



DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

*Retail Rates Committee
Thursday, November 28, 2007
9:00 a.m.*

MEETING MINUTES

BOARD MEMBERS

Robin Martin, Chairman
David J. Bardin
Joseph Cotruvo
Howard Gibbs
Brenda Richardson
F. Alexis Roberson
Alan Roth
Keith Stone

WASA STAFF

Jerry Johnson, General Manager
Olu Adebo, Acting Chief Financial Officer
Avis M. Russell, General Counsel
Linda Manley, Board Secretary

Chairman Martin called the meeting to order at 9:02 a.m. The purpose of this meeting is to discuss the Impervious Surface Rate project, stormwater taskforce updates, and the FY 2009 rate and fee proposal.

Impervious Surface Rate Project

David Tweedy from PB Consult (PB) provided an update on Impervious Surface Rate project. Mr. Tweedy began by identifying three key elements to the project: database development, rate policy and communications outreach. He noted that eighty-five percent of the impervious area data has been collected. A chart was provided to illustrate the areas in which the data has not been collected. The majority of the uncollected data is on federal property and coordination with various federal agencies is underway. The consultant has begun reconciling the tax data with the GIS data.

Mr. Bardin asked why the tax data differs from the GIS data, if the GIS data comes from the Office of Tax and Revenue (OTR). Mr. Bardin requested that the consultant locate someone to explain the significance and the difference between the two data sources. Mr. Adebo responded that the GIS data comes from the Office of the Chief Technology Office (OCTO), and they have compiled several data sources for their GIS layer. The main data source is from OTR which is the tax database. Coupled with the data from OCTO, the team will visit other agencies (GSA and National Parks Services, among others) to obtain the remaining data. Mr. Tweedy noted this is a phased approach; the two data sources will be reconciled, a third layer will be added, a high level impact analysis will be performed followed by a sensitivity analysis. Mr. Bardin wondered whether OTR data about federally-owned "reservations" plus OCTO aerial photo data would suffice for IAB purposes even if courtesy calls on GSA, NPS, etc. did not add any information.

Mr. Bardin asked what the smallest lot size in the database is and whether there are lots in the database that include pervious and impervious combined less than 2,000 square feet. Mr. Roth noted that if the data comes from OTR, he is almost certain it must include lots that small.

Mr. Tweedy responded that there are small slivers within the data and Board policy will have to determine how to handle these data. Mr. Adebo further noted that the Steering committee is waiting on statistical data from the data collection efforts, and then the review process for some of the policy issues can begin. Mr. Bardin noted that the Authority has gone through this process over the last two years with previous consultants and the WASA engineers. He wondered whether it might make things less complicated if the Board provided the Authority with a policy decision to eliminate in the first phase all lots below a certain size.

Mr. Johnson further noted that the Authority is taking the initial step with federal agencies and the WASA departments are working cohesively to ensure that the critical paths are met as well as considering other avenues for data collection. In addition, the Authority already has an established relationship with properties such as Bolling AFB from prior work on the infrastructure.

The consultant is making progress on the rate policy and has calendared the various policy issues over the next few months to be presented around the committee's schedule. A communications plan has been developed by the communications task force. There has been initial and will be extensive outreach to the City Council, Department of Environment (DDOE), and environmental groups. These meetings will continue over the next month. Mr. Adebo noted that DDOE was very excited about impervious surface rate implementation and Dr. Hamid Karimi is very knowledgeable and will hopefully be an advocate for implementing the rate structure that will have both impervious surface rate for Combined Sewer Overflow (CSO) and the stormwater fee.

Chairman Martin stated that it is important that the Committee receive substantive feedback from and reporting of these ongoing meetings. He wants to understand the dynamics of the discussion particularly when WASA talks to and hears from community groups. Mr. Adebo elaborated on the meetings with Council Members' staff and noted the educational value of the discussions. Through the feedback, the Council offices are beginning to see the link within the programs and better understand the cost impact of LTCP. The goal is to meet directly with each of the Council Members. Chairman Martin requested that when presenting the information, that management is mindful that new WASA bills will be different from what the customers are used to seeing.

Mr. Johnson responded that these are the initial meetings just to introduce the concept and raise awareness. Ms. Richardson recommended that future meetings include meetings of AARP members, Advisory Neighborhood Commissions (joint meeting), Civic Associations (joint meeting) and Friends of the Earth. She also requested that an evaluation component be included within the communication implementation plan as it relates to the communication process for impervious surface rate implementation and making sure the customer understands what WASA is trying to educate them on.

