

July 23, 2018
Joint Special Council/Clarion Borough Storm Water Authority Meeting
Minutes

A special joint meeting of Clarion Borough Council and Clarion Borough Storm Water Authority was held on July 23, 2018, in the Clarion Free Library. President Lapinto called the meeting to order at 6:00 p.m. Everyone recited the Pledge of Allegiance. Councilmembers present were Ms. Roberts, Mr. Aaron, Mr. Noto, Ms. Logue, and President Lapinto. Mr. Zerfoss and Dr. Sanders Dédé were absent. Mayor Parker, Solicitor Marshall, Mr. Colosimo, Mr. Preston, and Secretary LaVan-Preston were also present.

Storm Water Authority Boardmembers present were Mr. Tom DiStefano, Mr. Ben Aaron, and Chairman Jason Noto. Storm Water Authority Boardmembers Mr. Chuck Bartley and Mr. William Miller were absent. Mr. Bruce Hulshizer, HRG, Inc., and Attorney Lee Stinnett, Salzmann Hughes, were also present.

President Lapinto stated the purpose of the meeting, as advertised, for discussing the lease and management agreements between the two entities and asked Mr. Noto, Chairman of the Board, to report.

STORM WATER AUTHORITY

Mr. Noto reported the Board wanted to review and work out some of the details and specifics of the two agreements between the Storm Water Authority and Borough. Decisions need made on how the agreements are going to look so everybody has a thorough understanding of who does what. The Board's engineer and lawyer are here to answer any questions. Mr. Noto stated Secretary LaVan-Preston provided Councilmembers with the agreements, which Solicitor Marshall's recommendations/suggestions were indicated in color.

Attorney Lee Stinnett provided background that their firm began helping Clarion Borough in 2016 to form a Storm Water Authority. Mr. Colosimo has done a great job of keeping everyone on track after Council decided to move forward after taking a break. Projects are moving along as well. Attorney Stinnett commented more importantly everyone has been waiting to hear from PennVEST to see if grant/loan funding was possible, which it was. Due to that, these documents will have to be changed. The biggest question tonight is to determine how each entity wants to deal with the documents; where on the spectrum is the Borough control and Authority control. Attorney Stinnett pointed out these documents were prepared in 2016 and, at that time, the agreements were prepared more tilted towards the Borough side. However, the way things have been progressing; the Authority has taken the lead and done a good job with moving things forward. Attorney Stinnett suggested the pendulum should move over to the Authority side while allowing some backstops and checks for the Borough to make sure the rates are not out of control. Everybody realizes the concerns of the citizens aren't going to go to the Storm Water Authority Board but to the government entity and this is the reason it is so important for the Borough's involvement. Another big question for tonight is how do the two want to handle the budget process? In discussion with Mr. Bruce Hulshizer from HRG, the

thought is it should come from the Authority rather than the way it is currently drafted. Again, this is just because of the way the Authority has been proceeding and already prepared a capital improvements plan. The Borough will still review and give ideas of the project scope. The Borough will need to provide guarantees on financing, the PennVEST applications, and also have the yearly oversight and input on the budget. This is really what determined the rate. Attorney Stinnett stated the Borough's Solicitor helpfully added the emergency repairs in the agreements on how to deal with those types of situations that may not be in the Authority's plan. Attorney Stinnett recommends the first budget should be the Authority's and then be provided for the Borough to review in the October budget timeframe for the fees.

Ms. Logue asked if someone on the Authority Board has experience in preparing a budget or who would do it?

Attorney Stinnett reported Mr. Hulshizer prepared the capital improvement plan and what projects will be happening, which helped when determining rate. That information is then provided to the Authority for review and then would be handed over to the Borough during their budget timeframe. This is a little different than a standard budget, because it's hard to compute a \$4 million capital budget and what that really means to the rate payers.

Mr. Hulshizer added Treasurer Colosimo, Secretary LaVan-Preston, and Mr. Sam Lynch have been and will be significant contributors to the budget development each year.

President Lapinto asked how you prepare a budget when you don't have any revenue?

Attorney Stinnett commented you project the revenues from the fees that are anticipated to be collected.

Mr. Hulshizer stated Council has been given the draft budget for 2019 in a handout, which is attached to the Official File Copy of these minutes. This was prepared with a large amount of help from Mr. Lynch. This shows how much money is needed so that then a fee can be set for the storm water rate. In developing the fee, Mr. Hulshizer commented it is projected out 5 years so that the Authority does not have to raise rates in a year. The 5 years includes the capital improvements indicated at the bottom of the budget, which includes the PennVEST debt service and then a second debt service assuming borrowing is done next year in accordance with the plan that was approved by the Authority. The idea is additional debt service is envisioned and that is how the rate was determined that the Authority is recommending for 5 years. That's what this budget is based on.

