



Lewiston, Maine's Storm Water Utility



Maine Real Estate &
Development Association



June 12, 2013

*Presented by
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Director, Department of Public Works*

History



- **Dec 1999** – NPDES Phase II initiated
- **June 2001** – City Council Briefed on “Combined Sewer System” (CSOs)
 - Big Bucks (\$\$) and 15 year Program
 - “Paying for Your Stormwater Mgmt Program” by Joe Ridge of CDM
- **April 2002** – City Council Brief on “Stormwater/CSO Utility Feasibility Study”
- **Sept 2003** – City submitted NOI for 1st NPDES period
- **March 2006** – TABOR & Budget pressures have City Administrator looking to reduce property taxes
- **April 2006** – City Council given update on 2002 Briefing
- **May 2006** – City Council directed it be implemented



Drivers Behind Decision

- Selling Points
 - Residential properties had ~40% of impervious surfaces, but paid 53% of property taxes
 - Tax-exempt properties had ~12% of impervious surfaces and paid nothing
 - Typical single family home appraised at \$80,000 paid \$102/year for property taxes to support stormwater services but would pay only \$30/year under the utility
- Removed ~\$1.9 million from requirements paid for by property taxes (~\$1.27 on mil rate)
- Utility implementation resulted in fee shift from residential to "other" properties

Implementing Storm Water Utility



- **May 2006** – City Council “Go” Decision
- **July 2006** – City Council Approved Ordinance Establishing the Stormwater Utility
(Less than 2 months after May direction to implement)
- **September 2006** - Stormwater Fee Schedule and Credit Policy (Retroactive to July 1, 2006)
- **October 2006** – Citizen’s Petition to require the “Rain Tax” be delayed and sent to the voters for approval
- **January 2007** – Petition failed to get support and 1st Utility bills were sent out

Stormwater Utility Fees



- **Single Family Homes** – Flat rate of \$50/year
- **Duplex Residential** – Flat rate of \$74/year
- **All others** - \$50 for first 2,900 SF of impervious surfaces then \$0.054/SF for every SF exceeding 2,900 SF
- **Accounts** (Total nearly 11,000)
 - 7,258 Single Family Homes
 - 1,057 Duplex Residential properties
 - 2,438 Base Fee + cost/SF properties



Stormwater Utility Credits

- Stormwater System Impact Credit
 - 50% or more of parcel's impervious surface drains directly to river and does not impact the City's system
 - Potential for 100% credit
- Permit Improvements Credit
 - On site collection-discharge systems exceed capacity requirements of Maine DEP permit (25 yr storm)
 - 25% for 50 yr storm, 30% for 100 yr storm, 35% for more
- Private Road Credit
 - Private Rd more than 100 ft long to multi-unit residential properties



Fee Payments / Collections

- Most Accounts are paid on time (97%)
- There are some, that don't pay
 - Accts more than 6 months overdue as of June 3, 2013
 - 238 Residential Properties total of ~ \$18,000
 - 104 "Other" properties total of ~ \$114,000
- Be prepared with bad account collection procedures
 - Both Small Claims and Superior Court found in favor of City! (2011)
 - In Maine, can not yet lien properties like water & sewer utilities
 - LD 833 – An Act to Allow Municipalities to Place Liens for Failure to Pay Stormwater Assessments
- Maine Supreme Judicial Court Decision favored the City! (March 27, 2012)

Lessons Learned



- Do not underestimate the amount of public education and public relations effort that is required to obtain buy-in from the public.
 - Don't Rush! Plan for an 18-24 month implementation period.
 - Plan for Post Implementation Education - People will not understand and will need to explain how stormwater from individual properties impacts the collection system
- Never let your City Administrator get ahead of you in setting rates!
- Well structured GIS can significantly speed the development of the stormwater fee, and is critical in explaining the basis of the fee to the public and elected officials.



