

BOARD OF PUBLIC WORKS

Vision

The Board of Public Works exists to improve the quality of life of the customers we serve.

Mission

We are dedicated to providing our current and future customers with utility and other value added services in a safe, reliable, and economical manner consistent with sustainable growth, community involvement, and environmental stewardship.

Regular Meeting of the Board of Public Works was held at Council Chambers, Lewes City Hall, 114 East Third Street, Lewes, Delaware on Wednesday, June 30, 2010 at 7:00 p.m.

Members Present: President Gary Stabley, Messrs. James Carmean, James Gayhardt, and James Richmann

Members Absent: Mr. C. Wendell Alfred

Others Present: Kenneth Mecham – General Manager, BPW
James L. Ford, III – Mayor, City of Lewes
Paul Eckrich – Lewes City Manager
Darrin Gordon – Asst. General Manager, BPW
Glenn C. Mandalas – Board’s Legal Council
Gilbert Holt – BPW
Paula Liner – BPW
Vic Letonoff – City of Lewes Council
Walt Baumer – Severn Trent
Carl and Doris Schirmer – BPW
Henry Evans – Cape Gazette
Tim Crowley – Resident
Joe Hoechner – Resident
Bill Lingo – Property Owner
John Lingo – Property Owner

7. It is recommended that the Board of Public Works adopt BOARD RESOLUTION NO. 10-006, A RESOLUTION OF THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES, DELAWARE ESTABLISHING A STORMWATER UTILITY, ADOPTING A STORMWATER TARIFF AND SETTING FEES AND RATES FOR STORMWATER SERVICES WITHIN THE CITY OF LEWES.

INFORMATION:

Mr. Mecham stated last month Board appointed a Stormwater Subcommittee to review questions of tariff and the rates. The committee chaired by Mr. Richmann met and created proposed resolution. One change to the document is noted on the third and last page where last line is stricken. ~~Credit shall be granted for stormwater facilities operated and maintained by others.~~ Recommendation is to adopt the resolution. Mr. Carmean read the resolution.

ACTION:

Mr. Richmond stated as chairman of the committee the proposal represents the work of the committee and motioned for its adoption with noted **amendments**. Mr. Gayhardt seconded.

Mr. Richmann asked Solicitor Mandalas if he finds the resolution acceptable as written. Solicitor Mandalas said it is acceptable as to provisions and in correct and proper format.

Amendments include: (1) Add “(BPW)” in first line after Board of Public Works of the City of Lewes (BPW); remove (BPW) from first line of 100 Purpose; spell out first time and then use BPW throughout proposal. (2) 300 paragraph has no period at end. (3) 400 Rates paragraph, line 4, add “of” to within the City *of* Lewes.

Mr. Richmann asked Mr. Mecham to explain the removal of last sentence on credit provision. Mr. Mecham said committee was very specific on establishing the basis for the creation of the rates and believes it is appropriate to have the basis for granting credits established before incorporating into the tariff. Committee will work with grant requests information to decide how to grant credits. Mr. Richmann suggested stricken sentence was probably included erroneously from another draft.

Mr. Richmann informed public it is the intent at some point to allow credits for methods of stormwater control that are

privately owned and requested an agenda item be added in 120 days to specifically address credit provisions for private stormwater treatments such as pervious surface treatments for driveways, swales, rain barrels, catchment basins, etc. used to reduce load. Mr. Gayhardt asked discussion clarify process for granting credits in case someone appeals. Mr. Carmean said usual procedure is to have a public workshop and obtain public input to develop criteria used to grant credits. President Stabley said procedures for determining what qualifies for a credit and how appeals are physically handled would be laid out by the Committee with amendments to the resolution. Mr. Carmean said it is premature to talk about credits with the \$5 assessment which barely covers costs today. As capital budget is developed with decisions made on repair needs, rates will be revisited again and that is when credits can be established. Credits are appropriate but not in the near term. Workshops could start in 120 days but the rates should substantiate the need for credits. Mr. Richmann agreed but said the purpose of credits is twofold: (1) Relieve the financial burden for citizens who have alternatives to stormwater management on their own property. (2) University of Delaware Study on natural methods of stormwater control points the way to methods of treatment that need to be encouraged by providing a credit. Original drafts of the stormwater tariff included very complex and detailed procedures for dealing with the credits. Even though our committee decided to remove those procedures, committee did not necessarily give up on the natural methods of stormwater control. Homeowners will appreciate the fact their sound behavior and their use of natural methods are rewarded contributing to Lewes being recognized as environmentally sensitive. Agree \$5 is inadequate but wants to move ahead more quickly on the credits for benefit of homeowners.

Mr. Richmann requested Mr. Mecham to propose a procedure because he and his staff would administer any procedure. Mayor Ford confirmed the ERU classifications – residential; commercial; industrial – are Board's recognition of those areas and not the City's zoning classification. Mr. Mecham responded each is a customer class. President Stabley asked if Solicitor Mandalas agreed and he agrees with this statement.

Clarification followed on debt services as defined under paragraph 4 of resolution; will money be put in the general fund or be collected only for the debt services incurred by the stormwater management. Mr. Carmean said intent of debt services is for stormwater capital improvements. Mr. Richmann said two studies are pertinent to this issue. One is study done by the consulting engineer presented to Board on April 28, 2010 and the other is the draft auditor report with a comprehensive review of indebtedness. They provide the justification for recuperating the depreciation in terms of operating expense to the stormwater funds.

