

12-13-2023 - Reno City Council Meeting - Item # E.4 Stormwater Utility Ordinance

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(no subject)

1 message

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To: publiccomment@reno.gov

Proposed Stormwater Utility Fee, Agenda items E1-E4.

My name is Joe Panicaro. I am a longtime activist and lifelong resident of Reno, Nevada, having worked in the legal profession the last three decades. I am unable to appear at City Council on December 13th to speak on the proposed Stormwater Utility. Thus, I'm submitting this written response.

On November 6 and 7, 2023, I had my 54 page Stormwater Utility Opposition emailed to all City Council members, the City Manager and Chief Engineer Jon Simpson. To date, I have not received a response from any of the individuals.

As I detailed in my Opposition, the proposed Stormwater Utility Fee (essentially a tax) appears ill conceived and likely to result in class action litigation, as acknowledged by the legal community. (Just because you call a dog a cat, this doesn't mean it's a cat. Fees are discretionary whereas taxes are mandatory). The proposed Stormwater tax is apparently duplicative as it seeks funding for items ALREADY FUNDED BY OTHER SOURCES. The Stormwater tax appears discriminatory and violative of Article 10, Section 1 of the Nevada Constitution which requires taxation to be uniform, just and equal. The tax appears violative of both the Equal Protection and Due Process Clauses of the 14th Amendment of the U.S. Constitution. Its method of calculation appears erroneous and the tax unjustified, lacking a reasonable basis. Records obtained from the City show the Tennessee consulting firm Raftelis was paid \$857,670.89 to advise on initiating a Stormwater Utility tax.

Raftelis advised mailing postcards to ALL City of Reno property owners at two different intervals to inform them of the proposed Stormwater tax. Instead, City staff states they provided an informational mailer in sewer bills directing property owners to a website. This apparently violated the notice requirements of Due Process as many property owners have septic systems, not sewer hookups, and were never given notice.

Many businesses, including those practicing law, were not provided with notice of the proposed Stormwater tax. NRS 237.030 requires local government to provide notice of a proposed rule to owners and officers of businesses likely to be affected by the proposed rule so they may submit data and arguments to the government. WHEN THIS IS NOT DONE, NRS 237.140 MAKES THE ADOPTION OF THE RULE VOID.

Raftelis confirms in its report that the items to be funded with the proposed Stormwater tax ARE ALREADY BEING FUNDED THROUGH OTHER SOURCES SUCH AS SEWER AND STREET FUNDS. RAFTELIS FURTHER CONFIRMS THAT GROUPS ARE ALREADY PAYING FOR STORMWATER MANAGEMENT THROUGH THEIR PROPERTY TAXES. THUS, THERE'S NO NEED FOR ANOTHER DUPLICATIVE TAX.

Raftelis points out that in 2018, voters turned down an increase in taxes to further fund flood control and may view the Stormwater tax as a way to circumvent that vote. THAT CERTAINLY SEEMS WHAT'S HAPPENING HERE. IF NOT, WHY DOESN'T THE CITY PUT THE STORMWATER TAX ON THE BALLOT?

The Stormwater Utility tax is to be used for City of Reno bridge replacement. YET, ACCORDING TO DAN DOENGES AT RTC, VEHICULAR BRIDGES ARE TYPICALLY PROJECTS OF RTC FOR WHICH FEDERAL FUNDING IS OBTAINED. IN FACT, DOENGES SAID RTC ALREADY SECURED FEDERAL FUNDING FOR REPLACEMENT OF THE TWO ARLINGTON AVENUE BRIDGES, SLATED FOR CONSTRUCTION IN 2025. IN REGARD TO THE HUGE INFRASTRUCTURE BILL CONGRESS PASSED IN 2022, DOENGES SAID RTC WOULD DEFINITELY SEEK THOSE FUNDS AS WELL. WHY HASN'T THE CITY OF RENO SOUGHT THOSE FUNDS?

Making only Reno property owners responsible for replacement of vehicular bridges that others use would apparently be discriminatory and violative of Article 10, Section 1 of the Nevada Constitution.

Under the proposed Stormwater tax, the two pedestrian bridges at Winfield Park are slated for replacement at a cost of \$1,133,977. Yet, when I asked for records showing their need for replacement, the City provided me with park inspector reports which had the box "ok" check marked for both. Also slated for replacement are two Wells Avenue pedestrian bridges. When I asked for records showing their need for replacement, the City did not provide me with any.

Also included in the Stormwater funding package is a \$5,000,000 amount for "Partial Solutions" for Swan Lake/Silver Lake flooding. The City was previously warned by the engineering firm Quad Knopf in 2007 that continued development in the area would lead to increased Stormwater volumes in Swan Lake, resulting in flooding. The warning was ignored and Swan Lake flooded. Consequently, the City was sued, resulting in a \$4.5 million settlement.

According to Raftelis, an additional \$1,263,000 annually would be needed just to hire new employees to implement the Stormwater Utility.

The Stormwater tax is apparently based on an erroneous method calculation. The basis for the tax is to make a property owner responsible for their contribution to stormwater flowing into the City's collection system. YET, THE METHOD OF CALCULATION USED EMPLOYS A PROPERTY'S IMPERVIOUS AREA ONLY AND DOES NOT TAKE INTO ACCOUNT THE PROPERTY'S PERVIOUS AREA WHICH CAN ABSORB STORMWATER BEFORE IT RUNS OFF THE PROPERTY AND INTO THE STREET. RAFTELIS PROVIDES A PERFECT EXAMPLE OF THIS FLAWED CALCULATION WHEN COMPARING THE TARGET SHOPPING CENTER WITH RENO HIGH SCHOOL. WHILE TARGET HAS VIRTUALLY NO PERVIOUS LAND AREA TO ABSORB STORMWATER, RENO HIGH HAS COPIOUS AMOUNTS, NEARLY AS MUCH PERVIOUS AREA AS IT HAS IMPERVIOUS AREA. YET, BECAUSE RENO HIGH HAS SLIGHTLY LESS IMPERVIOUS LAND THAN TARGET, ITS STORMWATER BILL WILL BE SLIGHTLY LESS THAN TARGET'S. YET, RENO HIGH'S CONTRIBUTION TO THE CITY'S STORMWATER SYSTEM IS IMMENSELY LESS.

I implore you to read my 54 page Opposition prior to taking any vote on the proposed Stormwater tax. People are furious over this proposal and there's even talk of a recall. Further funding of flood control was soundly rejected by the voters. Now, they feel the City is thumbing its nose at them and shoving this down their throats.