Statement must indicate that they are aware of the application and give their opinion of the proposal.
6. Specific plan showing disposal of environmentally unsafe materials such as oil, gasoline, Freon, battery acid, etc.
7. Evidence of compliance with all applicable environmental regulations.
8. Specific plan for storage of parts and products.
9. Evidence of insurance to cover business risks.
10. Applicant will submit a picture of the proposed site.
11. No storage of salvage shall be permitted within twenty-five (25) feet of any bounding lot lines.
12. There shall be adequate off-street parking to meet the needs of the trade and employees so that parking along any roadway is not necessary.
13. The operators of a salvage yard must comply with all State and Federal laws and regulations.
14. The parking area shall have a stabilized surface or

render it reasonably erosion resistant and dust free and shall be graded and drained so as to prevent damage to abutting property and to public roadways.

15. Every applicant for a salvage yard shall demonstrate to the Department of Natural Resources that adequate measures will be taken to eliminate the threat of pollution or damage to the surface streams or ground water by the storage of waste materials and substances.
16. Every applicant shall demonstrate to the State Fire Marshal that adequate measures will be taken to eliminate the threat of fire hazard from materials or refuse to be collected, accumulated or stored on the site.
17. A salvage yard shall be defined as any land or structure used for operating salvaging business, including but not limited to the storage and sale of waste paper, rags, scrap metal and discarded materials, and the collection, dismantlement, storage and salvage of three (3) or more unlicensed, inoperative vehicles.
18. Safety measures will be taken to protect the public and employees.
19. There shall be no storage of dangerous or toxic chemicals or storage of damaged chemical tankers or containers on the premises.
20. The corners of the actual salvage yard site, must be staked with flags on the area to be used for the storage, so that it can easily be distinguished from the total parcel of land. This must be done before site inspection.
21. Location Standards:
 - A. No salvage yard shall be located closer than 1000 feet of an existing residence unless a waiver from that permanent resident is obtained.
 - B. No salvage yard shall be located closer than 1000 feet of an approved subdivision.
 - C. No salvage yard shall be located within 1000 feet of an existing public or private school or land owned by the Nicholas County Board of Education or a public or private playground, park, recreation area or cemetery.
 - D. No salvage yard shall be located within 200 feet of any year round stream, run, river, pond or other water body. In addition, no salvage yard shall be permitted within the 100 year Flood Plain, and shall be in compliance with WV Code of Laws of the Department of Natural Resources, Chapter 20, Article 5-A.