

EAST PENNSBORO AUTHORITY
MAY 21, 2020

Regular Meeting

6:30 p.m.

A Regular Meeting of the East Pennsboro Authority was held on Thursday, May 21, 2020, at 6:30 p.m., telephonically.

Those present were: Commissioners George Tyson and Kristy Magaro, Dr. Glenn Zehner, Randy Martin, and Mario Billow, members of the Authority; Lisa M. Coyne, Esquire, Solicitor; John Pietropaoli, Township Manager; John Owen, Assistant Manager; Dearan Quigley, Housing & Community Development; Ed Myers, Assistant WWTP Superintendent; Jared Hockenberry, Consulting Engineer; and Robert Coyne, Coyne & Coyne, P.C.

I. CALL TO ORDER

The meeting was called to order at 6:30 p.m. by Mr. Tyson. A moment of silence followed by the Pledge of Allegiance to the Flag.

Chairman Tyson noted the meeting is being held via teleconference per the Township's resolution for the State emergency disaster. Visitors will be called upon by the Chairman at the appropriate time.

II. APPROVAL OF MINUTES

MOTION approving the minutes of the February 20, 2020, was made by Dr. Zehner, seconded by Mr. Martin, and was carried by a unanimous aye vote.

III. PUBLIC COMMENT

Mr. Thomas Denslinger addressed the Authority on behalf of Our Lady of Lourdes Catholic Church, 225 Salt Road. He confirmed his total calculations matched the ARCADIS calculations relative to the units they are being assessed for. He reviewed the plans for the site and walked around the building and the drawings matched what is actually there. He also went out in the rain and walked the property to look at how the rain was running off the impervious surfaces and then did calculations as

to how much impervious area is being affected, and that approximately 80 percent of the impervious area is being captured at the collection basin. He asked about the proposed credit resolution of only a maximum of 50 percent credit and asked since they are doing a better job of diverting impervious areas into the detention basin, with only a 50-percent credit being proposed there is really no incentive to look at different things like repaving the parking lot, diverting more water into the collection basin, downspouts from the social hall into the detention basin, et cetera. They would like to see some incentive to do some of these things.

Chairman Tyson noted staff reviewed the letter Mr. Denslinger sent with the application. Mr. Myers stated he has had several conversations with Mr. Denslinger and thanked him for his diligence in checking and approving the ARCADIS calculations, which was the basis of the fees issued to Our Lady of Lourdes Catholic Church. Regarding the credits, he explained to Mr. Denslinger that the fee only took into consideration the impervious area currently, per the resolution that was passed. The Authority is in the process of drafting the credit resolution, which will be discussed tonight.

Chairman Tyson informed Mr. Denslinger that the Authority's intention was to adopt the credit resolution after the stormwater fee was introduced. The stormwater fee was adopted just prior to the COVID-19 pandemic State disaster declaration, which has pushed back consideration of the credit resolution. Mr. Denslinger confirmed he talked with Mr. Myers about credits and asked the board to consider their request, including retroactivity of the credits. He stated he understands the Authority's position, but reiterated his concern about being able to apply the credit retroactively.

IV. MANAGER AND ASSISTANT MANAGER REPORT

Mr. Pietropaoli reported on the second quarter billing and complimented staff for answering all the questions that came in, handling them on behalf of the Authority.

He noted they did a great job explaining the requirements and mandates. Ninety percent of residential second quarter bills have been paid. Commercial payments are down to 50 percent for the second quarter, which is a bit alarming, but with the coronavirus situation, that may have caused the delay with business being forced to close during the Governor's emergency declaration. He noted the account is not where he would like it to be at this point at the second quarter, but money is not being spent at this point either.

Mr. Owen noted staff fielded a lot of calls and provided a lot of education. Mr. Myers was the repository for all the calls so they could be categorized, such as education, general complaints about the fee, and anything that might turn into an appeal.

V. MS4 COORDINATOR REPORT

Mr. Myers reported he received about 18 calls, consisting of: Reported issues on stormwater basins, four being residential, two nonresidential, which could be anything from holes around a drain box, worry about pipes, flow coming from pipes, all noted from people walking by and wondering, since residents are now more acutely aware of stormwater drainage since the billing went out. There were questions about credits, the next most frequent calls, and they were closely linked with the fee and wondering when the credits would occur. And then actual appeals, of which currently as of yesterday there are five nonresidential appeals and one residential. The most notable appeal is the Norfolk Southern Enola yard.

Chairman Tyson asked that a working committee of staff meet with Norfolk Southern, including the Township Manager and Solicitor, to get more feedback from them. There are precedents for Norfolk Southern where they had this same argument and he would like to review that.

