Utility Advisor Committee (UAC)

September 4, 2012

Report to Council on the

August 24, 2012 / FCS Group

- Storm and Surface Water Management Street Rate Policy Analysis

BACKGROUND

The City of Winslow 1st established a storm and surface water utility thru Ordinance 86-27 back in 1986. After annexation in 1991, the storm water utility was extended to include the entire City, thru Ordinance 91-49, thus becoming the City of Bainbridge Island storm water utility. The City's storm and surface water utility rates were initially adopted and amended over time thru ordinance. The rates established in Ordinance 2010-34 were legally challenged through suit brought by the Rate Payers Alliance, and on September 2011, Kitsap County Superior Court found these rates to be "arbitrary and capricious". The court later gave the City until November 29, 2012 to come up with a legal ordinance.

On April 3, 2012 the City issued RFP soliciting proposals for qualified consultants to "complete a study of the City's Storm and Surface Water Management (SSWM) rates to be appropriately charged to the City of Bainbridge Island road systems". On May 9, 2012 Council approved Agenda Bill 12-051 thereby authorizing the Interim City Manager to enter into an Agreement for Professional Services with Financial Consulting Solutions Group, Inc. (FCS) to that end.

FCS group provided a preliminary overview of their findings at the Joint Workshop with the Utility Advisory Committee conducted during the August 8, 2012 Special/Regular City Council Meeting, as included in the August 2012 / Bainbridge Island SSWM Street Rate Policy Analysis. While the Council and UAC were provided the opportunity to ask questions after the August 8, 2012 FCS presentation, we were often told at that time that the requested information would be available in the report which would be to the City by August 17 and distributed for our review as soon thereafter as possible.

The FCS / City of Bainbridge Island Storm and Surface Water Management Street Rate Policy Analysis Report of Findings was published and distributed to UAC on August 24, 2012. This gave the committee just 5 business days to review the results and respond, and because of the timing of this material two of our six member committee were unavailable to participate in our review. We provide this information more than anything as context for generally limited nature of our comments included herein.

COMMENTS / The comments contained herein are based on individual members perceptions and understandings and are not necessarily consistent. These comments are not intended to represent a consensus or recommendation.

1. Clearly the City's municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains provide benefit to the storm water utility, as do the other onsite storm water facilities constructed by other SSWM rate payers. Unfortunately while the consultants report attempts to quantify the value of the city's (road funds) capital investment in the municipal streets, they have not provided sufficient rational, detail or documentation to support their estimates, nor have they explored the similar offsetting credits due to the other SSWM Utility rate payers who have constructed onsite storm water facilities as a condition of their residential and commercial developments. Without a true measure of the city's roads department's capital contribution and associated costs of dealing with roadway runoff there can be no assurance that any proposed credit or exemption is accurate, fair, or legitimate. Without such it is not reasonable for the City to adopt an ordinance that includes any exemption for the city roads.

2. This specific activity was initiated through court action and implemented to directly respond to the court direction to adopt an ordinance that the court will NOT find to be "arbitrary and capricious". While this report provides summary of other jurisdiction's policies it lacks the details, supporting explanation or documentation to support those other Cities policies and associated exemptions and consequently it also lacks the specificity to support the City of Bainbridge Island's adoption of similar policies or exemption.

3. Adopting a recommended alternative rate structure or associated exemption absent the necessary supporting rationale could perpetuate (prolong) the risk that the court will find the newly adopted rates and associated exemptions in those ordinances to be "arbitrary and capricious" as well.

4. The UAC has not been yet provided by this report or other information, sufficient detail or documentation to support the Consultants claim that the City roadway manages most if not all stormwater runoff from properties adjacent to streets or the 39.2 million dollar estimate of the City street fund's capital investment (total asset value) in stormwater facilities that abut the street or otherwise as necessary to support any of the proposed exemptions.

5. I was disappointed to <u>not</u> see how the cities that use either 30% or 50% of the regular rate decided on those percentages. Perhaps there is no record that could be easily located.

6. I favor exempting the city streets for the two reasons cited by FCS, and to be consistent with 85% of the other cities. This doesn't prevent the city council from using general fund money to pay for SSWM projects, if in its wisdom that is the appropriate thing to do.

7. The FCS Group's Recommendation on page 9 of their August 24, 2012 report is for exemption of SSWM charges due to (1) the streets are part of the stormwater conveyance system, and (2) their initial analysis shows the City's investment in stormwater facilities could outweigh their SSWM charges for a significant period of time. They further supported their recommendation by saying that 85% of the cities that responded to their survey exempted their streets, even though they admitted that they did not ask the cities what criteria they used to make that decision.