Ms. Logue asked if the revenue projection is indicated somewhere or a formula was figured out that will make sure it is attainable.

Mr. Noto reported the members looked at different variables and the effect it will have if certain things are done to find a balance.

Attorney Stinnett commented the rate has to be a reasonable number. A lot of discussion centered on delinquencies, administrative costs, and the impact of a credit policy to the bottom line. It boils down to the actual per equivalent run-off unit.

Ms. Logue then inquired if some of the revenues will be put away to build up to the capital improvements that will need to be done?

Mr. Hulshizer informed Council the capital improvements projects are included in the budget that assumes borrowing to finance them. Also, there is a line item for the Borough's Public Works Department to complete in-house projects.

Attorney Stinnett noted some of the financing may require a sinking fund and really depends on where the Authority will go for the debt.

Mr. Noto pointed out it depends on the future as well. Again, this is a projection on the major problems as long as nothing surprising pops up.

Mr. Hulshizer reported 63% of the impervious area is non-residential and the revenue from those is about \$27,000 of the \$43,000 projected a month. Of that \$43,000 that is a 5-year projected budget includes 10% delinquency and 5 % credit. The amount per 1,000 square foot for non-residential impervious area is about \$3.75, meaning \$10.75 on the base fee for the majority of the residential customers. Now for those residential properties that have a lot of impervious area, Mr. Hulshizer commented the Authority's recommendation is to go with that base fee up to the average impervious area and then those past the average will pay the incremental increase of \$3.75 per 1,000 square foot.

Attorney Stinnett stated these figures are pretty consistent with what all the authorities he's been working with across the State have been setting.

Just so Borough Council is aware, Solicitor Marshall clarified what is being discussed about with the lease and how he approached if from Council's viewpoint was there are some restrictions on what the budget should be and how it can be and the rates and everything should be set in it. The Authority is going to have to account for the debt service, because they are going to be making the payments to the Borough to cover the debts and everything that they are taking on for the storm water system. Solicitor Marshall stated that's part of what's contained in the Rent Provision, Section 3, and then the Authority Covenants in Section 4 on how they are to go about setting the rates and the minimum to make sure that everything is covered.

Attorney Stinnett commented the documents are very much companion documents and this is why they are progressing together and referring to each other. Lately, the termination language is being added if one does the other automatically terminates as well. Attorney Stinnett reported the factor that will need built into the documents will be how to handle the future transfer of the PennVEST project over to the Authority when the times comes. PennVEST will be consulted for input on how to handle this when the time comes.

Mr. Bob Balough, 86 South Seventh Avenue, didn't think the Authority itself will do any borrowing and thought it was Council or the Borough and wondered why it will be transferred over to the Authority?

Attorney Stinnett noted the PennVEST project. The Authority wouldn't be able to borrow the first year. All borrowing from municipal entities is based on rate revenue, and the first year Council would have to guarantee any borrowing.

Solicitor Marshall added PennVEST doesn't lend money to municipal authorities without requiring that the municipal government itself to pledge the full faith and credit of the tax system. In normal sewer or water authorities, they take out the loan, because they own the system and then the local government unit guarantees it through their tax revenue. In this instance, the Borough's going to own the system, at least that's the game plan now, so the Borough will assume the loan with PennVEST. However, somewhere along the line, Solicitor Marshall stated that may transfer, and the Borough will be just the guarantor. That's why Attorney Stinnett commented he will have to work that out with PennVEST in how they want to go about this.

President Lapinto announced PennVEST awarded the Borough a grant of \$1,224,622 and a loan of \$684,078 at 1% interest. This is very exciting great news.

In the projected budget, Ms. Roberts questioned if there are any of the reimbursements to the Borough for the cost of the money incurred to date included; for instance, the fly over and set up fees?

Mr. Hulshizer stated it is included in the PennVEST borrowing reimbursement to the Borough.

According to the documents, Mr. Balough stated the budget is always prepared by the Borough and questioned if the Borough will determine what projects and maintenance are going to be done? It seems like it's one-sided.

Attorney Stinnett commented earlier the documents were prepared in 2016, and the Borough was in control in these agreements. However, that's the reason he suggested changing that as the Authority seems to be the leader now. At least that's what has been occurring over the last 6 months. The Borough would still be involved in the budgeting, because rate payers are going to show up at Council Meetings. Council needs to understand what the Authority is doing with storm water system and be able to educate everyone as that happens. Storm water is relatively new and people don't see what they are paying for as he/she does with sewage as it flows out the pipe into the system.

