



Gregory J. Swain, County Attorney

MEMORANDUM

To: Council Members, Anne Arundel County Council

From: Kelly Phillips Kenney, Supervising County Attorney /s/

Date: September 21, 2020

Subject: Bill No. 80-20: Public Works – Utilities – Assessments – Water and Wastewater Facilities

Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law at the request of Councilwoman Haire for use by members of the Anne Arundel County Council during consideration of Bill No. 80-20. The summary is intended to explain the purposes and legal effects of the bill.

Purpose. The primary purpose of Bill No. 80-20 is to replace the front foot assessment method for recouping the County’s costs for the construction of water and wastewater systems with a per-equivalent dwelling unit (“EDU”) method.

Background.

When the County moves forward with a petition project to expand the County’s water or wastewater systems to provide service to an area, the project is required to be “self-sustaining”, meaning that the County must recoup the entire cost of the project back from the property owners who connect to the facilities. The County has always calculated this assessment based on a “front foot” basis. Under the front foot assessment method, DPW determines the number of feet of a lot abutting the road in which the water or sewer line is to be laid. Then, the assessment is calculated based on the number of feet and the use of the property, as further set forth in current § 13-5-605 of the Code.

The front foot method of assessments prevails as the method used by many jurisdictions. The method can seem unfair, especially in a residential subdivision. For example, in a residential subdivision most lots have the same use – a single family dwelling. But, the assessment for the lots can be vastly different depending on the size the lot, or the portion of the lot that abuts the

Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.

right of way, despite the fact that each lot is essentially “benefited” the same way by obtaining water and wastewater service for one single dwelling. This unfairness (whether actual or perceived) has caused some petition projects to fail in the past, and residential property owners have requested to be assessed on something more akin to a per-lot basis.

As the County is moving forward to convert properties from septic systems to public sewer service (as previously discussed before the Council on Bills 90-19 and 95-19), DPW and the Septic to Sewer Task Force explored ways to change the method of assessment. This Ordinance is the result, and eliminates the front foot assessment method and replaces it with a per-equivalent dwelling unit (“EDU”) assessment method. EDUs, as discussed in more detail below, are the units of measurement that DPW uses for other utility-related calculations and is a fair way to assess properties for their fair share of the cost of the project to extend water or wastewater utilities. It is important to note that, no matter the method of assessment, the County recoups the entire cost of the project (plus interest) from the owners who connect to the utilities (except insofar as the County provides subsidy towards the cost of the project as provided by Bill 95-19 (§ 13-5-815.2)).

Section 9-722(a) of the Environment Article of the Maryland Annotated Code provides that a political subdivision may (1) establish a reasonable charge for connection to a system and (2) set an annual assessment on all property, improved or unimproved, that abuts on any street in which there is a water main or sewer. Subsection (b) states that the provisions of § 9-655 through 9-658 govern the imposition of assessments under this section. Section 9-657 provides that a sanitary commission (in this case, the County) shall assess on a “front foot basis” or “under uniform rules and regulations adopted by the district and approved by member counties” (in this case, the County). This Office has determined that the per-EDU basis in the Ordinance sets forth “uniform rules and regulations” for a method of assessment as required by State law.

Bill provisions.

The Bill repeals existing §§ 13-5-601 through 606 and replaces it with new §§ **13-5-601 through 605**. While some language from the existing provisions of the Code remain similar to what is in the Bill, most of the changes from the current Code were quite substantial and therefore set forth completely as new language.

Section **13-5-601** is new and sets forth five definitions. In subsection (1), “Equivalent Dwelling Unit” (“EDU”) has the meaning in § 13-5-401(4), which “means a unit of 250 gallons of water.” The EDU is the measurement that DPW uses for determining the water and wastewater flow that will be generated by a use. One EDU is the equivalent of one single family dwelling.

“Lot” is defined in subsection (2) as “those parcels of real property that have separate tax account numbers according to the Property Account Identification Numbers assigned by the Maryland Department of Assessments and Taxation, whether or not improved..” The term does not include a lot that the owner can prove to the satisfaction of the County is non-buildable under any circumstance.