Mr. Bardin expressed concern that DDOE's goals and concerns are parallel but not necessarily consistent with WASA's LTCP recovery needs. The stormwater task force is not dealing with WASA rates and collection of costs for the LTCP. The DDOE director estimated raising \$25 million per year for stormwater management. He urged the Board members to remember that the WASA bill will reflect the WASA rate, the WASA impervious surface collection for LTCP, and the District's stormwater fee. The customer will see only the bottom line. This could be a significant impact.

Mr. Johnson noted that tax bills from other jurisdictions include several components (e.g., stormwater, recycling, and trash disposal fees), so there are a number of mechanisms to propose to the District in regards to the billing and collection process.

The discussion moved to a review of policies. Chairman Martin acknowledged that the initial discussion of policies can be formatted as presented, but the final versions approved by the Committee would be contingent upon formal submittal of a resolution with the policy attached as had been done with the initial IAB policy in October.

Three policy topics were presented by Dan Lanning (PB Consult) to the Committee: definitions of an impervious surface, inclusion of LTCP O&M costs, and exemptions to the Impervious Area Billing (IAB) rate.

Mr. Gibbs expressed concern that the proposed policy for defining an impervious surface contains an all or nothing definition (pervious or impervious) and felt that there are varying degrees of imperviousness (i.e. gravel driveway). Mr. Lanning noted that PB Consult has worked on stormwater studies in Suffolk, Wichita, and Austin and in those, each area was defined as either pervious or impervious. Billing for varying degrees of perviousness was judged to be very complicated and difficult to administer. Mr. Bardin asked how the Detroit system handles varying degrees of imperviousness. Mr. Lanning responded that Detroit has a drainage fee and it is a rate based on impervious areas within the retail portion of the city. Detroit has taken all of the applicable drainage costs and allocated them to include CSO and stormwater costs, and then charged the customer based on imperviousness. Ms. Russell noted that a second city has been identified through a May, 2007, ordinance as a city that recovers LTCP costs through an impervious fee. That city is Wilmington, Delaware. Mr. Adebo further noted that after looking at other authorities and cities that have implemented impervious area fees, there are very few using a coefficient to determine various gradations of perviousness, due to administrative complications. Mr. Bardin noted that PB Consult is proposing, through the use of aerial photos, to add to the building footprint, driveway, patio, swimming pool and various other impervious areas. Dr. Cotruvo recommended changing the definition of the impervious surface as presented in this meeting to a binary choice of soil versus non soil, because using imperviousness begged the question of different levels of percolation which was not the intent of the proposal. Chairman Martin suggested that the consulting team be prepared to present at the next meeting more detailed information on gradation and on benchmarking data from other cities to help decide if this the right policy. Mr. Bardin further added that he would like the team to determine if this is a binary system and a written description of the Denver and Detroit systems. He also wanted the team to review the possibility of a three way system, as opposed to a binary system, in which a small part of the cost pool is distributed over all of the square feet of the land area in the District, to reflect the fact that there is some sheet flow over lawns by and large even though less than over impervious surfaces, and the lion's share of the cost pool is distributed over the impervious areas. He pointed out that impervious surface would be a surrogate for rainwater, which no one meters, rather than a cost causing parameter in and of itself.

Mr. Adebo discussed the second policy proposal. PB Consult had raised concerns about charging O&M costs for the LTCP using the impervious rate methodology. Mr. Bardin asked the general counsel to provide clarification if O&M costs, when appropriate, could be collected on impervious area. Ms. Russell responded that this was in reference to a concern raised by the consultants that the provision in the IAB Policy brief was applicable to CSO but any restriction related to construction grants. You can recover all costs related to the CSO program including O&M. The rate will take into consideration all of the applicable cost. This is different from the fee set by the District for stormwater. Dr. Cotruvo expressed concern that at some point, allegedly the debt service is paid off and questioned whether this IAB rate would continue after implementation of the CSO and debt repayment.

The final policy discussion surrounded exemption policies and the need for Board guidance regarding possible exemptions for consideration. Mr. Adebo noted that policies from other agencies and cities have a standard exemption for public right of ways (ROW). Some policies discuss undeveloped properties as exemptions, for example virgin land with no paved surface. Chairman Martin suggested that the discussion of exemptions may be more timely if it is revisited during the presentation of the impact analysis, when the committee could determine the impact of the areas that the Board may consider to exempt. Mr. Bardin expressed concern with a sliver lot being treated as an ERU and would like to see other cities or agencies that used this same process. Mr. Gibbs also noted that if WASA instituted an all or nothing policy on imperviousness,

the small properties with no impervious surfaces might be exempt but they do contribute to stormwater runoff. Therefore, he felt that the goal should be to spread the cost over as much area as possible. Dr. Cotruvo requested that the Board is provided with a precise definition of 'sliver lots' because it was important to know whether the concern was small lots being insignificant, or whether the administrative burden was excessive. Mr. Roth agreed that WASA should spread the burden as broadly as possible. Any parcel that has been developed and is in use should not be exempt and in the system. Mr. Bardin urged the consultants to consider a small fee per square foot of all land including the triangles that the Park Service owns and the sliver lots he referred to earlier in the discussion. ERUs that are graded should be such that a row house has a lower ERU than a mansion.

