FRONT FOOT WHAT?

(I Thought Feet Came in Left and Right)

By: John P. Hale, ABR, CRS, GRI, REALTOR®

Homeowners that are selling a house with a well for their water supply and a septic system for their waste treatment do not need to be concerned about this topic. Everyone else - served by public water and sewer, needs to pay attention. Over time, Maryland counties and municipalities have evolved and made some changes in their interface with developers and home builders in the way they handle the huge expense of the installation of water and sewer infrastructure necessary for new housing development.

The local governments and their water companies used to work hand-in-hand (some would argue that it was sometimes more of a hand-in-pocket arrangement) with developers to use public bond sales to help finance the very large costs associated with installation of the water and sewer lines to new subdivisions. Obviously, the materials and labor for these major capital improvement projects would have to be paid for at the time the work was completed. As individual residences were completed and sold in these new subdivisions they were assessed an appropriate proportional share of that cost - either rolled into the base price of the home – or as a separate one-time closing cost. The recovery of that initial huge investment wouldn't take too long. Five and ten-year municipal bonds were common – incurring minimal interest and management expense. As the years have passed and the baby boomers demand for housing swelled, all of these "investments" and their associated costs became even more significant. Some county governments, perhaps in part, as incentive for continued desired development and resultant revenue, have agreed to manage and recover the costs from the new property owners over a longer period of years with an annual fee, plus interest charges and a variety of administrative fees – often billed along with the property taxes. Many people did not even know they were paying it.

More recently, perhaps because it has gotten so big and embroiled in allegations of mishandling in some cases, many Maryland counties have begun to require the developer (or their contractor) to construct and pay for this infrastructure as part of their normal responsibility. Since developers want to “develop” and move on, they typically contract for the service of financing and managing the ongoing collection of the huge expense that is necessarily allocated for each new property. Many of these systems are now amortized over a period of fifteen to twenty-five years – plus or minus, with annual charges of anywhere from five-hundred to two-thousand dollars per residential lot. Yes, these can be very significant debts. Oddly enough, even though they have created the appearance of an arms-length relationship, the counties are actually collecting these fees for the management companies on the annual property tax bills. Few homeowners fully understand exactly why, what and how they are being charged.

Different entities have had different names for this mystery charge: “Front Foot Fee”, “Front Foot Benefit Charge”, “Water and Sewer Facilities Assessment” or “Deferred Water and Sewer Charge”. Different names – same thing. The words “front” and “foot” originally referred to the basic measurement of the property lot line along the roadway where the water and sewer service parallels and / or crosses – usually the address street. In subdivisions where most of the lots are about the same size – townhomes for example, the fees would often be exactly the same for each home. In an attempt to be more equitable in non-cookie cutter lot subdivisions, where street frontage distances and lot sizes vary significantly, the actual calculation of “share” of cost may also be prorated based on total square footage of the lot and / or the potential number of bedrooms and baths in the residence. In the case of commercial property, the demand on the water and sewer system may be calculated differently and fees adjusted accordingly. Potential for future subdivision of the lot may also be a consideration in the assessment.

Out of all this change have come companies that specialize in managing all of this from start to finish. One such example would be U.S. Utility Corporation: http://usutilitymd.com/homeowners/, located in Ellicott City, Maryland, that hold themselves out for hire by developers.

Another player serving Anne Arundel, Baltimore, Charles, Frederick, Howard, Montgomery, and Prince George's counties is S&W Utility Company: http://swutilityco.com/, located in Potomac, Maryland.

There is also a very old organization, Washington Suburban Sanitary Commission (WSSC), which was created in 1918 and is now based in Bethesda, Maryland serving Prince George’s and Montgomery Counties. For more information about WSSC: https://www.wsscwater.com/customer-service/rates/front-foot-benefit-charges.html

Howard County has their interpretation: https://library.municode.com/md/howard_county/codes/code_of_ordinances?nodeId=HOCOCO_TIT20TACHFE_SUBTITLE_6UTCHAS_S20.610ANFROTBEASCH

Frederick County has yet another twist on the same practice: https://frederickcountymd.gov/DocumentCenter/View/266794

Anne Arundel County is also a player: http://www.aacounty.org/departments/inspections-and-permits/permit-center/utility-and-impact-fees/

Here are some more online resources on this topic:

Surprise, surprise, surprise: https://www.washingtonpost.com/local/md-politics/legislative-panel-examines-mystery-fee-for-water-and-sewer-connections-in-new-homes/2013/10/20/ac05d5dc-3108-11e3-89ae-16e186e117d8_story.html?utm_term=.954b37bd03ae

New Disclosure Requirements in Maryland for Private Deferred Water and Sewer Assessments: https://fcar.org/new-disclosure-requirements/

Front Foot Benefits, MATHME, LLC, Clarksburg, Maryland: http://www.frontfootbenefits.com/homeowners.html

Chesapeake Capital Partners, Marriottsville, MD: https://www.utilityassessments.com/homefaqs.html

If your property is affected by this issue, it is important to understand that these fees are legally enforceable – just as any community benefit like homeowner association and condominium fees. Just as with any and all material facts, disclosure of these fees is required before the sale and settlement and they are recorded liens against the property that come with all the legal consequences afforded by the law.

