



April 10, 2013

TO: Village President and Board of Trustees
THROUGH: David A. Hulseberg, Village Manager
FROM: Carl Goldsmith, Director of Public Works *CG*
SUBJECT: Stormwater Utility

Staff has prepared this report to provide an overview of stormwater utilities (SWU) in Illinois. The report will provide an overview of stormwater utilities, define the legal authority to establish an SWU, provide details on the methodology used to determine the fee structure of an SWU, define the steps for implementing an SWU and provide an overview of the next steps should the Village Board decide to further explore the establishment of an SWU.

The idea behind a stormwater utility is that stormwater management is like other public services, such as water, wastewater and electricity, which are priced based on use. The evolution of public services/utilities includes the establishment of water utilities in the 1950s, wastewater utilities in the 1970s and solid waste utilities in the 1980s. In these cases, customers utilizing the services of the utility are responsible for paying the cost of the service provision through fees. In a stormwater utility, fees are collected from residents, non-profits (i.e. religious institutions, schools, park districts, etc.) and businesses with the fees being used for water resource improvement projects, capital improvements and for implementing best management practices (BMPs) on a local level. Sometimes the fees are used to keep up with the costs of replacing and repairing aging stormwater infrastructure.

A stormwater utility is a funding approach based on a public utility-like process that is designed to protect a community from water related disasters. Paying for stormwater expenses must be divided in a fair manner. Many stormwater utility fees are established based upon the amount of imperviousness on each property within the corporate limits. The amount of imperviousness (pavement, roof-top, sidewalks, etc.) on each property increases runoff volume and peak storm flows in the rivers, and lakes, as compared to natural pervious areas (before man built there). The basic tenet of the SWU approach is that everyone is a part of the runoff problem, as each raindrop is conveyed downstream. If you discharge into the public drainage system you should support its design, maintenance and improvements. Each property owner should pay their proportional share to treat and manage the runoff attributable to their property or the "burden" they place on the system. A large retail facility on a hill should pay more than a single-family property owner for stormwater system costs. If no runoff escapes from a site, then no fee should be charged. Undeveloped parcels that do slope, at least in part, offsite are typically still charged a fee. Based upon the impact that a property places on the stormwater system, the use of property values or water consumption, are not the most equitable means of generating revenue to support

system operations and maintenance. The Village currently funds the stormwater system through general property taxes and water/sewer fees.

The main reason to create a stormwater utility is that current and future needs are not being met with available resources. Thus, raising appropriate revenues to support the system operations and maintenance improvements should be seen as a goal of the stormwater utility. Yet a stormwater utility can also result in direct savings for residential property owners. Depending on the fee and credit structure, it is entirely possible for a property owner who takes advantage of the credits, to pay less under the stormwater utility than under a system based on property value.

The table below provides an overview of the current funding source for stormwater and the funding mechanism under a stormwater utility. The source of the data is a Village of Downers Grove, Report for the Village Council Meeting from the April 10, 2012 Council meeting. The percentages identified in the cost burden may differ for Lombard, but the table provides an understanding of the magnitude and sources of funding that can be derived through a stormwater utility.

Attributes of the Current and Proposed Funding Approaches

	Current Property Tax Based System	Proposed Fee Based System
Primary Revenue Source:	Property Taxes	Monthly Fee
Contribution Based On:	Taxable Value of the Property	Impervious Area on the Property
Who Pays Directly?	Owners of Taxable Properties	Owners of All Properties
Alignment of the Cost Burden & the Impact on the Stormwater System:	Low	High
Cost Burden (typical):	<ul style="list-style-type: none"> • 76% Residential Property Owners • 21% Commercial Property Owners • 3% Industrial Property Owners • 0% Tax Exempt Property Owners 	<ul style="list-style-type: none"> • 47% Residential Property Owners • 36% Commercial Property Owners • 8% Industrial Property Owners • 8% Tax Exempt Property Owners
Desired Outcomes Achieved By:	Stormwater Regulations	Stormwater Regulations & Pricing Structure Including Fees, Credits and Incentives
Funding Approach Similar To:	Streets, Sidewalks and Streetlights	Water System and Refuse Collection

In Illinois, home rule units of local government, with their relatively broad powers to institute fees and taxes, have no legal difficulty in establishing stormwater fees. The majority of municipalities in Illinois that have established stormwater utilities have done so under home rule authority. While non-home rule units, such as Lombard, are more restricted in the ability to establish fees, all municipalities have the power to own and operate utilities under the Illinois Municipal Code. Several non-home rule communities, such as the Village of Morton, City of East Moline, and Village of Richton Park have successfully established stormwater utilities.