Ms. Coyne noted the appeal was received at the township on April 30. The Authority was under the emergency order at that time. The current resolution

provides for a 60-day turnaround for a review of an appeal, and the Authority is well within that timeframe. She noted a working committee of staff welcomes the opportunity to have a dialogue with Norfolk Southern to see if matters can be resolved, and if they reach an impasse, they will report that back to the Authority.

Ms. Coyne also thanked Mr. Myers and the staff for getting fast resolution on the appeals. People are looking for credits, they are agreeing with the impervious calculations, similar to what Mr. Denslinger identified. Mr. Myers noted the original assumption of many of the applicants for stormwater fee appeal was that stormwater credits were being taken out of their fee, and with a little bit of education along with the return form, everyone was notified that that is a future occurrence and that the fee is currently only based on impervious area.

VI. ENGINEER REPORT

Mr. Hockenberry noted they have been on hold since about mid-March because of the COVID-19 emergency declaration. He assisted with a few of the responses to the appeals that came in. He noted they are willing and able to continue with the efforts of the surveys and the retrofit design for the two basins on township property. He wanted to confirm that the Authority was going to continue with the consents of the PRP to retrofit the basins, and then after the retrofit has been done to keep the maintenance responsibility as a private responsibility. He discussed it with Solicitor Coyne and she requested that the board affirm that assumption.

Mr. Hockenberry noted the stream consultants are available and ready to start their field assessments of the streams, which they can start in June. He will send the required letters to property owners for access to those streams, most of which are on private property.

VII. SOLICITOR'S REPORT

Ms. Coyne confirmed the request for guidance as to whether the Authority is inclined to utilize public funds on private facilities. It was not clear in her review of matters whether that was something that the Authority wanted to undertake on some of the basin retrofits.

Ms. Coyne reviewed with the board the February 11, 2020, draft of the proposed credit resolution, which has been put on hold due to the State emergency restrictions. Appendix A is a listing of suggested credits for consideration: 25-percent credit for rate control or volume control, which will be structural; K through 12 education program; fertilizer management program that would allow up to 15-percent credit; a separate MS4; and an additional one that Mr. Myers suggested regarding a partnership.

She noted consideration for the Authority is whether to impose an application fee for the credits. The credits would be in place for three years and then they would automatically expire and the property owner would have to reapply. It would be a matter of tracking. The Authority would want to have the ability to go out and see what these efforts are that people have been awarded past credits for. If they have not been complying or maintaining certain facilities, their credit will not be renewed, as well as the Authority could even suspend the credit if it is within the three-year period. The period by which to apply, which Mr. Denslinger referenced, was a 60-day period after billing goes out. In implementing the resolution, the Authority will have to provide guidance as to the effective date, if it would be retroactive to coincide with the quarterly billing that went out in April.

Dr. Zehner asked staff to provide an estimate of time spent dealing with each application. If it is taking up a lot of their time and there is no compensation for it, an application fee may be warranted. Mr. Pietropaoli asked about having a first appeal with no fee, and perhaps a fee

on a second appeal or further investigation. Ms. Coyne stated the appeal process is the determination. The agreement with the township is that the township is the administrator of the program. The appeal is reviewed by Mr. Myers, any appeal beyond that goes to the Court of Common Pleas. She noted some municipalities have no application for an appeal, but there is a fee for the credit application because more review is involved. There will be more effort on the staff in reviewing some of the credit applications.

Chairman Tyson asked before the next meeting if staff could provide time estimates for reviews. Mr. Owen noted the technical nature of an appeal, if it were to need an engineer to review, as some applicants are hiring engineers to produce their appeal, should be a consideration as far as recovering costs, especially if it would then be appealed to the Court of Common Pleas. Ms. Coyne noted the appeal is akin to appealing tax assessment. The burden is on the person filing the appeal to present persuadable concrete evidence that either the calculations for the impervious calculations are incorrect and to prove that the stormwater fee associated with the property is not correct.

Mr. Pietropaoli noted verifying the correct information on the application for the credit may be more time-consuming than the actual appeal, but they will discuss it further and report back to the board with estimates at the next meeting.

Mr. Myers noted the applicant for the credit would have to, on a yearly basis, communicate with the township as part of the minimal control measures. Part 5, post-construction best management practices, the township has to maintain an inventory and make sure that all the items on that inventory are in working condition. One of the reasons to have the credit program is to promote the communication and maintenance of these BMPs.

Discussion was held regarding the categories and percentages in the Appendix A draft. Mr. Hockenberry

noted similar to land development plans, if a credit application includes more calculations, he suggested the Authority consider that the engineer review those applications, however not necessarily for the educational programs or partnership credits. It was the general consensus that the engineer should review those applications. Mr. Martin suggested with a residential fee of \$88 a year, not many residential properties will be applying for credits. Most of the applicants will be from industrial facilities, and a lot of them will be reviewed by their professional engineer. He suggested for that reason, an engineering review fee should be considered. The general consensus was to have a fee for professional review of the credit application. Ms. Coyne noted staff will discuss a possible review fee and provide suggestions for the Authority at the next meeting.