Lessons Learned (cont)

- Issues with parcel identification caused by # of buildings on commonly owned land
- New fee without the normal measurement (meter, gal etc.) results in time consuming implementation & management of the utility.
- “Rain Tax” Syndrome - Constituents will look at this as a new tax and will be resistant – even if they are paying less! Courts decided otherwise!
- Bottom Line - The fee is an effective and stable way of financing both stormwater and CSOs, but the up front effort cannot be under-estimated



Questions??



Backup Slides

Must Educate the Public & Press



Sun Journal
Pair challenge city's tax

October 10, 2006 Scott Taylor
LEWISTON - The city's new water utility fee is coming from two legislative candidates to put the matter to voters.
House District 72 candidate said he hopes to begin the process today and begin signatures on a petition to vote on the new fee.

Dick Gregory in Lewiston
Activist/comic to perform at Bates College. Page C16

Apocalypse: Saturday?
Some believe the end is coming this weekend; others just milking it. Page C8

Auburn council
Meetings behind closed doors on Aho; also, budget meeting set. Page B1

Rich get richer: B8

Sun Journal
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City's storm fees upheld
By Scott Taylor
LEWISTON - Andruson County Superior Court has issued a decision ruling that the city's storm water utility fee is a legal charge for a local taxpayer who was ordered to pay more than \$12,000 in fees, interest and penalties.
According to a news release issued by the city Wednesday, the challenge to the fee by Robert Gladu was rejected by the court in a 17-page opinion issued by Justice Margaret Kennedy on Tuesday.
The court upheld the city's ordinance and its storm water fee, rejecting Gladu's claims that the city had no right to impose or collect those fees or that such fees constituted a tax, according to the release.
Specifically, the court concluded that the city's fee is a valid charge for the storm water utility, not a tax, and that the city is not required to provide the storm water management services that are needed to comply with federal and state water quality requirements.
The court also upheld the city's use of "imposition surcharge" as the basis for determining the fee applied to a taxpayer.
The court issued a judgment for the city for the unpaid fees, interest, penalties and a portion of the city's attorney's fees.
City Manager Ed Barrett said Wednesday that Gladu's outstanding bill for the fee was \$7,475.70, plus \$1,317 in interest.
Kennedy ordered Gladu to pay the city a penalty of \$10,000, plus \$1,000 in attorney's fees and \$1,000 in costs of collection.
"Gladu's fee is a fair apportionment of the cost to the city of the storm water utility in the individual of the service provided," Kennedy wrote in her opinion.
David Jones, director of Lewiston Public Works, said the decision confirmed the city's position since the adoption of the ordinance in 2004.

Texas woman arrested in killing of 6-year-old
By Scott Taylor
LEWISTON - A woman was arrested in Texas on charges of capital murder in the killing of a 6-year-old boy in South Berwick, Maine, on Wednesday.
The woman, who is being held in a jail in Houston, Texas, was arrested Wednesday on a fugitive warrant issued by the state of Maine.
The boy, who was 6 years old, was found dead in a wooded area near his home in South Berwick on Tuesday.
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The boy, who was 6 years old, was found dead in a wooded area near his home in South Berwick on Tuesday.

Boy asphyxiated in Hampton, N.H.
By Scott Taylor
LEWISTON - A 6-year-old boy was asphyxiated in Hampton, N.H., on Wednesday.
The boy was found dead in a wooded area near his home in Hampton on Tuesday.
The boy's mother, who is being held in a jail in Hampton, N.H., was arrested Wednesday on a fugitive warrant issued by the state of New Hampshire.
The boy, who was 6 years old, was found dead in a wooded area near his home in Hampton on Tuesday.

Brown won't return to DEP
By Steve Meyler
LEWISTON - Gov. Paul LePage has announced that he will not return to the Department of Environmental Protection (DEP) after his resignation.
LePage, who resigned as governor in January, said he will not return to the DEP because he believes the department is not doing enough to protect the environment.
LePage said he will continue to work on environmental issues through his private law firm, but he will not return to the DEP.