All policy decisions will be reconsidered after additional data is collected, an impact analysis presented to the Committee and benchmarking data can be considered.

Stormwater Taskforce Update

Mr. Adebo provided an update of the DDOE stormwater task force meeting. At the end of February, DDOE will be sending information to the DC Council to adopt a rate. DDOE has expressed that they would like to use WASA's impervious surface database for a basis for their billing. Environmental groups were present and embraced the impervious area concept as a mechanism for collection of stormwater fees. Chairman Martin asked if DDOE plans to propose legislation to request use of the database, and will there be a formal memorandum of understanding (MOU) between WASA and DDOE concerning use of WASA's work product. Mr. Johnson responded that this has not been defined but will direct this to the general counsel as appropriate.

FY 2009 Rate and Fee Proposal

Mr. Adebo discussed the calendar and the interactive model to show the impact on retail rates assuming the FY 2009 budget is approved without any changes. He also provided some background discussion with different rate options. Mr. Roth expressed concern on the matching of the budget timetable with the impervious rate approval process. Mr. Bardin requested a description of the model used to project the percentage increases as to how it relates to budget or other accounting numbers in projecting into the future. In addition, the Board needs an indication of the size of the LTCP cost pool that the Board is trying to recover through the impervious surface rate in order to understand the impact on the dollar amount of the rate increase. Mr. Adebo responded that the preliminary numbers from the impact analysis indicate a greater impact on rates for the multi-family, commercial and federal properties.

Mr. Adebo noted that the rates proposal and alternative scenarios provide varied simulated increase points to give the Committee a sense of the impact. The model assumes that the revenue requirements remain the same for the entire 10 year plan which is driven by debt service from the capital program. Chairman Martin stated that there is a communications challenge to explain and link the impact of costs and debt issuance in one year to the impact on rates in the out years. Mr. Johnson suggested we get external assistance to help develop this message so it will be conveyed in a different and more understandable way.

Ms. Roberson suggested decreasing spending in operations, delaying some of the capital projects, and reviewing the procurement process to lower rate increases. The question becomes, is it possible to get the same capital projects by making changes in the bidding process, by, for example placing a ceiling on the contract price. Ms. Russell responded that the Board would need to totally change the philosophy and policies on contracting. Mr. Johnson noted that there will be some answers from the ongoing third party independent review of the budget process. The savings would also need to be compounded for the out years. Chairman Martin further noted that the third party review is looking at ways we can broaden the procurement pool and get more bidders. He

suggested that we wait for the report that will be forthcoming in March prior to making these types of changes to our process. One area to consider will be to remove the Lead Service Replacement program from the budget. Chairman Martin requested staff provide a cumulative number indicating exactly how much additional money needs to be raised over FY 2007 budget for each succeeding year in the rate proposal and alternative scenarios. Mr. Adebo noted that this information is based on the proposed budget and the revenue requirements to meet those budgets. The actual numbers are entered into the rate model and the Board has the opportunity to make adjustments accordingly.

Mr. Bardin expressed that Mr. Gibbs raised a critical path issue about whether there is DC law involving the role of certified surveyors in making land measurement. Following up on the discussion from the last meeting, Ms. Russell's office researched existing DC laws regarding the requirement as to how property is to be measured. Staff was unable to locate anything in District's laws on how land should be measured. Staff spoke with the Office of the Attorney General and land surveyors. Mr. Gibbs expressed that he wants to make sure that WASA's process is in conformance with the law. He cited an existing DC law on general licensing that governs surveying practices in the District. There were also regulations issued in September by the Board of Engineering relative to the act. It describes the practices of surveying and the types of activities required to be performed by a licensed surveyor. It was requested that Ms. Russell look into this to see if either or both would conflict with the use of GIS data for implementation of service fees.

Mr. Bardin noted that in his recent research into the history of WASA shows that the WASA enabling act of 1996 was amended in 1996 before Congress would approve the revenue bonds provision, to provide among other things that WASA is exempt from taxation by the District on its property, assets and revenues. The MOU under which WASA has agreed to pay the District fees in lieu of taxes raises a legal question. The provision that the PILOT increases each time WASA increases rates appears to be a tax on income. Mr. Bardin requested a careful legal analysis of the issues involving the WASA enabling act, policies that the District government would no longer enjoy free water and sewer service, and the payment in lieu of taxes (PILOT). When the MOU was signed, WASA was operating under a series of transitional provisions in the enabling act, which said until WASA has systems operational; it can pay the District treasury for services. In addition the WASA bill shows the ROW fee but not the "PILOT" fee. Most of the amount in the ROW fee line on the bill is actually a PILOT fee.