Mr. Noto agrees with Attorney Stinnett that it makes sense for the Storm Water Authority Board to prepare the budget and Council approve it during budget time each year.

President Lapinto asked for verification that these documents are not ready for anyone to vote on this evening and inquired if another joint meeting will be necessary?

Attorney Stinnett reported some changes will need reflected in the documents and agreed to work with Solicitor Marshall to get all language in place and acceptable with both entities. Another joint meeting would not necessarily be required as long as both approve the documents at their respective meetings.

Ms. Logue questioned where the Borough employees that do work for the Authority is included in the budget so that the Borough is compensated.

Mr. Hulshizer stated the regular full-time employees' wages are at the top for Secretary LaVan-Preston (5%), Treasurer Colosimo (25%), and another administrative new hire (75%). Under Public Works, the employees will be compensated as well. Benefits are also addressed in the appropriated departments.

Secretary LaVan-Preston inquired if the \$60,000 under Capital Outlay (PW) is for projects that the Public Works Department will be able to do in-house?

Mr. Hulshizer agreed for projects and also renting equipment the Borough owns.

Mr. Noto asked if that answered Ms. Logue's question or if she wanted to know where the Borough's payback for the money already spent on forming this Authority is located in the budget?

When the Borough applied for PennVEST, Mr. Hulshizer reported that amount was included in the \$1.9 million for the Center Place Project but also to recoup what was already spent to form the Authority. Thankfully, PennVEST approved it that way. Once the closing on the application is completed, Mr. Hulshizer thinks a draw on the PennVEST Grant to repay the Borough can be done. In other words, the money will come back in a lump sum. Also, part of that handout included the storm water capital improvement plan and map. Mr. Hulshizer stated the Authority is recommending that the Borough approves information tonight. If that is done, then the Authority can set the rates and keep moving forward.

Attorney Stinnett suggested a packet of the rates, resolution, the credit policy, and budget could all be reviewed and approved by both sides. This may be a joint meeting in the future so everyone is clear and understands what will be established and how it will be handled. Members may have questions on the credit policy.

At the public information meeting, Ms. Logue thought \$5 was the projected rate and questioned if it is now \$3.75?

Since the PennVEST funding was unknown until after that meeting, Mr. Hulshizer stated the rate was projected as \$5. Now that it has been awarded to the Borough, the rate of \$3.75 should be good but is not 100% until the resolution is approved.

Attorney Stinnett pointed out HRG really stepped in to apply for PennVEST to help lower the rate.

President Lapinto expressed the Borough's gratitude for HRG applying and verified no action will be taken tonight.

Mr. Noto thinks guidance is necessary on if everyone feels the Authority would do the proposed budget with Council doing the final approval. The attorneys need to know how to prepare the documents so that Council could act at the next Council Meeting and the Authority could at the next Storm Water Authority so that the rate structure could keep moving forward.

Attorney Stinnett asked when the next meeting of Council would be?

Secretary LaVan-Preston commented August 7th, but the documents should be included in the packet which would be mailed no later than August 2nd.

Ms. Logue verified it's around \$10.75, and if it will be billed quarterly?

Mr. Hulshizer stated for residential \$10.75 is correct and the plan is quarterly.

As County fiscal director, Ms. Logue asked all these questions for the County's budget. The latest to have a good grasp on the fee for 2019 would be August-October. Also, if someone wishes to pay for the whole year, will a discount be available?

Mr. Hulshizer stated yes, probably 2%.

Back to the credit policy, Ms. Logue inquired if a resident would be able to receive one if he/she does something, like a rain barrel?

Attorney Stinnett thinks that is an important consideration for residential credits but depends on how much oversight you have of them, because someone's bill will be reduced but the cost of service will be increased. Non-residential credits are doing a lot of helpful things for the system. Attorney Stinnett asked for guidance on the residential credits and stated it would be helpful in order to finish up the policy. A lot of communities struggle with this issue. Rain barrels are a good idea; however, it becomes more of a policing issue and cost more overall. However, bigger systems installed by residential customers may warrant more consideration.

President Lapinto asked who would monitor that and make sure everything is working.

Authority Secretary DiStefano commented he has a rain barrel that goes to water his garden, his downspouts go into pervious areas, and thinks recognition does need built in.

If each entity wants to allow it, Attorney Stinnett stated it could be pursued. It's just a matter of putting heads together and figuring out what is necessary.

President Lapinto asked if the credit policy could be introduced after it's up and running?

