

MOTION:

December 15, 2020

SECOND:

Regular Meeting

Res. No. 20-

RE:

AUTHORIZE A PUBLIC HEARING TO CREATE A STORMWATER MANAGEMENT GRANT FUND AND TRANSFER, BUDGET, AND APPROPRIATE \$200,000 FROM FISCAL YEAR 2020 YEAR-END SAVINGS FROM THE CAPITAL RESERVE TO THIS STORMWATER MANAGEMENT GRANT FUND CONTINGENT UPON APPROVAL OF THE STORMWATER MANAGEMENT GRANT FUND

ACTION:

WHEREAS, the residents of 16196 Sheffield Drive and 4094, 4096 and 4098 Camelot Court have experienced serious flooding issues to include in house flooding on numerous occasions within the past few years; and

WHEREAS, this flooding is due to a severely deteriorated 60-inch corrugated metal pipe on Montclair Country Club property that is beyond repair, prevents the free flow of stormwater, and backs up on these properties; and

WHEREAS, previous attempts to resolve this issue with the Montclair Country Club property owner and through other, volunteer efforts have failed; and

WHEREAS, the County's contractor for the Powells Creek Stream Restoration project is willing to replace the deteriorated stormwater pipe at cost and has provided an estimate to the Montclair County Club and the County; and

WHEREAS, the owners of Montclair Country Club are willing to allow for the disposal of excess dirt from the Powell Creek project saving the County's contractor money which can be used to offset some of the cost of the pipe replacement; and

WHEREAS, based upon the County's contractor estimate for the pipe replacement, including contingencies, and the savings for disposing excess dirt on Montclair County Club, an estimated \$200,000 is needed to fully fund the replacement of this deteriorated stormwater pipe; and

WHEREAS, in accordance with § 15.2-2114.01 of the Virginia Code Ann., localities by ordinance can create a local Stormwater Management Fund consisting of locally appropriated moneys for the purpose of granting funds to an owner of private property or common interest community for stormwater management and erosion prevention on previously developed lands;

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NOW, THEREFORE, BE IT RESOLVED that the Prince William Board of County Supervisors hereby authorizes a public hearing to be held in early 2021 to consider the adoption of an ordinance creating a new Stormwater Management Grant Fund and establishing criteria as to what future projects would be considered for funding of stormwater management on private property on previously developed lands;

BE IT FURTHER RESOLVED that the Prince William Board of County Supervisors, contingent upon the Board adopting an ordinance creating a new Stormwater Management Grant Fund, hereby transfers, budgets, and appropriates \$200,000 from Fiscal Year 2020 year-end savings from the capital reserve to the Stormwater Management Grant Fund.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Abstain from Vote:

For Information:

County Attorney

Director of Public Works

Assistant Director of Public Works for Environmental Services

ATTEST: _____

Clerk to the Board



STAFF REPORT

Board Meeting Date:	December 15, 2020
Agenda Title:	Authorize a Public Hearing to Create a Stormwater Management Grant Fund and Transfer, Budget, and Appropriate \$200,000 of Fiscal Year 2020 Year-End Savings from the Capital Reserve to this Stormwater Management Grant Fund Contingent Upon Approval of the Stormwater Management Grant Fund
District Impact:	Countywide
Requested Action:	Approve the resolution and authorize the public hearing.
Department / Agency Lead:	Department of Public Works
Staff Lead:	Thomas J. Smith, Director

EXECUTIVE SUMMARY

Residents at 16196 Sheffield Drive and 4094, 4096 and 4098 Camelot Court have been experiencing serious flooding problems for several years to include recent house flooding due to a failing privately-maintained stormwater management pipe on property owned by CJ Eagle LLC, more commonly known as Montclair Country Club (MCC). This deteriorated pipe is preventing the free flow of stormwater and backing up water upstream of the pipe for these residents. Attempts to repair the pipe by the MCC as well as by private volunteer efforts have failed.

The Board of County Supervisors (BOCS) issued a directive (Directive 20-61) to research existing County and State ordinances and polices including the Design and Construction Standards Manual (DCSM) and House Bill 1614 (Local Stormwater Management Fund) as they relate to Stormwater Fee or other grants for private stormwater management maintenance and repairs.

Currently, the County has an existing Stormwater Management Fee and program which provides funds to meet stormwater regulatory requirements. This Fee can only be used to for maintenance of the County's stormwater management system, which have been placed in easements and accepted by the County. The Fee cannot be used for maintenance or improvements to private drainage systems that are not part of the County's system.

In 2019, the General Assembly passed House Bill 1614 which enacted § 15.2-2114.01 of the Code of Virginia, which allows localities to create a local Stormwater Management Fund "consisting of locally appropriated moneys" for the purpose of granting funds to an owner of private property or common interest community for stormwater management and erosion prevention on previously developed lands. If desired, this fund can be established by the Board through adoption of an ordinance.