Comment on bottom of page 2 was identified as based on a residential load as per April 28, 2010 study which can be made available.

Potential of increasing the \$5/month fee was discussed. Addition of fee is necessary because previously paid out of sewer rate as verified by audits; revenue is shifted to new stormwater department. Fee will probably increase because improvements are needed in stormwater system, however, City of Lewes projected rates are far less than at state and county levels. Debt and increased demands are also critical factors.

ERU rate of \$5 used to recover the current depreciation associated with the stormwater investment. BPW is taking financial approach to recover from the public what the current costs are because imprudent to advance the fee before commitment to make improvements.

President Stabley said the stormwater program was initiated by the State some years ago and asked Mr. Richmann about the roles of the State and County governments. Mr. Richmann responded the stormwater management within the entire state of Delaware including Lewes is a State responsibility. The State Legislature has given that responsibility to the Department of Natural Resources (DNREC). DNREC has established the regulations for stormwater and sediment control that must be followed by all subordinate governments including counties and cities within the State of Delaware. We have one common standard for how sediment control and stormwater should be managed in the DNREC regulations. Now, DNREC in enforcing those regulations has two procedures: (1) A blanket delegation of stormwater responsibility for the regulation in accordance with their standards to the Counties. Since Lewes is part of Sussex County, DNREC has a specific delegation to the Sussex County Soil and Conservation District. Currently, any land improvements on 5,000 sq. ft. or more requires a DNREC certified approval. That approval within the City of Lewes is done by the Sussex County Soil Conservation District. (2) Under DNREC's rules, municipalities may apply to DNREC for the specific delegation of land use improvements within their municipality but they must apply as it is not an automatic delegation. Many of the municipalities within Delaware, and specifically the larger communities, have sought and obtained such delegation. Under this procedure, a land developer who has a lot of 5,000 sq. ft. or more and wishes to develop the property would go not to SC but to the BPW for plan approval. An appropriate fee could then be charged that would be equal to the engineering review costs of said plan. However, the engineer would be hired not by the developer but by the BPW. So, this is a procedure that many municipalities are following. It is not clear and it is worth further study as to whether it is appropriate for Lewes to seek that delegation or not. That determination has not been made. For all we know, the SC Conservation District is doing a very good and adequate job of reviewing plans. To have the City get involved in that may not be necessary. It needs to be clear in this explanation that a land developer would not need to go to both the City and the County; it would be one or the other as determined by whether or not the City had sought the delegation or not. To recap the important points, stormwater and sediment control is a State responsibility as administered by DNREC in a common set of regulations. Within Lewes, we do not have ability to set our own regulations for example on how much effluent can drain into the bays or into the waterways. We do not have that ability but once the water is on the ground it is this Board's responsibility to deal with it. That is why we are about to implement the stormwater utility. President Stabley asked Solicitor Mandalas to verify if the authority granted to the

State comes from the federal government through the EPA Clean Water Act. There are standards the federal government has for municipalities which have not been applied to BPW's jurisdiction but to larger cities such as Dover and Newark. However, Lewes is designated as a Green City. As part of the program, the treatment plant has been upgraded for stormwater running into the canal; trying to comply is part of City's directive. Mr. Gayhardt said it is amazing the number of agencies that are involved.

Bill Lingo, a Lewes property owner, said there is a natural pond on private property and the City's stormwater management system is currently dumping water into that pond. Mr. Richmann responded the intent is to make sure the public stormwater system is disposing of the water in an environmentally sound way and is not aware of any system that would dump on private property; it is usually the reverse. BPW will investigate the case more fully. If the retention pond is solving stormwater problems for an area and preventing the stormwater from running into the public system, it is the subcommittee's intent to give credit in some way. A long-term solution needs to be reviewed. Mr. Lingo submitted a study done on a major fish kill in the pond as a direct result of the City's irrigation system for the Board's review before adopting the resolution. Mr. Lingo is willing to work with the Board and can bring his own scientist who is working with the State scientist. "Environmental Assessment and Findings Report – The White's Pond Fish Kill – Prepared by Envirotech – Copyright 2008" was given to Solicitor Mandalas. Mr. Lingo said he will be happy to assist on some other findings.

President Stabley called for a poll vote to adopt the resolution: Mr. Carmean voted aye. Mr. Gayhardt voted aye. Mr. Richmann voted aye for following reasons (1) Consistent with the Subcommittee on Stormwater Report. (2) Consistent with April 28, 2010 Study by Mr. David Athey, P.E. of URS Corp, in accordance with establishing a stormwater utility. (3) Consistent with materials presented at the public hearing in May. Those materials collectively establish the need for a stormwater utility as specified in the preamble of this resolution; namely, the need to establish public facilities for the removal of stormwater in a safe and environmentally sensitive disposal. President Stabley voted aye and requested General Manager to inform Mr. Lingo when the committee meets so he is aware of the date and time. Since the document was just received this evening, it is only fair for Mr. Lingo to attend to share any knowledge with the Committee. This resolution is currently just a broad resolution with a lot of work ahead to be considered as part of the resolution. Mr. Richmann said he wants to work with Mr. Lingo to establish the specific needs and then work with Mr. Mecham to include the capital requirements if appropriate in the capital plan. Mr. Lingo thanked the Board.