In Illinois, there is a strong legal distinction between a tax and a utility fee. The distinction became clear following a 2005 lawsuit in the City of Rock Island initiated by 12 churches against the City's new SWU program. The City, making a legal distinction between a fee and a tax, won this lawsuit. Case No. 3-04-0480 of the Illinois Appellate Court dealt with this particular issue. The court found that under Illinois law the stormwater utility was in fact a fee, not a tax. As a result of the Rock Island case, a fee is not a tax and now a fee is legally defined in Illinois as 1) fairly assessed, 2) used for regulatory issues and 3) voluntary. A confusing aspect of a fee definition is that the fee is voluntary. This case has allowed other municipalities in Illinois to develop their own ordinances and collect fees from tax exempt land owners. Residents can be exempt from paying their monthly stormwater utility if they (for instance) eliminate all the runoff from their property. Additional detail on the credits that property owners may receive can be found later in this report.

Given the current mechanism of funding operations and capital improvements to the stormwater system, the establishment of a stormwater utility would allow the Village the opportunity to better plan and program projects in the CIP. The current system of funding is a "pay as you go" system that is highly susceptible to increases and decreases. It is critical that a stable source of funding be identified to ensure adequate resources are made available for maintenance and improvements to the stormwater system. In comparison to the pay as you go system of funding, a stormwater utility provides a stable revenue source. That stability can allow a municipality to issue debt (Alternate Revenue Bonds) backed up by the fees collected by the utility. This stable revenue source allows the Village to borrow money to fund large, long-term capital projects, such as sewer separation projects, detention basin improvements and stormwater pump station improvements. The issuance of debt, backed-up by the stormwater utility fees, can minimize the impact to other core services provided to the residents and businesses in Lombard.

One question that many property owners ask when discussing the development of a stormwater utility is "**Doesn't the Village already have a stormwater utility?**" The answer to that question is NO. While it is true that the Village of Lombard does own and maintain stormwater infrastructure and the Village does have an operational structure to manage the infrastructure (Public Works Administration, Public Works Engineering, Underground Utilities Division and Private Engineering Services), the funding source for stormwater management is not directly attributable to a property's impact on the system. The funding is primarily derived from the

General Fund and Water/Sewer Funds without regard to the actual impact an individual property has on the system. The other critical component is that the existing funding mechanism is insufficient to pay for significant system improvements. A stand-alone SWU is able to provide sufficient funding for operation and capital expenses in a more equitable manner.

A second question that is often asked relative to a stormwater utility is “**What activities/efforts would be operated via the stormwater utility?**” The answer is best summed up in the following fashion. A stormwater utility would include infrastructure (*i.e.*, drains, pipes, pumps and detention) owned by the Village, governed by the Village Board, managed and administered by Village Professional Staff and operated by Village line-level employees.

A third question that is often put forth during the discussion of a stormwater utility is “**Why have a stormwater utility?**” There are three primary responses to this question:

1. Community need for improved stormwater mitigation to protect property and keep infrastructure operational for service delivery.
2. Operational need to maintain or enhance stormwater infrastructure.
3. Financial need for revenues to fund immediate and future improvements and continuing operation.

The impetus for developing a more effective means of funding stormwater is the Village of Lombard’s obligation to manage stormwater. Federal environmental regulations based on the 1972 Clean Water Act (CWA) require that Municipal Separated Sanitary Sewer Systems (MS4s), construction sites and industrial activities control polluted stormwater runoff from entering receiving bodies of water (including navigable streams and lakes). The NPDES permit process regulates the discharge from these sources based on amendments to CWA in 1987 and the subsequent 1990 and 1999 regulations by the U.S. Environmental Protection Agency (USEPA). In Illinois, the USEPA has delegated administration of the Federal NPDES program to the Illinois Environmental Protection Agency (IEPA).

Based upon the regulations imposed by the Federal and State governments, the management of stormwater can be separated into two (2) distinct principles:

1. Stormwater *volume* must be managed

In Illinois, flooding is the leading cause of damage to property. This has been consistent with the history of Lombard. Minimizing the damage sustained to public and private property is a paramount goal of the stormwater management program in Lombard. The Capital Improvement Plan has included many stormwater improvements; however millions of dollars are needed to make system-wide improvements to reduce the impact of stormwater.