A unique opportunity to replace the pipe now with a similar 60-inch diameter pipe at a discounted price in conjunction with the Powells Creek Stream Restoration Project, a County Watersheds CIP project, has become available. While the pipe repair on the MCC property is not connected to the Powells Creek Stream Restoration project, if the County contractor is utilized for the MCC repair, they can address removal of excess soil for the CIP project, which saves money on travel and landfill fees and apply these savings to the pipe replacement project, thereby reducing the overall cost of the repair for the MCC project. The County contractor has provided for consideration an estimate (which includes the assumed cost savings) for the pipe repair to solve this drainage and flood control problem.

If the BOCS decides to establish this new fund and provide funding for the MCC project, a resolution has been developed for consideration that authorizes a public hearing to create an ordinance to establish a new stormwater grant fund and provides funding for the program once approved by the Board. Staff would then schedule a public hearing, develop an ordinance and criteria as to what future projects would be considered for funding. If approved by the BOCS, the new fund is thus created, and property owners can then apply for a grant, including MCC.

BACKGROUND

Residents of Sheffield Drive and Camelot Court in the Montclair subdivision have been experiencing house and yard flooding since at least 2009 due to a deteriorated private stormwater pipe across Hole 1 and the Driving Range at Montclair Country Club (MCC). Recently, even with less intense rainstorm events, the flooding has gotten worse. The stormwater causing these floods flows from upstream of MCC and homes through a swale behind the properties, a portion of which is in a dedicated County easement, and then through Montclair Property Owners Association (MPOA) common area property and eventually to the 60-inch metal pipe located on MCC property. The County's dedicated easement is clear of debris and well maintained with nothing to inhibit the flow of stormwater. The private stormwater pipe was installed to convey stormwater across the golf course when the MCC was originally built in the early 1970's. The County has no record of ever maintaining this pipe and there is no dedicated County stormwater easement for the pipe. Due to the deteriorated nature of the MCC pipe, the free flow of stormwater through the pipe is blocked. This causes stormwater to back up on these properties and caused serious flooding to include home flooding in the basement at 4098 Camelot Court in March of 2019. It is estimated that the standing water during non-rain periods is as deep as 6-7 feet. Numerous requests to MCC by the County and others such as MPOA, as well as volunteer efforts to fix this issue have all failed. Recent legislation now allows the County to provide public funds through a grant program, if established by the local governing body, to a private property owner for stormwater repairs.

The County's contractor for the Powells Creek Restoration project has provided Public Works with an estimate and is willing to replace the MCC pipe at cost and take advantage of the cost savings of the work in the area to dispose of soil on MCC property. MCC has agreed to give the County's contractor access to MCC property for the pipe repair and for disposal of excess soil from the Powells Creek project.

Stormwater Management Fee (Existing program)

Prince William County has an existing Stormwater Management Fee (Fee) that has been in place since 1994 (FY95), when it was adopted by the Board of County Supervisors (BOCS). The Fee supports many Federal Clean Water Act requirements to include a permit program for stormwater discharges known as the Municipal Separate Storm Sewer System (MS4 Permit). This comprehensive program has as its purpose flood prevention and the protection of water quality in local streams and creeks that are part of Prince William County's stormwater system and ultimately the Potomac River and Chesapeake Bay. One of the requirements of the MS4 Permit is demonstrating a dedicated revenue source – such as the Fee - to fund the permit program every year.

In addition, funding from the Fee supports major CIP projects such as stream restoration, stormwater management pond retrofits, flood control, infrastructure maintenance, and the County-owned Lake Jackson Dam operations and maintenance. In this past year, dredging of County-maintained stormwater ponds to remove accumulated silt has also been occurring with Fee support.

The County collects the Fee for the maintenance and operation of the County's stormwater management system as required by state and federal law. This system of pipes, ponds, swales, and culverts are in dedicated County easements and make up the County's stormwater infrastructure. This Fee is charged along with the real property tax bills sent to property owners each year. The County's legal authority to collect the Fee is established by § 15.2-2114 of the Virginia Code Ann. That section permits localities to “establish a system of service charges to support a local stormwater management program consistent with” state and federal requirements. Income from those charges (i.e., fees) “shall be dedicated special revenue.”

Accordingly, the Fee collected by the County for stormwater management can only be used for the maintenance and operation of the County's stormwater management system as described in that statute. It does not allow for the use of the Fee for private drainage structures that are not part of the County's stormwater management system.

