

# **Development Reimbursement Policy Committee**

## **Final Report**

### **Committee Members**

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**January 13, 2010**

## **1.1 Mission**

The Development Reimbursement Policy Committee (DRPC) was assembled at the request of the St. Mary's Metropolitan Commission (MetCom) to investigate the merits of a policy to reimburse developers who build or extend water and/or sewer facilities from their current terminus to serve a new development or project within the development district, and to make recommendations to the Commission relating thereto.

Currently in St. Mary's County, when a new project is proposed, the developer of the project is responsible for the cost of design and construction of all new water and sewer facilities needed to serve the proposed project. That developer is then required by MetCom to construct those necessary facilities within publicly dedicated rights-of-way, and upon completion and acceptance by MetCom of those facilities, to transfer ownership of those facilities to MetCom. Landowners or developers along the route of the newly extended facilities are then able to connect to the new facilities without reimbursement to the developer who incurred the cost to construct the extension of the facilities. Likewise, landowners and developers situated just beyond a newly constructed project are able to obtain access to public water and/or sewer lines for a far lower cost, due to the efforts of that developer.

The questions posed to the DRPC were:

- (1) Is the existing scenario a fair and equitable method of constructing water and sewer infrastructure?
- (2) Should the developer who first extends a public water or sewer line be entitled to compensation for their efforts? and
- (3) If there should be such compensation, how would that compensation be structured and administered?

## **1.2 Existing Policies**

MetCom has an informal policy wherein it will provide some compensation to a given developer for the cost to construct new public water and sewer facilities when MetCom determines that additional capacity, in excess of that required to accommodate a developer's project, is necessary or desired to meet the future needs within the vicinity of a proposed project.

In such a case, MetCom will require the developer to increase the capacity of the facilities to accommodate those future needs. MetCom will then agree to compensate the developer only for the increase of capacity of those facilities (i.e., if MetCom determines that a 12" water line is required for future needs and the proposed development only requires an 8" water line to serve its needs, MetCom would pay the developer the difference in cost of purchasing and installing a 12" line versus an 8" line).

There is also a case wherein MetCom allowed a developer to be reimbursed for the cost to construct a public sewer line by other users of the new line, as connections were made. In this instance, however, the geography was such that the constructed line could not be extended further and there were therefore a limited number of connections possible. This scenario created a situation where there were a finite number of identifiable properties that could potentially connect to the extended line.

The far more typical scenario however is one where a line extended by one developer will be subsequently and consecutively extended by any number of future developers. In this situation, the number of properties that might share in the cost of each line extension cannot be identified with certainty, which renders the administration of any viable reimbursement policy difficult if not impossible. However, to have no policy to accommodate such reimbursement, in some manner, results in a direct benefit for later-developing projects which are not required to share in the actual cost of extending the water and sewer infrastructure.

### **1.3 Investigation**

The DRPC, along with staff assistance, began collecting information from a variety of sources to educate themselves on the merits and problems of reimbursing developers for infrastructure costs. The following summarizes the scope of the investigation undertaken over a six month period:

- Two local developers were invited to address the committee with the particular circumstances of their projects and their reasons for feeling new policies were warranted.
- Edward Donahue, President of Municipal & Financial Services Group, who has assisted other communities in preparing such a policy, made a presentation to the committee.
- Committee members contacted various colleagues and associates in their area of expertise to obtain source information or examples from other jurisdictions.
- An internet search was conducted on a national level to determine whether other states or communities utilized such a policy, how it was structured, implemented and administered.
- Building on a memorandum from the Institute for Governmental Service and Research prepared for the Metropolitan Commission Task Force Members, dated April 14, 2010, regarding Water and Sewer Comparison Chart Findings, staff attempted to speak with someone in each jurisdiction, comparable in size to MetCom, to determine whether these communities had reimbursement policies, what those policies were and how they were administered, and to get personal impressions of the effectiveness of their policies.
- Conducted a Q&A session with Dale Pusey of the Department of Public Works with the City of Salisbury, Maryland regarding their Extension Reimbursement Policy.

## 1.4 Findings

There are many jurisdictions in Maryland and around the country that have a policy to reimburse developers for constructing infrastructure that provide a public benefit beyond the needs of the project being developed. The internet research conducted by this Committee identified at least seven (7) states that have enabling legislation allowing for some form of developer reimbursement, or a “late-comers” fee. However, it became apparent after initial review of some of these policies that they could not work for MetCom because of a variety of reasons that will be discussed.

