



**City of Rochester Hills
AGENDA SUMMARY
NON-FINANCIAL ITEMS**

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Legislative File No: 2008-0676

TO: Mayor and City Council Members

FROM: John D. Staran, City Attorney

DATE: December 10, 2008

SUBJECT: Appointment of representative petitioner and engagement of Secret Wardle to represent the City in the MDEQ stormwater permit contested case.

Recommendation:

The City Attorney and DPS recommend that City Council resolve to appoint a representative petitioner and to engage the Secret Wardle law firm to represent the City for purposes of the City's MDEQ stormwater permit contested case.

Background Information:

The federal Clean Water Act of 1972 requires the elimination of untreated sewage from our waterways, and further requires that urban storm water be subjected to a permit process and that water quality standards be applied to watercourses. The MDEQ is responsible for administering the stormwater permit process, and has issued a new stormwater permit regulating discharge from municipal pipes. However, the permit, as currently drafted, is overbroad, too costly, overly burdensome and based on inappropriate assumptions. The specific objections make for very tedious reading, but in short the major points of contention are over: (1) Detailed mapping and data collection required throughout the municipal system and not just at point of discharge; (2) Required dry and wet weather monitoring throughout the regional drainage system is prescriptive, costly and unreliable; and (3) Post-constructive runoff control requirements are one-size-fits-all and inflexible. These new requirements significantly exceed the scope and cost of the requirements under the prior stormwater permit the City continues to operate under while the contested case is pending.

The City has joined numerous other municipalities and public agencies in petitioning for a contested case hearing objecting to the new permit. Due to the number and similarity of the claims and issues, the Administrative Law Judge presiding over the case has consolidated the cases and ordered the petitioners to consider appointing representative petitioners to litigate the case. Accordingly, we have been speaking with Attorney Beth Kudla of Secret Wardle, who has been very involved in the permitting and contested case process on behalf of the dozen or more municipalities her law firm represents. We have discussed that from an economy and efficiency standpoint, it may be advantageous to pool legal resources and consolidate legal representation as well. Accompanying this Summary Sheet is a proposed letter of engagement from Attorney Kudla, a separate explanatory letter, and a proposed City Council Resolution to appoint a representative petitioner.

Budget and Staff Impact:

Under the terms of the engagement letter, Attorney Kudla would apportion her \$130 per hour fee equally among all the municipal clients she represents. This should result in more efficient and economical legal representation for the City for the contested case.

Summary:

City Council is asked to approve the Resolution to appoint a representative petitioner and to further resolve to approve the letter of engagement to retain Secret Wardle to represent the City for purposes of the MDEQ contested case.

APPROVALS:	SIGNATURE	DATE
Department Review		
Department Director		
Mayor		
City Council Liaison		