Mr. Johnson responded that initial PILOT payment was established as a settlement fee. When the ROW was originally established it was to provide funding for a highway trust fund for street repairs to be administered by the Department of Transportation. The Authority probably had more facilities in the street than any other utility in the city. So, WASA's costs were disproportionately higher than the cost being charged to other utilities but the Authority was not causing proportionately the same amount of damage to streets. Another compromise was established and a provision put into the law to allow the Mayor to make exceptions to the per linear foot charge that was made for the ROW fee. An argument was made that the Authority was paying twice, both the PILOT and ROW fee. In addition, the facilities actually belonged to the District and WASA was being taxed for those same facilities. The Authority agreed to a compromise position that credited a portion of the PILOT payment toward the ROW fee and fixed the amount for a ten year period. There were a series of compromises involved. At the time, the attorneys involved in putting together the MOUs that established those agreements determined they were lawful prior to entering into the agreements. Ms. Russell stated that upon her arrival at WASA, she initially felt that WASA should not be paying a PILOT. It was explained that a compromise was reached with the District regarding these issues. She is not sure of the benefit of declaring the PILOT not a legal requirement unless the Board wants to revisit the entire issue of the compromises.

Mr. Johnson noted that PILOT is not an uncommon approach for enterprise funds and utility operations to make payments to jurisdictions. Mr. Bardin expressed that there is a law that binds

this Board as the governance of this Authority. The law also binds the District and the law says that the District shall not tax the income of WASA. WASA has an agreement with the DC Chief Financial Office (DC CFO) that WASA will pay more in PILOT to the extent that the rates are increased. Before WASA was created the District agencies was criticized for not paying for water and sewer use. One of the points made in the legislative history of WASA's enabling laws was that Congress hoped that this practice of non-payment would be changed and the Board did so. If there is not a legal justification for the MOU under current law justifying the present practice, a new law should be enacted, or the MOU revised, or if there is a legal justification for the MOU, he requested it be forwarded for review. Mr. Bardin also requested that any additional information that is presented to the Board should separate the PILOT and ROW. Chairman Martin asked if there is a reason why the Authority does not show the PILOT on the customer bill and if staff could revisit this issue.

Ms. Russell noted that WASA should look at the big picture. In essence, the District is charging its citizens for its water bill through the bill WASA gives them and the Authority calls it a PILOT. If you just called it the District's water and sewer bill, then the Authority is collecting it for the District. If the Authority doesn't pay it, then the District has to find a mechanism to charge for its water and sewer use. Mr. Johnson explained that the legislation that created the Authority said everyone was responsible for paying the costs of the services being provided to that user. The Authority was successful in winning the lawsuit that the District could not be exempt from paying for water and sewer use. The cost of the city's water and sewer use historically was roughly equivalent to the PILOT payment. Chairman Martin requested that at this time the staff only review the existing files to see if there is documentation justifying the PILOT from a legal standpoint. Regardless of the compromise, if it is not legal, Mr. Bardin stated that WASA can take the position not to make the PILOT payment or request an amendment to the law to make the payment legal. In addition, Mr. Bardin reiterated his request for a legal statement by the General Counsel on the issues surrounding the PILOT payment. He also stated his intent to revisit this request at the next Board meeting. Mr. Bardin reminded the committee that Mr. Stone asked at a prior meeting that the PILOT and ROW be split on the invoices. Chairman Martin requested that staff come back with a recommendation about whether the term PILOT should be placed on the bill.

There was some discussion about the labeling of Attachment F. Staff agreed to review the item so that accurately reflects the fiscal year under discussion.

Hearing no further business, Chairman Martin adjourned the meeting at 11:50 am.

FOLLOW-UP ITEMS

1. Chairman Martin requested that staff and the consultants present at the next meeting: information about imperviousness gradations, benchmark data from other cities, and a three part system in which a small cost of the cost pool is distributed over all of the square feet of land area.
2. Chairman Martin requested that staff show a cumulative number on the rate proposal and alternative scenario. This will show exactly how much additional money is needed to be raised over FY 2007 budget.
3. Chairman Martin requested that the staff review the existing documentation to see if there is a justification of the PILOT payment from a legal standpoint.
4. Chairman Martin requested that staff provide recommendations as to whether the PILOT and ROW should be listed separately on the bill, and if not, should there be information regarding the two fees on the reverse of each bill.
5. Mr. Gibbs requested that General Counsel review the DC Non - Health Related Occupations and Professions Licensure law to determine whether this law restricts the use of GIS for the determination of surveys and boundaries.