The policies this Committee reviewed from its national research could be generally summarized as follows:

- A project for which reimbursement is being requested must be pre-qualified by the jurisdiction prior to design and/or construction.
- An agreement is executed between the developer and the jurisdiction identifying the extent of the public benefit, the cost of the design and construction, and the boundary of the area that would receive the benefit.
- The project is constructed by the developer and accepted by the jurisdiction.
- The jurisdiction either:
  - Collects a pre-determined fee for a specific number of years (usually 10 to 15 years) from subsequent projects within the defined area of benefit, and then reimburses the initial developer as those fees are collected, less an administration charge; OR
  - Reimburses the developer a pre-determined amount of money upon acceptance of the construction and collects a fee from subsequent developments to reimburse the jurisdiction for its reimbursement to the developer.

Within Maryland, many jurisdictions of comparable size to MetCom represent that they have a reimbursement policy, however when questioned on the specifics, it became apparent that no real policy actually existed. In a number of jurisdictions, the person contacted stated that they might consider reimbursement on a case by case basis, but had no written policy that could be forward to the DRPC for review. Some examples of information collected from other jurisdictions:

**Calvert County** has worked on a policy for payment of line extensions, but that policy specifically excludes the extension of water and sewer lines for new developments.

**The City of Salisbury** implemented a policy approximately five (5) years ago, but the purpose of the policy was to shift the capital costs of construction from the city to the developer, with the promise of reimbursement to the developer with future connection

fees. The policy has thus far not been utilized adequately to determine its effectiveness. However, regardless of its effectiveness, this policy is evidence of shifting the cost burden of constructing new water and sewer lines *away* from the jurisdiction, not *toward* it.

**Washington Suburban Sanitary Commission (WSSC)**, albeit a far larger jurisdiction than MetCom, has a System Development Charge (SDC) Credit program. The WSSC has an eight (8) page document of Standard Procedures for utilizing the program. The eligibility of a project seems to be determined on a case by case basis, and only projects for local service (extensions less than 2000 feet) and including sewer lines greater than 15 inches in diameter and/or water lines greater than 16 inches in diameter are eligible.

## 1.5 Considerations

The complexity of this issue became clear early on in the investigation. Each example examined by the Committee raised many questions including but not limited to questions of fairness, basis of eligibility and ease of administration. Major re-occurring issues that framed the Committee's discussion included:

- *Project eligibility* – Would every project proposed in the system be eligible for a reimbursement or should the requirements restrict eligibility to certain types of projects, certain line sizes, or certain locations?
- *Defining the developer(s) to whom reimbursement should be made* – Nearly every line in the MetCom system was constructed by a developer for a certain project, as an extension of a line constructed previously by another developer for some other project, and so on. So the question becomes, how far back in the chain of potential reimbursement should a policy extend? It appears that any reimbursement policy would need to establish an arbitrary point in time, before which no reimbursement would be made and after which the reimbursement policy would become effective.
- *Determining the boundary of the public benefit* – Which properties would be included in the boundary of a given reimbursement agreement would need to be determined on a case by case basis and every property owner in that area would need to be notified. Many jurisdictions hold public hearing to determine the benefitted area and to legally bind each affected property to participation in the reimbursement policy. This process may prove to be ineffective and overly burdensome to implement.
- *Cost of Development in the Development District* – Does the cost of developing lots served by public water and sewer infrastructure versus developing lots that are served by well and septic systems discourage development in the Development District? Would a Reimbursement Policy provide an incentive to direct growth to the Development District?
- *Basis of reimbursement* – *To what extent should a developer be reimbursed?* Should a developer be reimbursed for all of the excess capacity constructed but not required for the developer's project? What if such excess capacity is greater

than the capacity needed for the build-out of the defined area of benefit? What if there is little or no future development potential in the defined area of benefit--- does that mean that developer is not entitled to any reimbursement?