Attorney Stinnett does not prefer setting it up that way. Policies can be changed easily later. The purpose of the credit policy for storm water fees is to bring the fee in line with the level of the service the customer receives. Federal cases will always ask that very question: was a credit policy in place to allow the user to get their fee in line with the service they received. Also, in conjunction with the credit policy, an appeal procedure is necessary. Council and the Authority will approve two packets, one for the rate resolution and the other for the credit policy and all the forms necessary to fill out an appeal. The reason for two separate policies is in most cases one has to be changed but not the other one. The type of facility to handle water that someone may get a credit for must be maintained and periodically checked to make sure it continues to work. If not, then the credit can be lost.

Mr. Hulshizer stated like a detention basin, where the water is contained and then slowed released as it is able to be taken in the system. This definitely needs included in the credit policy. Residents will not install something like this but a commercial facility may.

Ms. Roberts pointed out the University dorms along Main Street installed a system.

President Lapinto commented CVS did as well.

Ms. Roberts asked if there is a clear definition on impervious and pervious area? Residents are going to question what he/she is responsible for, especially in reference to off-street parking areas.

Attorney Stinnett reported there will be and recommends a broad definition that allows some discretion for the gray areas. The definitions will be included in the rate resolution.

Mr. Hulshizer thinks it could be stated as a surface that rain water cannot infiltrate in the ground, including packed gravel.

Ms. Janice Horn, 32 Barber Street, inquired if the plan will include any changes made on a property or new buildings?

Attorney Stinnett agreed there is coordination between the Borough and the Authority to share information whenever a land development plan is presented so the impervious area can be calculated.

Mr. Hulshizer feels the Borough should be doing that in-house.

Ms. Logue noted that they blacktopped their driveway at their residence, and the Borough did not require a permit. Also, approximately how many properties will be over the 3,700 average square footage?

Mr. Hulshizer stated 60% of the properties are at base rate. Quite a few of the 479 residential properties are just over the average.

Mr. Balough questioned how a property is determined residential and which one is commercial? Some properties in the single-family areas are not single-family but may consist of two or four apartments.

Attorney Stinnett reported it's usually differentiated as single-family residential or non-single-family residential and this needs decided as well.

Mr. Balough asked if the Authority could go by the zoning map?

Mr. Colosimo stated no, because the zoning districts have multiple uses and can contain commercial and/or residential.

Solicitor Marshall informed Mr. Balough what everyone is saying is it depends on the structure of the house. If it's a duplex, it's commercial; if not, it's non-single-family. When this is planned, there will be single-family and non-single-family residential. If it is anything other than a single-family residence, it falls under the other category.

Ms. Roberts sees his confusion though with a rental owner.

Solicitor Marshall pointed out that's not single-family residence then.

Ms. Roberts explained her house is single-family. But in her neighborhood, a house that has been broken into three could be turned back to R-1 at some point.

Mr. Noto stressed the amount of rain water that the building is generating is what the fee is for not the number of people in a dwelling. That is not relative. Mr. Noto inquired if Attorney Stinnett would be able to have the credit policy and the agreements ready for the next Council Meeting?

Attorney Stinnett stated no, but the management and lease agreements should be ready for the meeting. Once the agreements have been rewritten, Attorney Stinnett will work with Solicitor Marshall to make sure the changes are agreed upon. The documents should be ready by the August 2nd deadline for the packet so Council can review and understand the stipulations.

Mr. Hulshizer commented the Authority should be able to discuss the credit policy and hammer out the specifics at their August Meeting.

President Lapinto feels if anyone were to enforce rain barrels it would probably be the zoning officer, but those wages should be reimbursed by the Authority if that is the direction it goes.

Mr. Noto stressed the point is to charge a rate that is necessary not to make a profit.

Attorney Stinnett informed everyone the agreements will spell out hourly rates for employees so that the fee will not be excessive.

If an appeal is filed, President Lapinto asked who would hear the case?

Attorney Stinnett stated usually a Borough staff member first, then the second step is the Authority, and then the owner would have the right to file a lawsuit in the Court of Common Pleas. It's a three-step process.

President Lapinto asked Mr. Aaron or Mr. DiStefano, as Authority Boardmembers, if they had any questions?

Authority Secretary DiStefano thinks he will discuss the detailed questions about the agreements, how they might work or conflict with each other, later.

Because of the interest expressed for budgeting purposes, Mr. Hulshizer asked if the Authority would feel comfortable sharing some numbers and is good with the rate of \$3.75.

Mr. Noto is comfortable with \$5 as the high number.

Attorney Stinnett doesn't think there is any problem sharing the estimated impervious area and the projected fee with an entity.

Mr. Noto stated that's why the flyover was done so everyone could be informed what it is.

President Lapinto asked for any other questions?