The existing Prince William County Ordinance § 23.2-5 allows the County to operate its local stormwater program for the benefit of the County as a whole. It protects and enhances water quality and prevents localized flooding. It offers flexibility to perform projects on public or private property within the confines of available funding. The County has consistently limited its program efforts to exclude improvements on private property where there are no dedicated storm drainage easements.

Design and Construction Standards Manual – Section 700 Environmental Systems

The County's existing Design and Construction Standard Manual – Section 700 Environmental Systems, contains numerous guidelines on Stormwater Management. It dictates how approved plans and plats and maintenance agreements for the Stormwater infrastructure are to be legally recorded and maintenance responsibility assigned as public or private. Since the 1990's all projects include a recorded easement and a maintenance agreement which requires the property owner to perpetually maintain the easement and stormwater facilities. Public stormwater infrastructure is a legally binding obligation on the County in perpetuity; it must and does include a robust program of inspection and maintenance to include replacement or retrofit of older systems when needed. The program is entirely funded by the Fee, with no General Fund or other non-Fee fiscal resources to support this program.

Recent Legislation

Prior to 2019, the Code of Virginia contained no specific authority for localities to fund the maintenance or repair of private structures (outside of easements) such as the pipe at the MCC. That year, the General Assembly enacted § 15.2-2114.01, which allows localities to create a local Stormwater Management Fund “consisting of locally appropriated moneys” for the purpose of granting funds to an owner of private property or common interest community for stormwater management and erosion prevention on previously developed lands. Grants from that fund may only be used for construction, improvement, or repair of stormwater management facilities or for erosion and sediment control. It is critical to note that the “Stormwater Management Fund” permitted by § 15.2-2114.01 is separate and distinct from the stormwater management fee collected by the County pursuant to § 15.2-2114. Localities are enabled to create this fund through local ordinance.

CURRENT SITUATION

The BOCS has the authority to establish a fund for this new program by ordinance, if desired. A draft ordinance would need to be developed and a public hearing held. However, any funds or grants for this new program must consist of “locally appropriated moneys,” and the stormwater fee collected with the real property tax bills may not be used for this fund. Private property owners would need to apply for these grant funds, and the County would review and approve the application and provide funds directly to the property owner.

If the BOCS would like to further assist property owners in dealing with private drainage issues and the increased frequency of localized flooding outside of dedicated County stormwater easements, and to fund this project on MCC property, a draft resolution to authorize a public hearing has been developed for consideration.

Service Level / Policy Impact

By policy and ordinance, the County has not and does not provide storm drainage maintenance to systems located on private property that are not located in storm drainage easements. County staff will continue to assist and provide guidance to property owners with specific issues on private property which are causing flooding or drainage problems for those property owners to fund and implement themselves.

Should the BOCS want to move forward and fund a new Stormwater Management Grant Fund to assist MCC and future private property owners with failing drainage systems, it is recommended that a public hearing be held on a draft ordinance, which would include strict criteria as to what future projects would be considered for funding.

If funding is approved for a newly created local stormwater grant program, the owner of MCC will need to apply for a grant for these funds for replacement of the pipe. The County's contractor may then work directly with MCC to perform the repairs.

Fiscal Impact

If the Board decides to establish this new fund and provide funds with the intent to replace the MCC pipe, \$200,000 is needed to fully fund the MCC project. The estimate for the MCC pipe replacement from the County contractor is \$270,000. Adding a \$30,000 contingency brings the total estimate to \$300,000. The estimated savings to the contractor for disposing of excess dirt from the Powells Creek project on MCC property is approximately \$100,000, leaving the estimated amount to fully fund the pipe replacement at \$200,000.

If this new fund and program is established, any future cost will be determined and budgeted on a project by project basis by the Board. Specific criterion for each project eligibility can be developed by staff and approved by the BOCS. The future costs of projects is unknown at this time. Existing staff can be used to implement this new program, if approved.

Legal Impact

The County has no record of ever maintaining this pipe on MCC property. Because no drainage easements have ever been dedicated to or accepted the County, the County has no legal responsibility to maintain or repair this pipe.

Under § 15.2-2114.01 of the Code of Virginia, the BOCS has authority to establish a new Stormwater Management Grant Fund by ordinance to provide funding for stormwater management projects on private property, like the MCC pipe replacement project, at its discretion. The draft ordinance would be developed, and a public hearing advertised for two consecutive weeks prior to holding the hearing.

Process and Timing

To establish a new Stormwater Management Grant Fund, and award a grant for the MCC pipe replacement project or any other projects, the following steps and timeline is proposed:

- Authorize public hearing: December 15, 2020
- Develop draft ordinance and criteria: December 2020/January 2021
- Advertise Public Hearings: January 2021
- Hold Public Hearing: February 2021
- Adopt Ordinance: February 2021
- Application Process Finalized: February 2021

STAFF CONTACT INFORMATION

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