- *Unfair competitive advantage of secondary developments if no reimbursement policy exists* – Construction of offsite infrastructure (i.e. water and sewer line extensions) adds a capital cost to each unit or building in the proposed development. An adjoining property owner or developer who benefits by the line extensions constructed by another developer could have a competitive advantage because little or no capital cost was incurred to construct the line extensions. Accordingly the benefitted developer’s product can be sold for a lower cost or at a greater profit, or both.
- *Standard Line Sizes* – In most cases in St. Mary’s County, when a water line or gravity sewer line is extended, those lines are 8-inch diameter lines. An 8-inch line usually has enough capacity for the proposed project plus other projects in the vicinity. Therefore in most cases, the developer is required to build the same size line, which will accommodate future development in that area, even if MetCom has not specifically requested same. So effectively, many times developers are building lines to accommodate general future growth, without being compensated accordingly.
- *“Double dipping” by developers* –In the event a reimbursement policy were to be implemented, a developer would still have uncertainty as to when and to what extent reimbursement will be received. Accordingly, to eliminate this uncertainty, developers will likely continue to build the capital cost of water and sewer infrastructure into the selling price of the finished product (i.e. the cost of the finished home, etc). In this case, any subsequent reimbursement received by the developer as the result of a reimbursement policy would result in the developer being paid twice (or “double-dipping”) for the cost to construct the water and sewer lines.
- *Administration of reimbursement fees* – In almost all cases of reimbursement policies in other jurisdictions, the term of the reimbursement period was 10 years, with a 5 or 10 year extension to the term allowable upon request. During that time, the jurisdiction is required to track the number of connections made to the line during the year, the amount of money collected, the amount of money to be dispersed, any adjustments for inflation, and the contact information of the developer to be reimbursed. Each qualifying facility would need to be so tracked, as each would have different costs. An administrative fee to cover the cost of this effort would need to be established.
- *The legal and financial structure of MetCom* – Section 113 of the County Code restricts the types of monies that can be collected and dispersed, thereby making many policies reviewed from other jurisdiction unusable in St. Mary’s County, without corresponding legislative amendment.

## 1.6 Conclusions

In consideration of the factors stated above, the Committee drew the following conclusions:

- There is no effective, fair and equitable way to structure a comprehensive reimbursement policy that would consistently and efficiently render reimbursement because of the complexities created by:
  - Project eligibility parameters
  - Identity of and notice to affected properties
  - Extent to which reimbursement policy is retroactively applied
  - Potential for “double” compensation to developers
  - Administrative burden
  - Legislative and structural limitations
- There are certain inequities created by the fact that, without a reimbursement policy, certain developers are able to avoid some or all of the capital costs of extending water and sewer infrastructure to meet their project needs.

## 1.7 Recommendations

The Development Reimbursement Policy Committee makes the following recommendation to the St. Mary’s Metropolitan Commission Board of Directors:

- A. That the Metropolitan Commission not adopt a comprehensive developer reimbursement policy except as otherwise set forth herein below.
- B. That MetCom formally adopt a policy to reimburse developers for the incremental costs increase between what is required to serve their project and any upsizing requested by MetCom to provide future service in the vicinity of the project. Specifically, this policy would include reimbursement for the additional costs incurred to:
  - Increase pipe size from the standard line size (currently 8 inch diameter) to something larger;
  - Oversize sewer pumping station capacity and capability to serve future development;
  - Oversize drilled water wells to create additional capacity and capability to serve future development;
  - Oversize ground or elevated water storage tanks to create more capacity to serve future development;
  - Construct a project in such a manner to meet any such special circumstances as MetCom may deem appropriate to meet the needs of future development.

To qualify for reimbursement as described above:

- The project must meet one of the above conditions;
- The developer must agree to perform the work to MetCom requirements;

- The developer must supply MetCom with the cost estimates for the infrastructure required for the developer's project and the cost estimate of the upsizing or other modification requested by MetCom;
  - Upon approval by MetCom of the cost estimates submitted, the dollar amount between the two estimates would be the amount the developer would receive as reimbursement;
  - The reimbursement amount would be included in the Public Works Agreement, would be placed as a line item in the budget for the following year, and be paid to the developer upon acceptance of the facility into the MetCom system.
- C. That MetCom continue to encourage and help to facilitate private cost share agreements between developers who have projects that could benefit from such an arrangement.
- D. That if, in the future, the legal and financial structure of MetCom were to change, these recommendation be reviewed.