



Attorneys & Counselors at Law

TO: Board of Trustees
Boone County Regional Sewer District (the "Sewer District")

FROM: Chris Pieper
Angela Burke

RE: Legal Fee Reimbursement Policy

DATE: January 9, 2024

In an effort to assist the Sewer District in recovering the cost of legal fees incurred on certain development projects, we are providing a recommended policy for the Board's consideration, pursuant to which the Sewer District would require cost share from developers for legal fees incurred by the Sewer District, similar to current cost share practice for other professional services incurred by the Sewer District in connection with a development project.

Although there may be circumstances where developer cost share for legal fees incurred by the Sewer District in connection with a development project is not appropriate (e.g. where a private developer seeks only a single connection, etc.), we recommend the Sewer District adopt a policy to require developer payment of Sewer District legal fees for projects that are likely to result in the Sewer District incurring significant legal fees in connection with a real estate development intended to generate significant profit for the developer. For example, for a variety of reasons outside of the control of the Sewer District, it has incurred more than \$10,000 in legal fees to-date for the yet-to-be-completed Brookfield Estates/Oak Hill treatment facility project.

Accordingly, and after consultation with Sewer District staff, we recommend adopting a policy requiring developer reimbursement or cost-sharing of Sewer District legal fees in the following circumstances, which have typically resulted in the Sewer District incurring significant legal fees for a single development project:

- A. Projects involving developer's construction and conveyance to the Sewer District of treatment and other facilities;
- B. Projects involving rezoning;
- C. Projects in which the Sewer District includes cost-sharing provisions; and
- D. Projects involving a connection agreement with the City.

We also recommend that such a policy allow the Sewer District to retain discretion to waive cost share on a particular development project that may otherwise fall within one of the above categories.

If adopted, such a policy could be implemented through the inclusion of provisions in connection or service agreements similar to the provisions currently employed for reimbursement of fees the Sewer District incurs to effectuate cost sharing of third-party engineering reviews. The agreement would require that the developer pay invoiced legal fees with a not-to-exceed amount established at the outset of a project.

We have prepared the following policy language for consideration by the Board of Trustees:

In furtherance of the mission of the Boone County Regional Sewer District (the "Sewer District") to provide cost-effective sanitary sewer to current and future Sewer District customers, it shall be the policy of the Sewer District to require developers share in the cost of the Sewer District's legal fees incurred on certain projects, in the Sewer District's sole discretion, including but not limited to projects which will or may involve:

- a. Rezoning of all or part of the property subject to the project;

- b. Developer construction of wastewater plants and/or other facilities that will be conveyed to the District;
- c. The sharing of other project-related costs between the District and developer; and/or
- d. Agreements, including but not limited to connection agreements, with the City of Columbia.

When required by the Sewer District, the cost of the Sewer District's legal fees to be borne by the developer shall be included in a written agreement between the Sewer District and the developer.