Subsections (3) and (5) define “nonresidential lot” and “residential lot”. “Project cost” is defined in (4) as all costs or expenses required to complete a water or wastewater extension or

upgrade, including the combined cost of engineering, construction, right of way or property acquisitions, and connections.

Section **13-5-602** is, in large part, what is currently set forth in the Code as § 13-5-601. Subsection **(a)** (like existing § 13-5-601 (a)) establishes that the County has the authority to impose assessments to recover the cost of the County constructing water and wastewater facilities or of bringing private facilities up to County standards and taking them over. Subsection **(b)** (like existing § 13-5-601 (b)) requires that the owners of property who connect to the water or wastewater facilities pay the applicable assessments set forth in the Subtitle 6.

Section **13-5-602(c)** elaborates on what currently exists in § 13-5-601 (c). Under the current code, the payback period for a front foot assessment is 30 years for all properties. The new language establishes that, except for properties that qualify for the deferral described in § 13-5-815.1, assessments are billed annually for a total of 30 years. For properties that qualify for the deferral, assessments are billed annually for a total of 40 years.¹ A property owner only needs to be qualified for the deferral under § 13-5-815.1, but the owner is not required to choose to take advantage of the deferral in order to be subject to the 40 year payback. By extending the payback period for these projects, the Ordinance complements the changes already implemented by the Council in Bills 90-19 and Bill 95-19, which are intended to promote getting properties converted from septic systems to public sewer.

Subsection **(c)** contains language from the existing Code and states that assessments shall be paid within 30 days of billing, and any amount unpaid 30 days after the due date shall be collected as provided in § 1-8-101² of the Code. Subsection **(c)** also provides that, except as provided in § 13-5-603(h) (discussed below), and except for an annual assessment that has already been billed, assessments are not required to be paid upon a title transfer and remain a lien against a property upon title transfer.³

Section **13-5-603** is new and replaces the front foot method set forth in portions of existing §§ 13-5-602, 13-5-603 and 13-5-605. Instead of determining the number of boundary feet

¹ As enacted by Bill 90-19, owners of residential property with existing improvements in an eligible area may be eligible to choose to partially defer payment of the capital facility connection charge (“CFCC”), user connection charge (“UCC”), and assessment imposed for connections to an extension of the County’s wastewater system. The partial deferral may be up to 50% of the CFCC, UCC and assessment, separately or in total. “Eligible area” is defined to be 4 different areas: (i) the critical area, as defined in § 18-1-101; (ii) an onsite wastewater management problem area as defined in subsection (a)(4); (iii) an area designated in the County’s Master Plan for Water Supply and Sewerage Systems as a septic to sewer conversion area; or (iv) an area that is adjacent to one of the areas listed in (i) through (iii) and that is within the boundary of a wastewater extension project that includes one of areas listed in (i) through (iii).

² Section 1-8-101 provides: “When an owner of real property is responsible to the County for the payment of a tax, fee, or other charge related to or arising out of the ownership or use of the real property, the amount shall be levied, collected, and enforced in the same manner as County real property taxes and have the same priority rights, bear the same interest and penalties, constitute a lien on the real property so assessed, and be treated the same as County real property taxes.”

³ This is the case under current law, although it is not clearly spelled out that a front foot assessment “runs with the land” and is not required to be paid upon transfer.

attributable to a property and multiplying that by the applicable front foot assessment rate, the assessment is determined based on the number of EDU's assigned to a property.

Subsection (a) provides that for a property required to connect to a project initiated under § 13-5-302 (extension on initiation by DPW); § 13-5-303 (petition project); or a project bringing private water or wastewater facilities up to county standards so that they system can be owned by the County under § 13-5-105, the Director shall calculate the assessment to be levied to recover the costs of the project. This language is almost identical to existing § 13-5-603(a).

Subsection (b) sets forth the method for the Director to determine the net assessable amount of the project by establishing the project cost; subtracting any costs associated with making service available beyond the project area and any aid or contribution; and adding the estimated interest expense for the project, as determined by the Controller. This is same method set forth in existing § 13-5-603(b) (albeit, somewhat reworded).

Subsection (c) provides that after the net assessable amount is established, that the Director shall set the per-EDU assessment by dividing the net assessable amount by the total number of EDUs attributable to all the lots served by the project. The EDUs are determined in accordance with the method set forth in § 13-5-804.⁴ Additionally, each lot shall be assigned at least one EDU, except as provided in subsection (h).

