



BOROUGH COUNCIL SUB-COMMITTEE MEETING MINUTES

COMMITTEE NAME: **MS4 - Storm Sewer Program**

PLACE OF MEETING: **121 S. Walnut Street; Council Chambers**

DATE OF MEETING: **October 23, 2023** TIME OF MEETING: **5:00 PM**

ATTENDEE/CHAIRPERSON: **Emanuel Mirabito** ATTENDEE #2: **Ron Madison, P.E.** ATTENDEE #3: **Brad Flynn** ATTENDEE #4: **James Kratz, Esq.**
ATTENDEE #5: ATTENDEE #6: ALL OTHER ATTENDEE(S):
Carol Bear-Heckman, 207 W. Northampton Street
Darrin Heckman, 207 W. Northampton Street

EXCUSED OR ABSENT:

MEETING MINUTES PREPARED BY: **Emanuel Mirabito**

MINUTES STATUS: **APPROVED/FINAL**

MEETING MINUTES:

- Solicitor Kratz opening the meeting with a brief overview of MS4.
- Solicitor Kratz discussed two proposals that were submitted to the committee by two law firms that have completed work developing Storm Sewer Authorities.
- The firm Salzmann Hughes was a bit more expensive (\$18,000) than Norris McLaughlin (\$15,000); both proposals set not to exceed. Salzmann Hughes had the most experience in Storm Sewer Authorities, establishing some 30 and/or more authorities to Norris McLaughlin's one to two. Solicitor Kratz recommended the possibility of Borough Council interviewing both law firms. Manager Flynn and Chair Mirabito recommended the MS4 committee present this information to Borough Council, allow Council to either suggest an interview meeting, or authorize the committee's recommendation in selecting a firm. The committee's recommendation would be to select Salzmann Hughes, given that firm's experience with establishing Storm Sewer Authorities.
- The law firm will be responsible for establishing a recommended Storm Sewer Authority along with the fee program, articles of incorporation, leases, and master agreements.
- The committee will discuss further with Borough Council at their November meeting.
- Manager Flynn briefed the committee that the Bath Water Authority expressed no interest in assuming responsibility for Bath's MS4 program.
- Carol-Bear Heckman asked whether the storm water utility fee would be based on impervious or impervious coverage. Engineer Madison explained it has been a widely accepted (practical and legally--thru court challenges) to base a storm water utility fee on impervious coverage, coming up with a base rate.
- Carol-Bear Heckman asked why each municipality is on different permitting schedules. The committee explained the NPDES permitting cycle runs every 5 years and is different for each of the watershed communities, depending on when they entered into the program. Bath's NPDES was recently renewed January 1, 2023, and will expire December 31, 2027.
- Darrin Heckman asked; there was a lot of money being spent with lawyers and engineers to establish something that could fall under the borough, why a need to create an authority. The committee explained the borough code does have storm water fee provisions; however, the code allows for fees to be implemented for specific storm

sewer projects that front certain property; there is no community-wide basis for establishing a storm water fee in the code. The 2nd class township code, among others, were amended to specifically authorize a municipality assess storm-water fees. There is also a storm water fee court challenge circulating among the state Supreme Court; addressing the borough's powers to implement a storm sewer fee. The time it may take for the court challenge to finish and the state legislature to enact changes to the law will exceed the time limit of Bath's current NPDES permit to make changes to the storm sewer system. The Municipal Authorities Act was amended in 2013 to address storm sewer utility fees. The Storm Sewer Authority would have a lease and master agreement with the Borough to operate the MS4 system.

- Darrin Heckman asked, how was the capital projects for storm sewer systems assessed or developed? The committee stated it was determined by the previous engineering firm that created the Borough's Pollution Reduction Plan; the estimates are based on analysis and information available almost 2 years ago.

- Manager Flynn asked Engineer Madison if Bath could be exempted from the MS4 program. Engineer Madison said there are no exemptions for communities that have storm sewers draining directly into a stream or creek, like the Monocacy. MS4 programs are here to stay and the permitting process, each 5-year cycle, may become more involved over time. The first permitting cycle was primarily about public engagement and education, the second permitting cycle began developing storm water pollution reduction plans, and now the current trend is to implement pollution reduction practices, along with continued maintenance and operation of the MS4 system. The committee will share these thoughts with Borough Council at the next Council Meeting. It is recommended by the MS4 Committee that the process begin to develop a Storm Sewer Authority along with a storm sewer utility fee program. Engineer Madison will have a proposal from his office regarding the development of the MS4 program from an engineering perspective along with the GIS analysis. Manager Flynn stated engineering and legal costs have been previously discussed and entered into the Borough's 2024 budget drafts.

1. Meeting adjourned at 5:50 PM