

Storm Water Scope Proposal and Program Plan

(R4, 1/9/19)

Key Issue:

The City of Rochester Hills' (hereafter referred to as the City) current Storm Water funding is not sufficient to support proper maintenance of the storm water system. A study via SAW grant analyzing the current system and funding levels and the impact over the next four decades shows continued deterioration to where the City's fiduciary responsibility to protect health, safety, and property cannot be achieved without additional, dedicated funding. This deterioration has a significant negative impact on the City's stormwater infrastructure and their interface with natural waterways and green space. Refer to Appendix '1' for additional detail on substantiation for the funding and work-scope defined herein.

Today:

Funding level is \$575K (.48% of City Budget as of May '17) to maintain all city-owned systems. The City only owns and maintains the portion of the storm-water systems that are under all city roadways, excluding those in HOA's, and then only between the curbs of these roadways (about 25% of the entire storm water system in the City). These funds come from the Water Resources Fund, which is funded from the City's General Fund. Note that national average of municipal budgets for storm water is 2% to maintain integrity of storm water infrastructure.

Privately-owned storm water systems (about 75% of the entire storm water system in the City) include those owned by HOA's, predominantly, and other single-parcel properties. The entire storm water systems within an HOA, including under and around the roads and the retention/detention ponds are owned by the HOA and are therefore the responsibility of the HOA for all maintenance, repair, and replacement. Note the significance of this – 75% of the entire City storm water system is not funded, inspected, or maintained, while the 25% that is funded, inspected and maintained today, is still under-funded to maintain its integrity over time.

Other utilities and assets, such as electrical, gas, water, sewage, and the roads themselves, are all taken over by the 'utility' via easements (including the City for water and sewage and roads) after an HOA is developed and built-out to a point. Storm-water is not – it remains the responsibility of the HOA. Note that it is our experience that the vast majority of the property owners DO NOT understand that they have this liability and therefore there is no planning or funding set aside for what, can be, a large cost - often 50 – 60K, or larger.

In the event of an HOA incurring a large storm-water related expenditure, the HOA can levy an assessment against each home in the HOA (usually several hundred to thousands of dollars each). If the HOA refuses, the City can levy an assessment against each of the property owners in the HOA that, if unpaid, will be added to the property owner's taxes.

Key Considerations:

1. Comprehensive – in some effective manner, the scope needed to cover 100% of the non-single parcel system of the city. In one of three ways, depending on risks and benefits:
 - a. Level I – Full city ownership and management with Easements.

- b. Level II – City Inspection/Notification/Enforcement. Retained ownership by HOA's.
 - c. Level III – City Inspection/Notification/Enforcement upon request. Retained ownership by HOA's.
2. Clearly Defined:
 - a. Allows for legal enforcement and defense by City Attorney.
 - b. Facilitates Easements granted by City Attorney.
 - c. Provides clear Instruction to City Engineering.
 - d. Articulated for understanding for property owners and HOA's.
 3. Effective in Bridging Education Gap for Property Owners and HOA's.
 - a. A major concern and consideration is addressing the negative impact of the majority of the City residence having the heavy liability of maintaining their own storm water system themselves without knowing it or managing it.
 - b. The bi-monthly Storm-water/Sewer/Water Utility Bill is a great opportunity to reach every property owner and HOA Board to inform them of what they remain responsible for and the Grant Program and direct them to a webpage.
 - c. Rochester Hills website can detail property owner and HOA responsibility and the Grant Program in detail.
 4. Other Considerations:
 - a. Privacy of back yard / side yards for residents.
 - b. Liability issues associated with back yard / side yard & Retention / Detention Basins.
 - c. Perceived City liability from property owners for real and personal property in back yard / side yards – possible damage to: sheds, fences, pools, grass, gardens, swing sets, etc...

Key Compliance:

Aside from other compliance requirements that are understood and managed today by the City, the key compliance issue that must be satisfied is to meet the Michigan Supreme Court's Bolt Ruling. The Bolt Ruling is germane as a storm-water utility is the proposed funding source. Generally, the Bolt Ruling establishes a 3-point criteria that a utility must satisfy to be in compliance with the Headlee amendment. The Headlee Amendment requires that a tax be approved by a vote of the people. The 3-point criteria established by the Bolt Ruling provides for a way to measure if a fee or utility imposed by a municipality is not a tax in practice and therefore does not require approval by a vote of the people. These are the three tenants. Note that the criteria is to be met in its totality, whereas a weakness in one tenant does not necessarily mean that it is not appropriately a fee.

