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Suit against stormwater authority goes down the drain

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MEDIA COURTHOUSE >> Judge Spiros E. Angelos issued orders Monday denying four petitions seeking preliminary injunction against the Stormwater Authority of the City of Chester. The petitions were filed in the Delaware County Court of Common Pleas between Jan. 12 and Feb. 2 on behalf of Widener University, Chester Charter School for the Arts, and more than 40 city business and property owners.

The filings and a March 2 hearing came after a late 2017 controversy over the fee structure imposed on city residents and businesses by the municipal authority, created by the city in October 2016 to remediate stormwater pollution.

“We’re really excited about the opportunity to proceed with the work we’ve been asked to do to help this community,” said stormwater authority Executive Manager the Rev. Horace Strand, D.Div., on Tuesday. “We appreciate the judge’s wisdom with making a decision that’s according to the law. The city of Chester is going to benefit tremendously from the work we are going to do.”

The orders do not rule out the possibility of further legal challenges to the authority. “This order means there is no immediate harm (to the plaintiffs due to fees),” said authority Solicitor Joseph Oxman of the Philadelphia-based Oxman Goodstadt Kuritz, P.C. “As far as an injunction for permanent relief, that can continue.”

Rocco Imperatrice of the Newtown Square-based Imperatrice, Amarant & Bell P.C., attorney for the plaintiffs, could not be reached for comment Tuesday. A representative from the Chester Business Association, which was not a party to the lawsuit but organized the effort to challenge the authority, declined comment when reached by phone.

The main objections to the authority voiced at public meetings in late 2017 and stated in the petitions for preliminary injunction were that the authority’s fee structure was arbitrary and its work would be duplicative of stormwater remediation performed by the Delaware County Regional Water Quality Control Authority, or DELCORA.

The authority was incorporated in late October 2016 following a Chester City Council ordinance passed that month authorizing an “intention to organize a stormwater authority under the provisions of the Municipal Authorities Act” to “protect the city and Delaware County’s water bodies and groundwater and to safeguard the public health, safety and welfare to the residents of the city.”

The authority was announced to the public in June 2017 as an initiative to remediate stormwater pollution and create economic development. A Times report quoted U.S. Environmental Protection Agency Region 3 Acting Regional Administrator Cecil Rodrigues that the initiative was to also create safe, walkable communities that enhance the quality of life for residents.

The authority was launched with a \$1 million grant from the Pennsylvania Infrastructure Investment Authority, or PENNVEST, and since then has secured approximately \$15 million in low interest loans through PENNVEST.

The controversy began to take shape in November when city property owners received letters from the authority, notifying them of charges they would incur each month.

The monthly fee at that time was set at \$15.60 per ERU, or Equivalent Residential Unit. The ERU was defined by the authority as the average amount of impervious surface area on a single-family parcel and set at 1,139 square feet. The square footage was based primarily on satellite imaging of the city.

City business owners began voicing concern over the fee structure at authority meetings. While residents in a single-family home would be paying the single ERU fee per month, some commercial property owners had calculated their potential annual fees to be in the five- and six-figure range based on their amount of impervious surface.

Following the uproar, the authority voted unanimously at Dec. 1 meeting to approve a monthly fee of \$8.25 to be paid quarterly.

The plaintiffs then filed the four petitions for preliminary injunction in January and February to stop the fee collection. The defense's closing memorandum to the court states that "Generally, a court does not have jurisdiction to address an action in law or in equity where an administrative remedy exists" and "Per their own testimony, none of the plaintiffs' witnesses every contacted the Stormwater Authority to request a hearing" to appeal their property's fees.

The plaintiff's closing argument states that the document outlining the authority's appeal process was not posted on its website until Feb. 26, 2018, four days before the March 2 preliminary injunction hearing. It then states "when asked whether the appeal process was published at any prior time, Dr. Strand testified that it was 'published ... through the public meetings and communications,' meaning that it was discussed at meetings."

Speaking with the Times on Tuesday, Strand said that the authority received between 20-30 requests to date and that every requesting party has won their appeals. "They've been based on legitimate issues – they are vacant lots or had area considered to be billable and they've shown us that they are not," he said.

The plaintiffs' closing memorandum also states the authority did not hold its first public meeting until February 2017, four months after its incorporation, and that "during that time, the authority failed to hold and advertise public meeting to create and organize the authority, appoint board members, appoint directors, appoint officers, hire employees and consultants, authorize grants and loans, and approve the initial fee."

The closing memorandums from each party outline their positions on the two issues at the center of the original controversy – that the fee structures were arbitrary and the authority's work duplicative of DELCORA's stormwater remediation in the city.

The plaintiffs' memorandum states that authority failed to provide data explaining how the original and revised fees were "reasonable," basing it only on a five-year budget projection that the memorandum earlier categorized as not itemizing specific costs or expenditures.

The two parties gave differing interpretations of testimony by defense witness Howard Neukrug, former CEO and commissioner of the city of Philadelphia Water Department, each citing portions of his testimony that the fee was either arbitrary or consistent with projects mentioned in the five-year budget.

The parties also cited testimony by Michael DiSantis, director of operations and maintenance of DELCORA, in support of their respective positions.

DELCORA entered a settlement agreement with the EPA in 2015 requiring an improvement of its stormwater services, with the cost passed to Chester property owners. A portion of Chester's stormwater enters a combined DELCORA system of both wastewater and stormwater. The plaintiffs' memorandum cites DiSantis' testimony that DELCORA serves 85 percent of the city of Chester.

The defense's memorandum points to DiSantis' testimony that DELCORA has no ownership or control of the city's stormwater inlets and pipes to the combined system, which are the responsibility of the city of Chester. The inlets, making up the city's municipal separate storm sewer systems, or MS4, transport and discharge untreated stormwater to local water bodies.

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