City Council hears 'rain tax' complaints
February 27, 2008 Daniel Hartill
LEWISTON - If the city continues assessing its storm water fee, Robert Gladu figures he'll be forced to sell his properties.
Gladu is probably going to put us out of business," said Gladu, co-owner of the Pepperell Mill. His bill: more than \$12,000.
Gladu is making life very difficult," he told the council Tuesday as he pleaded for the city to reconsider the fee.

Jay team wins wind energy challenge
By Donna M. Perry
LEWISTON - The Jay team won the wind energy challenge, which was held at the University of Maine on Wednesday.
The Jay team, which consisted of students from the Jay High School, won the challenge by designing a wind turbine that was able to generate the most power.
The Jay team's turbine was able to generate 100 watts of power, which is a record for a student-designed turbine.

King declines Bridgton test
By Scott Taylor
LEWISTON - King declined to take the Bridgton test, which was held at the University of Maine on Wednesday.
King, who is a member of the Jay team, declined to take the test because he believes the test is unfair.
King said he will continue to work on environmental issues through his private law firm, but he will not take the test.

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INSIDE
Media circus
The breakup of the former first couple of California has turned into a full-on media feeding frenzy. C7

WEATHER
Today
Partly cloudy
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Tomorrow
Partly cloudy
45-55

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Maine Supreme Judicial Court

- Decision: 2012 ME 42
- Docket: And-11-269
- Submitted on Briefs: January 30, 2012
- Decided March 27, 2012
- City of Lewiston v. Robert R. Gladu

Amendments to Fee Schedule & Credit Policy



- 3 Rate adjustments (2007, 2010 & 2012)
- Nov 2006 Amendment approved to establish revised rates for mobile home in mobile home parks to make them more equitable with mobile homes not located in mobile home parks.
- Apr 2007 Amendment approved to establish revised rates for mixed use properties where the owner has both his/her residence and business collocated on the same property.
- June 2007 Amendment approved a "private road credit" for private roads providing access to residential properties.
- Sep 2008 Amendment approved to change the maximum System Impact Credit allowed to 100% and to have the credits be retroactive to July 1, 2006 for those credits previously approved.
- Jan 2009 Amendment approved to allow system impact credits for single family and duplex residential properties.

Maine Supreme Judicial Court Decision 2012 ME 42



- Four Tests Applied on Fee vs Tax
 1. Whether the Assessment Raises Revenue or is for Regulatory Purpose
 - Found City was using all revenues to address costs of stormwater requirements (including debt)
 2. Direct Relationship Between the Fee and the Benefit Conferred
 - Found basing fees on amount of impervious surface reasonable
 - Found because fees were applied only to developed properties, benefit was conferred

Maine Supreme Judicial Court Decision 2012 ME 42



- Four Tests Applied on Fee vs Tax (cont)

3. Voluntariness

- Found Voluntary because credits were available (up to 100%)

4. A Fair approximation of the Cost to the Government and the Benefit to the Individual

- City's financial reports demonstrate the fee was a "fair approximation" of the cost; and
- The impervious surface-based fee system makes a "fair approximation" of the benefit to the property owner

"After evaluating all four factors, we conclude that each factor individually supports our determination that the stormwater assessment is a fee and not a tax."

What do Utility Fees Pay for?



- **Planning & Permitting**
 - This budget primarily pays for all our engineering costs associated with managing and reporting required for permits
- **Storage & Retention**
 - This budget pays for all costs related to the operation & maintenance of the CSO storage facility and City owned retention/detention ponds.
- **Collection System Operations**
 - This budget pays for operation and maintenance of the City's stormwater systems and includes Catch-basin cleaning, inspection & maintenance of storm structures (pipes, catch-basins, ditches, culverts); street sweeping; employee education; HazMat storage & disposal
- **Customer Accounts**
 - This budget pays for the administrative functions of the utility including billing, collections, account management, accounting, legal, MIS, Human Resources, Administration and Insurance.
- **Other Expenses**
 - This budget pays for capital costs (including 50% of CSO separation costs), GIS updates & maintenance, debt service and abatement credits.