1. Must serve a regulatory purpose and not be imposed solely for a revenue raising-purpose.
2. Be reasonable and proportionate to the cost of the service provided.
3. Be voluntary - a user must have a way to limit the amount of the service used and the fee incurred.

In general, these requirements are understood as:

1. A true-North requirement that all efforts and analysis will be designed around, including specific legal review.

2. Be achievable with a fair degree of confidence because of the approach we are taking that includes: numerous credits, is inclusive of all single-parcel properties in the City, and because the City has a discreet storm water and sewage infrastructure where none of it is combined.

Definitions (Note reflects current system):

Retention Basin (Pond): Holds run-off until absorbed into soil or evaporates.

Detention Basin (Pond): Holds run-off until outlet into another part of the storm water system at the determined agricultural flow rate.

City-owned storm water system: Creeks, ditches, basins, pipes, or other storm-water systems located on public grounds and/or roadways.

Association-owned storm water system (Privately-owned): Creeks, ditches, basins, pipes, or other storm-water systems located on HOA common property.

Single Parcel-owned storm water system (Privately-owned): Creeks, ditches, basins, pipes, or other storm-water systems located on private single-parcel property.

Final Scope Proposed:

Scope: Includes all RoW on all current public roads & outlets from RoW systems (with Easements put in place) (Lev I – 80%), and inspection only for Retention/Detention Ponds (Lev II), and inspection upon request (Lev III). Includes 400K Grant Program for all retention/detention ponds (Lev II) and all side yard/back yard systems that are not included in City Easements and that benefit more than one parcel (Lev III). Funding source is a storm-water utility. RoW in this context is the Road Right of Way, and includes all city-owned roads and the easements that lie on either side of these roads. This is inclusive of all HoA roads and Road Right of Way's. Includes along private roads that are in line with public roads.

Exceptions/Caveats:

- a. Inspection for other back yard / side yard system upon request by property owner / HOA (considered to be about 5% of entire Storm Water System) (Lev III).
- b. Inspection of Retention / Detention Ponds, along with its outlet structure required every 5 years (considered to be about 15% of entire Storm Water System) (Lev II).
- c. Plan on effective statement on every water utility bill regarding property owner HOA responsibility and grant program - directs to a webpage (key to education improvement).
- d. Webpage added that details responsibilities, grant program, credit application process, etc...

Budget: 6.4 M Per year with 400K of it being the grant program (approx. \$7.90/mo +/- 5% at 6.4M funding level) per typical resident property. Program is implemented over 3 years with full Grant Program starting in Year one (2.4M), then 2M and finally 2M.

Funding Source: Storm-Water Utility.

Discussion of Storm-water Utility:

- 1) Successful precedence with Ann Arbor and other municipalities that we can follow, including specific management needs/protocols and implementation. ERU (permeability unit) management, etc...
- 2) Precedence is established in terms of MI House and Senate Legislative direction, though not law now.
- 3) Provides for fair distribution of storm water costs to those that use storm water system (includes almost every property owner in the City). Like water and sewage utilities.
- 4) While adding some additional administrative burden to City Public Service Department, basic systems are in place for management of public interface and billing.
- 5) Incentivizes individual property owners to minimize use of storm-water system.
- 6) Provides a frame work for new developments to mitigate storm-water costs by incorporating storm-water system use mitigation as they develop new commercial/industrial and residential properties.
- 7) Pro-rates stormwater costs to all users and avoids, compared to a millage, unfair allocation of costs to non-tax-exempt property-owners. The impact of this on residential property owners would be to avoid a 2.57 – 3.4 - fold increase for a mileage (i.e. \$7 vs. \$18 and \$7 vs. \$24) compared to utility, depending on the value of the residence).
- 8) Utility does not take appreciably more administrative manpower than millage.
- 9) Bolt Ruling criteria must be carefully adhered to.
- 10) Utility would cause current property-tax-exempt properties to pay their share for storm water usage.

The Plan Forward:

The plan forward has 6 major milestones. Each one requires a work to research, develop definitions and procedures to support the milestone.