There was discussion about whether the engineer will be doing the inspections and whether it might tie into the fee structure.

There was also discussion about the education program and whether to expand that beyond K through 12 schools to allow higher education facilities to apply for credits under the umbrella of the education program. Ms. Coyne noted most municipalities do not consider higher education among their education credits, but suggested that it can be addressed at a later point in time if the Authority decides to expand educational credits beyond K through 12. Mr. Pietropaoli noted Central Penn's credits will be hit by other avenues and any educational credits would exceed the maximum allowed credits so as to be moot.

There was discussion regarding the fertilizer management program. Ms. Coyne noted while the township does not have much agriculture anymore, it does have a golf course. Mr. Hockenberry suggested the country club would probably appreciate the ability to get credit for managing their fertilizers, although there has not been any direct conversation with them. Mr. Pietropaoli noted the golf course is large and adjoins close to the Conodoquinet Creek and if they treat their facilities

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incorrectly, it could do a lot of harm to the township's creek and waterways even beyond this program. He suggested it is important to know what they are doing and give them incentive to do the right thing, which was the general consensus. Mr. Myers stated the country club has not reached out regarding the stormwater fee. Mr. Hockenberry noted Hampden Township has a fertilizer management credit of 15 percent. The consensus was to keep the fertilizer management credit at 15 percent.

Ms. Coyne reviewed the category of separate MS4 receives a 50-percent credit, but there are no such properties with separate MS4 currently in the township. Mr. Pietropaoli noted he has no problem leaving that in because it is standard for a lot of municipalities for future development. The consensus was to keep it.

Mr. Martin stated he likes the idea of a partnership credit. Mr. Myers noted the spirit of the partnership credit is to spur creation of nontraditional solutions if a weird solution occurred or a traditional facility or practice did not fit. The burden would be heavy on the applicant to provide the proof, scientific data that would support the amount of reductions they would request. Mr. Martin noted new technology is always advancing, and there are oddball cases that do not fit into the normal paradigm, and they should be able to make their argument and have it heavily documented by a professional engineer and studies. The consensus was to keep the partnership credit.

Chairman Tyson asked the Authority members to review Appendix A before the next meeting and reach out to staff for any questions they may have.

Ms. Coyne asked about a retroactive provision to April 1 to be in sync with the fee resolution. Chairman Tyson noted that was the original intent and there should be a retroactive provision.

There was a discussion about whether a facility with a structural BMP that controls both rate and volume could apply for the 25 max for both, to combine the two for a 50-percent credit, and the consensus was that the maximum credit would be 25 percent for the combined. The Authority concurred with Mr. Myers' suggestion to have a statement in the credit resolution that you may combine rate and flow volume controls, or any combination of the structural and nonstructural, as long as the maximum permitted is 25 percent.

Mr. Pietropaoli expressed the importance of opening a bank account for the Authority to start accepting PennVest money for moneys spent. The township has a First National Bank account along with other township business, but he will need two signatories who would have daytime availability for signing checks. Ms. Coyne stated the Authority will have a resolution at the next meeting recognizing the establishment of the Authority's banking where the township does theirs, which is FNB, listing signatories as the Chair and another person. Mr. Martin stated as treasurer he can do it if he is not out of town for work. Ms. Coyne suggested appointing an assistant treasurer. Mr. Billow offered that he is typically available during the daytime.

VIII. ACTION ITEMS

MOTION to appoint Mario Billow as Assistant Treasurer for the Authority, was made by Dr. Zehner, seconded by Mr. Martin, and was carried by a majority of aye votes, with Ms. Magaro not voting due to telephonic drop-off.

Ms. Coyne asked for guidance as to whether the Authority was willing to expend money on private facilities. Mr. Hockenberry noted the pollution reduction plan years ago had these projects in mind. He does not believe the township has enough property or stream frontage that it owns itself currently in order to do all the retrofits to meet that 5-year goal.

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Mr. Pietropaoli asked that Mr. Myers, Mr. Owen, and Mr. Hockenberry meet with him to review those properties to get a better understanding for the next meeting. Ms. Coyne noted it is a policy question that the Authority must decide the extent of the use of public funds on private facilities.

Ms. Coyne noted for purposes of the record, there may be an Executive Session regarding a matter of potential litigation that will be scheduled at a later date and time between now and the next regularly scheduled Authority meeting.

MOTION to adjourn the meeting at 7:52 p.m., was made by made by Mr. Martin, seconded by Dr. Zehner, and was carried by a unanimous aye vote.