2. Stormwater *pollution* must be managed

The Village of Lombard is subject to Federal and State Municipal Separate Storm Sewer (MS4) permit requirements. The IEPA MS4 permit requires that the Village develop BMPs to address stormwater. There are also six general categories that are included in the MS4 permit:

- Public Outreach and Education
- Illicit Discharge Elimination
- Construction Site Runoff Control
- Post-Construction Runoff Control
- Pollution Prevention/Good Housekeeping
- Detention Basin Inspection

The process of implementing a stormwater utility is lengthy and requires a significant analysis of current operation/maintenance costs and capital projects. This section provides an outline of the steps to take in creating a stormwater utility. It is merely a guide, and some steps may blend into one another. Several Illinois communities have already completed elements of the outline as part of the establishment of a stormwater utility.

Assess Community Stormwater Needs

This step helps a community determine the scope of the water resource problems, such as flooding, erosion, water quality, federal or state mandates, etc. Project concepts and budgets may be developed at this stage. Many communities have already developed stormwater master plans, participated in watershed planning efforts, or through the normal budgeting process have a sense of their needs. Typically an engineering firm with experience in water resources would be hired to conduct a study, but many tasks can also be carried out in-house. While the Village has studied many specific areas of the community, the Village has not conducted a stormwater master plan. This is a critical step in understanding the needs of the community and the fiscal impact of the improvements.

Conduct Stormwater Utility Feasibility Study

A feasibility study helps determine whether a stormwater utility is the right approach to meet needs identified in the stormwater master plan. The feasibility study would address policy and administrative details such as the method used to calculate the fee, the means of billing, penalties for non-payment, and so forth. Typically, an engineering firm with experience in stormwater utilities would be hired to conduct the study. Some tasks may also be performed in-house.

In regard to the development of a fee structure, the Village would need to determine the billing unit to be used for the utility, as well as the base rate. Just as electric utilities use \$/KWh and many water and sanitary sewer utilities use \$/1,000 gallons, the Village would need to establish the parameters for the assignment of fees. With stormwater utilities in Illinois, the most common form of a fee structure uses a billing unit based upon runoff generated by impervious surface.

This is known as an Equivalent Residential Unit (ERU). This fee structure is based upon the amount of impervious area on the lot as a square foot measurement and is proportional to the volume of run-off attributable to the average single family dwelling unit. The use of ERUs correlates to stormwater system demand and “use”, is easily measured and verified via GIS and is a method that has been upheld by courts.

To determine the rate for non-single family residential units, the fee is based upon a calculation derived from the ERU. As defined, one ERU = the average amount of impervious surface from the typical single-family lot. To establish the fee for non-residential properties, an individual calculation is used by determining the amount of runoff. This figure is then correlated back to the measured ERU value times the base rate for an ERU. An example can be found below:

Illustration of Base Billing Unit			
Calculation of Annual Stormwater Fee for a 10,000 sq. ft. Commercial Parcel			
	100'		100'
1 Equivalent Residential Unit 30% Impervious Area		100'	
Single Family Residential 10,000 sq. ft. Parcel - 30% Impervious Area = 1 ERU Annual Fee = \$60.00			Commercial Property 10,000 sq. ft. Parcel - 90% Impervious Area = 3 ERU Annual Fee = \$180.00

Conduct Public Outreach and Education

Public outreach is critical to developing support for a dedicated and stable revenue source, such as a SWU. The most important elements likely will be to show the magnitude of the needs and to indicate how residents will benefit from the new fee. Communities that have successfully implemented a stormwater utility attribute their success to a well-developed and comprehensive public process. The public outreach should include stakeholders from various segments of Lombard; residents, commercial businesses, manufacturing, school districts, the Lombard

Chamber of Commerce and Industry, Lombard Town Center, library staff, park district staff and religious institutions.

Stormwater utilities are not without opposition. One issue is that residential property owners may not perceive any new benefit from the new fee. But the needs assessment is meant to take the measure of flood risk and other problems that affect residential property owners. If residential property owners can be shown that the fee they pay would reduce or eliminate these problems, then they typically see a benefit to themselves in the fee. This is one of the reasons why public participation is critical. Residential property owners may also perceive the fee as a new charge for something that has always been free.

Institutions such as schools and religious institutions that have large impervious areas but pay no property taxes will find themselves paying the stormwater fee. Opponents of the fees sometimes argue that requiring schools and park districts to pay a stormwater fee is “double taxation” in the sense that taxpayers fund the school system and so are ultimately also responsible for the stormwater fee as well. However, schools pay for water, electric, sewer, and gas service, and this state of affairs goes unchallenged. Religious institutions, on the other hand, may argue that their exemption from local taxes also qualifies them to avoid the stormwater fee. Again, this cannot be the case since a fee is not a tax. A stormwater utility that follows best practices will also include a set of rebates for implementing measures that reduce stormwater runoff. Then property owners, including schools and houses of worship, can reduce or eliminate the fee they pay.