1. Milestone 1 – Work-scope and Funding levels. Sub-committee was initiated to research and develop proposed work-scope and funding levels in order to develop a plan forward for implementation.
2. Milestone 2 – Prepare for Preliminary Briefings. In order to provide an informed briefing of the approach to the Mayor and Individual City Council Members and Key City Staff for feedback and adjustment. It is important that we get their feedback before we heavily invest in an approach.
 - a. ERU Determination Formulas: Research and define bullet points of the formula's that would be used to calculate storm-water utility fees for residential and commercial properties based on amount of impervious areas on the property.
 - i. Includes general approach for original determination of impervious areas.
 - ii. Includes baseline costs for 'small' and 'larger' residential properties.
 - iii. Includes baseline costs for 1 religious property and one school.
 - iv. Includes baseline costs for 1 apartment/condo property and 1 large commercial property.
 - b. Credit Program: Research and define bullet points of a credit system that supports proportional fees based on actual use of storm water system.
 - i. Includes credits associated with HOA's that have made investments in the last 5 years. Credit would be pro-rated based on when the investment was made.
 - ii. Includes credits associated with property-owner mitigation of stormwater use (rain barrels, etc...).

- iii. Includes credits associated with direct access to creeks and rivers, etc.. Note that there is thought to be some fee appropriate to cover costs for managing and maintaining these creeks and rivers by the City.
 - iv. Includes general idea on credits associated with Oakland University's internal system.
 - c. Ordinance vs. Referendum. A key decision point and recommendation is required associated with whether a Referendum is pursued or if it is an ordinance vote by the Mayor and City Council. The referendum would mitigate litigation liability if a suit is pursued associated with our compliance with the Bolt Ruling, but also introduces other risks. Research and define bullet points to support recommendation.
 - d. Education Approach. Research and define bullet points of an education program for the public, both residential and business.
 - e. Grant Program. Research and define bullet points of an education program for the public, both residential and business. Generally, this is thought to be a 50% match contribution on a first come-first serve basis, with discretion allowed by DPW to allow prioritization of most sever issues.
3. Milestone 3 – Major Stake Holder Meetings/Education: It is intended that major stake-holders in the City be invited, presented the approach and the specific impact on them to get feedback and understand the full breadth of the impact on different types of property owners. We would invite, by name, these stakeholders.
- a. Non-profits that are Tax Exempt:
 - o 1 Religious Institutions.
 - o 1 School locations.
 - o 1 Non-profit institutions.
 - o 1 Government entities.
 - o Residences (2 small, 2 medium, 2 large). We would also have the fees calculated the residences of those we invite, also.

Note that we would calculate the fees and impact of 1 additional for each category, except for residential for our own information, though, they would not be invited to the meeting.

- b. For Profits that are Not Tax Exempt:
 - o 1 Retail commercial
 - o 1 Industrial commercial
 - o 1 Condo
 - o 1 Apartment complexes
 - o Residence (2 small, 2 medium, 2 large). We would also have the fees calculated the residences of those we invite, also.

Note that we would calculate the fees and impact of 1 additional for each category, except for residential for our own information, though, they would not be invited to the meeting.

- c. Maybe a Third Meeting: Depending on how the first 2 go, the third meeting could include both non-profit, for-profit and residential, depending on what we learn
 - d. Execution of Education Program: Program is being employed to provide opportunities for all property owners to understand the approach being taken and the impact on them. Of course, we will also learn from these interactions to make adjustments as needed.
4. Milestone 4 – Final Approach. At this point, we’ve received feedback and are working to incorporate what we’ve learned and fill in what is missing in terms of concept and bullet points.
- a. Fill in missing details, if any, for:
 - i. ERU calculation
 - ii. Credit Program
 - iii. Final Implementation Plan
 - b. Write Resolution / Ordinance
 - c. Full, detailed legal review, including for compliance to Bolt Ruling.
 - d. Resolution / Ordinance presented to City Council/Mayor for adoption.
5. Milestone 5 – Ordinance Approved / Execution of Ordinance.
- a. Easements put in place.
 - b. DWP procedures/staffing/procurement put in place.
 - c. Water Department procedures & billing language put in place.
 - d. Webpage created with all detail.
6. Milestone 6 – Go Date. Go date for Phase I of 2.4 MM program.

Timeline:

<u>Item</u>	<u>Description</u>	<u>Completion</u>	<u>Status</u>
Milestone 1	PS & ITR Appl	1/16/19	Meeting Scheduled
Milestone 2	Prep/Brief	4/1/19	Pending
Milestone 3	Stakeholder/Educ.	6/1/19	Pending
Milestone 4	Fnl Approach	11/15/19	Pending
Milestone 5	Ordinance/Exec.	3/1/20	Pending
Milestone 6	Go Date	7/2021 (w/ water bill rates)	Pending

Appendix '1'

Summary of Substantiation for Funding/Work-Scope
5 Pages Attached