Section **13-5-603(d)** establishes the method of assessment for a residential lot, which is the per-EDU assessment determined in accordance with subsection (c) times the EDUs assigned to the lot, less any State, federal, or County aid or subsidy provided specifically to the lot or property owner.

Subsection (e), provides the method of assessment for a nonresidential lot, which is also the per-EDU assessment determined in accordance with subsection (c) times the EDUs assigned to the lot. Subsection (e)(1) further provides that the number of EDUs assigned to a nonresidential lot may not exceed five for industrial uses or three for all other nonresidential uses. Subsection (e)(2) also provides that, if there are additional costs to upgrade, upsize or improve the water or wastewater system specifically for a nonresidential lot that are over and above the assessment based on the EDUs, that the additional costs are added to the assessment.

Subsection (f) provides that the assessment is billed annually. The annual assessment is determined by dividing the assessment calculated in accordance with (d) or (e) by 30, or for projects that qualify for the deferral described in § 13-5-815.1, by 40.

Under subsection (g)(1), if a lot subject to an assessment is subdivided, the remainder of the assessment shall be paid in full prior to approval of the subdivision plat. In addition, the Director may impose an assessment on any new lots created as a result of the subdivision. Under subsection (g)(2), if a use on a lot is changed, the Director may increase or decrease the assessment,

⁴ As stated above, one single family dwelling equals one EDU. For other uses, DPW uses the “flow factors” assigned to certain uses based on guidelines from the Maryland Department of the Environment.

and shall apportion any resulting increase or reduction in the assessment, among the other lots in the project area.

Subsection **(h)** creates limited exemptions to the assessment requirement, upon confirmation by DPW, for unimproved common areas, recreation or open spaces shown on a record plat and owned by a nonprofit community or homeowners' association, or for improved lots owned by a nonprofit community or homeowners' association where there are no buildings or structures currently served by a private water or wastewater system.

Section **13-5-604 (a)** is similar to existing §§ 13-5-602 (d) and 13-5-606, and requires that the Director give notice to property owners of the assessment for a property. The owner shall also be advised of the right to appeal the assessment in writing or by requesting a hearing before the Director, and the deadline to file the same. Subsection **(b)** requires DPW to notify an owner who requests a hearing of the date, time, and location of a hearing. Subsection **(c)** provides that an assessment determination becomes final unless the owner files an appeal of the assessment within 30 days of the date of the notice. Subsection **(d)** allows the Director to make fair and reasonable adjustments if it is determined that the original determination was incorrect or inequitable in view of the use on the lot.

Section **13-5-605** pertains to non-petition projects (i.e., other County capital projects) and establishes a minimum basic assessment rate for properties connecting to such projects. This new section replaces existing § 13-5-604, which requires "properties not required but permitted to connect" to projects constructed by the County, pay the minimum front foot assessment. New 13-5-605 expands upon the explanation of what properties this applies to and establishes a minimum rate, which is based on the current minimum front foot in the Code multiplied by the average lot front foot of 131 (which is the average of the existing petition project lots) to determine the new minimum assessment rate. Subsection **(b)** provides that the minimum rate shall be adjusted each fiscal year based on the formula set forth. This formula is the same one that exists in the current code in § 13-5-602(c) for the annual increase to the front foot assessment.

Section 3 of the Bill is a grandfathering clause and establishes that the provisions of the Bill shall not be applicable to the project known as Coriander Place – Gingerville Water Project, No. W805901. The majority of the owners to be served by this project have already voted in favor of the applicable front foot assessment and the Council recently approved the rate in Bill 3-20. Section 3 also provides that the Ordinance shall not apply to any real property assessed prior to the effective date (the Coriander Place project has not yet been assessed). **Section 4** provides that the term "effective date of this Ordinance" in the Bill shall be replaced with the effective date upon codification. **Section 5** provides that the Bill is effective 45 days from the date it becomes law.

The Office of Law is available to answer any additional questions regarding this Bill. Thank you very much.

cc: Honorable Steuart Pittman, County Executive
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