Develop Local Ordinance and Credit Manual

An ordinance is required to implement the stormwater utility. The ordinance would provide a fee schedule, by property type, based on the recommendations of the feasibility study. The ordinance would also provide the guidelines and regulations for credits and rebates that could be applied to a specific property. These credits and rebates would be available to properties that minimize the run-off and impact on the stormwater system from the site. The ordinance would also provide for an appeals process for property owners who believe they were billed improperly or that the fee was applied incorrectly. A credit manual is often developed to accompany the ordinance and explain in more detail how to implement the practices that qualify for credits.

It is important to note that while the Village has not undertaken any efforts to establish a stormwater utility, there is legislation (HB 5900) in Springfield that would afford DuPage County and Peoria County the opportunity to establish county-wide stormwater utilities. The Village would have the discretion to have DuPage County administer and collect the fee for the Village of Lombard. The County has extensively looked at implementing such a program and their two stakeholder groups (municipalities and land owners) had jointly concluded that, if

implemented, it should be based on ERUs. The concept of administration by the County would simply require the Village to determine the fee that should be collected per ERU for the Village's costs. The County would then administer the database and billing, adding an increment for the Village. The Village would need to determine the basis of its costs and still perform many of the same studies that would have been necessary for a Village operated/managed utility. Another benefit of the Village adding onto a DuPage County administered stormwater utility is that it would likely save time since it typically takes at least a few years to establish a utility. The process of establishing a stormwater utility can be a timely process and that period would be shortened if the County is granted authority under Illinois Statutes to establish a county-wide program.

Whether the Village decides to advance the concept of establishing a stormwater utility as a stand-alone local program or participate in a county-wide effort, the next steps are relatively similar. The steps recommended for the formation of a utility would require the Village Board to provide direction on a number of policy related matters. The direction provided by the Village Board will assist staff in charting the course on the creation of a stormwater utility. The following policy matters need to be addressed:

- ✓ Which costs shall the Village seek to recover in an ongoing user fee? [e.g., operations, capital, maintenance only?]
- ✓ How shall the rate be structured to equitably recover costs? [e.g., impervious surface area, density of development?]
- ✓ Under what circumstances can rate credits be granted? [e.g., stormwater-related education, on-site mitigation?]
- ✓ What fiscal policies will ensure the ongoing health of the utility into the future [e.g., reserve targets, capital funding strategies]
- ✓ How does the Village bill the fee? [e.g., water bill, monthly bill]
- ✓ What level of interest the Village Board has in partnering with DuPage County, should the pending bill be enacted as law?

The answers to key policy questions, often first addressed with an advisory committee, provide a framework for calculating rates and fees. Policy recommendations also determine the type of property data to be compiled. For example, measurement of impervious surface area is often required, which has already been undertaken by the County. Once the policy framework has been established, and the rates and charges have been calculated, an adopting ordinance must be prepared, and the rate is ready for billing. The fee and the information necessary to calculate individual bills must be incorporated into the billing mechanism – usually an existing utility billing system.

Staff is seeking direction from the Village Board on these important policy questions in advance of retaining consultants or establishing work groups to perform the required analyses. It is recommended that should the Village Board of Trustees desire to advance the concept of a stormwater utility, the Village assign, by resolution, the function of stormwater committee to the Public Works Committee. The Committee has a long history and experience with stormwater issues and is staffed by the professional Public Works staff that can provide technical expertise on stormwater related matters.

The Village would subsequently retain a consultant to assist in developing the information necessary to advance the concept of a stormwater utility. The work conducted by a consultant will include; the development of a Stormwater Master Plan, development of database for imperviousness on a parcel basis, development of a methodology for assigning costs in a measurable, definable and equitable manner, assisting with the outreach to the public and serving as the technical expert to guide the Village through the implementation of the stormwater utility. The process would be conducted in such a manner that there would be milestone events that the Village would have to consider prior to advancing the concept further. These “jumping off” points would minimize the financial commitment made by the Village.

Based upon the implementation of the Downers Grove stormwater utility, it is anticipated that the cost of retaining a consultant to facilitate a Storm Water Master Plan and to perform the required analyses for a fee structure will be in the neighborhood of \$100,000. This figure does not take into account any efforts to align the billing system and additional efforts required by Village staff.