

News

Orrick Quoted in Washington Post

Attorneys

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March 16, 2011

The Washington Post

Montgomery IG says county, WSSC overpaid developers

By Miranda S. Spivack

The developers of a west Germantown subdivision were reimbursed twice by local government agencies for building a pumping station and water main, collecting more than \$6 million on a project that cost them about \$3 million, a Montgomery County inspector general's report says.

The payments occurred even though senior officials in the county government and the Washington Suburban Sanitary Commission were aware as early as 1998 of the potential for double payments, and some WSSC officials tried to stop them, the report says.

The risk of double payments was also outlined in 2007 in a report by Montgomery County Council staff looking into reimbursement plans for the Clarksburg Town Center developer.

Council staff urged the council to change the law to forbid double payments, but no such law was passed, council records show.

Tim Firestine, Montgomery's chief administrative officer, disputed the report. He said in an interview that "its conclusion is way off," and he disputed the idea that there were double payments.

In a letter to the council, he also said that Inspector General Thomas J. Dagley and Deputy Inspector General Christopher Giusti had moved too quickly to issue the report, which was released late Monday. Firestine said they should have waited for a response from the administration of County Executive Isiah Leggett (D). Firestine, Leggett's top aide, and Leggett's staff had already sought two delays.

Among the report's findings:

In 2002 and 2003, Montgomery made cash payments totaling \$3.7 million to Woodcliffe Development District for sewer and water for properties owned by

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Artery Hoyles Mill of Bethesda and Arcola Investment Associates of Hyattsville.

The WSSC applied additional cash payments to the projects in 2006 totaling \$1.87 million and credits totaling \$1.1 million.

WSSC officials raised questions several times with Montgomery officials, suggesting that the county, not the developers, should receive WSSC credits.

There was little documentation from Montgomery to help the inspector general ascertain how the \$6 million was spent.

The report does not address whether taxpayers might be overpaying but suggests that the county and the WSSC examine the findings to “ensure accountability in government and developer actions and to ensure that county payers who . . . pay the annual special tax are protected from any unnecessary or unreasonable payments.” Since 2002, the 1,300 west Germantown property owners have paid a special tax of about \$800 a year, which they will owe until 2025.

The inspector general has contacted law enforcement officials to examine the report. It says that the county had not been able to provide documents or invoices justifying the payments, as WSSC had done.

The report draws a complex picture of the development district reimbursement system, which sparked a political fight in Montgomery, helped lead to the appointment of a new planning chairman in 2006, and led the council to reexamine the payment and taxing system.

Last fall, the council killed off the Clarksburg Town Center special tax district, saying it wasn’t working correctly. The county is looking at other ways to help developers finance roads, sewers and other infrastructure they need to build communities.

Jack Orrick, the attorney for the developers, said that although double payments were made, the county gets much of its share back through the tax on homeowners.

The developers ultimately don’t fully benefit twice, he said, because they pass along credits to builders from the sanitary commission.

“The report is highly misleading and prejudicial to the parties involved,” he said.

The inspector general recommends that Montgomery and the WSSC review “all fiscal, ethical and legal accountability issues.” The report also suggests that the county and sanitary commission “jointly assess and seek recovery of the full amount of all questionable payments.”

The council is expected to hold hearings on the report next month. Several council members said they had not had time to digest the findings.

WSSC General Manager Jerry N. Johnson responded to the report in writing, correcting technical details and saying that the WSSC’s reimbursement system goes directly to developers. He did not comment on the report’s conclusions but said the sanitary commission “has no in-depth knowledge” of the special taxing district set up by Montgomery.

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“The bottom line here is . . . there are certain ways we have to handle these things, and that is what we did,” WSSC spokesman Jim Neustadt said. “We were in constant communication with Montgomery County. They knew what we were doing, and we knew what they were doing.”