Mr. Hulshizer asked if there is an update on the billing software?

Secretary LaVan-Preston stated RA Services sent some questions back that need answered before they can determine if the program can be used for the Authority, which she deferred to Treasurer Colosimo last week. Basically information is needed on how it will be billed, monthly or quarterly; if there are discounts or penalties; and if it is a flat fee for all or some so the formula can be determined. Secretary LaVan-Preston can forward that onto Mr. Hulshizer tomorrow but until that is provided, it's a standstill.

Mr. Hulshizer can provide that information.

President Lapinto questioned when the Borough should hire someone?

Mr. Hulshizer stated that is a question on when the first bill is to be sent out. There was discussion on the 4th quarter but now may be early next year.

Mr. Noto feels the beginning of the year would be better.

Mr. Hulshizer asked Secretary LaVan-Preston for her opinion?

Secretary LaVan-Preston isn't sure until the billing system is decided upon. The individual will need to set up the customers and accounts as well so there is a lot of preliminary work prior to bills being sent out.

Mr. Hulshizer suggested October may be a good time to hire someone. The Authority won't have any employees so the Borough would do the hiring.

President Lapinto thinks maybe September would be the time to move forward. A good job description and wage information needs discussed prior to though.

Mr. Hulshizer and Solicitor Marshall both feel that the Borough would have to have a motion on the agenda to accept the PennVEST offer in the minutes in August.

In discussion with Dave Henning of PennVEST, Mr. Colosimo doesn't feel that is necessary yet. Opening the original offer, indicated acceptance. There will be several follow-up calls to iron out the details before the closing.

Solicitor Marshall thinks the Borough has to sign it and send it back and also asked Mr. Colosimo to associate him with the PennVEST program so he can review all necessary papers.

Mr. Colosimo believes, and will confirm, that Solicitor Marshall is now on the account.

Several members wondered if that could be done tonight.

Secretary LaVan-Preston doesn't believe so as this meeting was advertised for the two agreements and possible action on them.

Mr. Aaron asked if the documents are not ready by the first meeting in August the second one is advertised and would just need announced.

Mr. Colosimo will try to get everything in order for the first meeting.

Mr. Hulshizer suggested Council could accept it right now.

Mr. Noto stated that's not possible, because it wasn't advertised for that purpose, which Solicitor Marshall agreed.

Mr. Hulshizer commented HRG and Solicitor Marshall can review the PennVEST offer and then Council could accept it at the August meeting. Council will need to decide if EADS or HRG will be used for the PennVEST closing phase over the next few months and throughout the disbursement phase. EADS could stay on board as the design engineer, and HRG could do the administration of the financial side. Council will need to decide.

President Lapinto has a preference and asked if Mr. Noto wishes to discuss?

Mr. Noto stated no discussion has taken place yet but agrees with President Lapinto.

Mr. Hulshizer asked Solicitor Marshall if he feels comfortable reviewing all the documents as this is a specialized area.

Solicitor Marshall doesn't foresee any problem and will contact Attorney Stinnett if need be.

Mr. Noto asked why Council cannot approve the PennVEST financing tonight?

Solicitor Marshall stated it wasn't advertised for that reason and doesn't think anybody has had an opportunity to review the whole funding offer at this point.

Ms. Roberts asked if a motion is necessary to advertise that reason for the next meeting?

Secretary LaVan-Preston doesn't believe as it is a regular Council Meeting to conduct business.

Solicitor Marshall verified that is correct.

Secretary LaVan-Preston announced this was advertised as a joint meeting for the two purposes of reviewing the lease and management agreement and possibly taking action.

Mr. Balough asked what happens to the people that will not pay until there is some sort of legal action to force them to so do? This isn't necessarily for one house but someone that owns 20 different locations.

Attorney Stinnett commented it depends on what the Authority determines the collection policy to be. There are a lot of different ways to handle that, which will be a policy decision.

President Lapinto asked for anything else.

Mr. Hulshizer asked if Council wants HRG to review the PennVEST?

President Lapinto and Mr. Noto stated yes.

Secretary LaVan-Preston asked for clarification on what action items need on the August 7th Council Meeting agenda?

Attorney Stinnett and Solicitor Marshall will work together to get the lease and management agreements in order so two separate motions will be on the agenda to adopt them and also the acceptance of the PennVEST offer will need on as a motion. The agreements will be provided by August 2nd for Council to review in their packet. Solicitor Marshall agreed to participate in the August 7th meeting by telephone as he will be out-of-town.

On a motion by Ms. Logue with a second by Mr. Aaron, the meeting was adjourned at 7:02 p.m.

Linda M. LaVan-Preston, Borough Secretary