Curiously, the ***MARYLAND RESIDENTIAL PROPERTY DISCLOSURE AND DISCLAIMER STATEMENT*** does not address this issue at all. Real estate agents and sellers just have to remember to think about whether it is applicable to a given property that is about to be listed for sale or not. If it is, we have a form for that. The Maryland REALTORS® Association has an Addendum specifically for this purpose: ***NOTICE AND DISCLOSURE OF DEFERRED WATER AND SEWER CHARGES*** which is reprinted here:

NOTICE AND DISCLOSURE OF DEFERRED WATER AND SEWER CHARGES

Contract of Sale between Buyer ____
and Seller ____
for Property known as ____.

Pursuant to Section 14-117(a)(5) of the Real Property Article of the Annotated Code of Maryland, the following Notice applies to the resale of residential real property that is served by public water or wastewater facilities for which deferred water and sewer charges have been established by a recorded covenant or declaration. **This law does *not* apply in a county that has adopted a disclosure requirement that is substantially similar to the disclosure requirements under this law.**

NOTICE REQUIRED BY MARYLAND LAW REGARDING DEFERRED WATER AND SEWER CHARGES

THIS PROPERTY IS SUBJECT TO A FEE OR ASSESSMENT THAT PURPORTS TO COVER OR DEFRAY THE COST OF INSTALLING OR MAINTAINING DURING CONSTRUCTION ALL OR PART OF THE PUBLIC WATER OR WASTEWATER FACILITIES CONSTRUCTED BY THE DEVELOPER. THE FEE OR ASSESSMENT IS $___________,
PAYABLE (annually, quarterly, monthly, etc.) ____
UNTIL (DATE)____
TO (NAME & ADDRESS) ____
____
(HEREAFTER CALLED "LIENHOLDER").

THERE MAY BE A RIGHT OF PREPAYMENT OR A DISCOUNT FOR EARLY PREPAYMENT, WHICH MAY BE ASCERTAINED BY CONTACTING THE LIENHOLDER. THIS FEE OR ASSESSMENT IS A CONTRACTUAL OBLIGATION BETWEEN THE LIENHOLDER AND EACH OWNER OF THIS PROPERTY, AND IS NOT IN ANY WAY A FEE OR ASSESSMENT IMPOSED BY THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

If a Seller subject to this law fails to comply:

(a) Prior to settlement, Buyer is entitled to rescind in writing the sales contract without penalty or liability. On rescission, Buyer is also entitled to the full return of any deposits made on account of the sales contract. If any deposits are held in trust by a licensed real estate broker, the return of the deposits to a Buyer under this law shall comply with the procedures under § 17-505 of the Business Occupations and Professions Article of the Annotated Code of Maryland. Buyer's right of rescission shall terminate five days after Seller provides to Buyer written notice in accordance with this requirement; and

(b) After settlement, Seller shall be liable to Buyer for the full amount of any fee or assessment not disclosed, unless Seller was never charged a fee or assessment to defray the costs of public water or wastewater facilities by the developer, a successor of the developer, or a subsequent assignee.

All other terms and conditions of the Contract of Sale remain in full force and effect.

Buyer Signature	**Date**	**Seller Signature**	**Date**
Buyer Signature	**Date**	**Seller Signature**	**Date**

As you can see, this form doesn't mess around. The seller has a huge liability if proper and timely disclosure is not made.

Sooner or later every reader affected by this is going to think of this question: Is the front foot benefit fee tax deductible? Sorry…no. Even though the fee is often included on the property tax bill – there really isn't any connection. It isn't a tax – it is an assessment for a finite period of time for a specific expense, typically incurred prior to development and construction of the property - except in cases where an existing residence, previously on their own well and septic - opts to connect to a new or recently installed public water and sewer system.

However, similar to property taxes, this annual assessment (usually billed for a calendar year) should be prorated at the time of settlement when the property is sold and title transfers to new owners. The lender / mortgage service company may or may not maintain a reserve in the escrow fund that is maintained to pay property taxes, mortgage insurance, and homeowner's insurance – especially in cases where the new homeowners' equity is less than 20 percent of the property's appraised value.

So, put your best foot forward and enjoy the modern convenience of indoor plumbing!