8. FCS used the estimated current replacement cost to bring stormwater facilities up to current City standards for all roads on the Island as the basis for this credit. It is my opinion that this 39.2 million total asset value is significantly overstated. The asset value should be limited to the documented total amount spent by the City (Street Fund) on stormdrainage facilities since the Island became a City. Credit should not be given to the City for assets they did not pay for (rural road ditches installed by the County or developers) before the Island became a City.

9. The current Council may take the easy way out and exempt the City from these SSWM charges as has about 85% of other Washington cities, but ask yourself why past councils first decided to pay 30% and then changed it to 100% before the economic collapse and they defaulted on the payments. It may be in the Island's best interest to pay all or a significant part of that 4 million dollars and dedicate it to capital projects, not consultant studies.

10. The city does not have a written policy defining the boundaries between SSWM and Roads funds. Kitsap County has an easy to understand policy that guides them and avoids confusion. This policy provides guidance for many activities, including rates.

11. On August 8, the city manager presented a road restoration plan to the council. That plan included the total cost of road reconstruction and identified the portion charged to the SSWM fund. When we tally these costs, we learn the SSWM is only investing 11.8% of the total reconstruction costs. This means that City's own published reports are inconsistent with the consultant's calculations and conclusions

12. The consultant assumes that all developed properties dump storm water onto the streets. This assumption is not valid because:
    a. If the development is downhill from the street, it is highly unlikely that the water will flow uphill on to the street. On the contrary, many private properties have required curtain drains and other onsite drainage systems to handle stormwater that flows on to their properties from the street and failed storm drainage systems.
    b. For many decades the City has required new construction, certain remodels and all land use proposals to include a drainage plan. The drainage plan basically requires the owner to install systems to retain and infiltrate storm water back into the ground. Therefore, these properties don't drain on to city streets.

13. The consultant suggests the city should take a credit for the value of the streets. This approach has several problems:

    a. Some of the city's street investments were paid for by developers. If the city claims a developer investment, the developer may file suit seeking reimbursement from the city. It is not ethical to claim credit for others' investments.

    b. The consultant suggests that the credit be based upon replacement cost of the roads. The April 18, 2012 city council meeting revealed the average road PCI (Pavement Condition Index) score was 60, which suggests that approximately half of the life of the streets has been used. Traditionally, actual costs are the basis for computing credits NOT hypothetical replacement costs estimates.

14. The consultant tells us the stormwater system has a replacement cost of $39,192,500. This is a major assumption that we could not understand. Based upon the information provided approximately 90% of the conveyance system is open. Our city has not defined the open conveyance system, however our county has defined it as limited to ditches and culverts with a catch basin attached. This seems like a reasonable definition. Many of the roads don't have ditches or the ditch may terminate in a valley and the water flows onto private property. To suggest all roads are a part of the stormwater conveyance system is not reasonable. The consultant tells us the average cost per mile is $285,000. To suggest it will cost $285,000 to dig 1 mile of ditch is not reasonable. Some members felt this was the entire road cost, while other member felt it was only part of the road costs. We don't understand the consultants logic.

    A more reasonable approach would be to start with:

    - Developing a definition of activity performed by the Street vs. SSWM funds.
    - Develop a list of the SSWM assets, such as ditches.
    - Exclude from your inventory a conveyance that dumps water on to private property.
    - Determine the historic cost of constructing these assets.

    We understand the city does not have a detailed inventory of SSWM assets.

15. The consultant suggests that 85% of cities exempt their streets. On August 8, they were asked what type of costs other cities charge to their SSWM vs. Streets and how those other cities' policies compare to Bainbridge Island's. They did not have that information, and told us it was too late to get it.

    Upon hearing this, we took it upon ourselves to select one city from the list to investigate, Medina, with the purpose of finding out their basis for exempting their roads. We called

Medina Public Work Director Joe Willis, who told us the reason Medina exempts roads and all property owners is because Medina does not have an SSWM utility. He went onto say they don't have a SSWM fund; rather, all costs related to maintaining the storm water system is paid by other city funds.

Our city takes the opposite approach from Medina. Essentially, Medina takes the view that the ditches support the roads. By suggesting that 100% of the road cost should be used for determining the investment in SSWM assets, we are taking the view that the roads support the ditches.

16. Our SSWM Utility is already paying a portion of roads reconstruction costs, along with a large share of maintenance costs, such as street sweeping. If the city wants to use alternative 2, they should gather additional data regarding these other cities' policies and procedures for managing their SSWM vs. Streets and funding SSWM activities. Furthermore, they should determine what percentage of revenues is obtained from sources other than SSWM.

17. The consultant states the method should be fair. Is it fair to exempt the impervious surfaces that comprise the city streets, but to charge without similar credit for impervious surfaces that make up roadways inside parks, schools and churches? The judge may rule it is arbitrary and capricious to exempt roads while not exempting other local municipal or governmental entities, such as schools and parks. Furthermore, why not give a credit to all private citizens who manage their own storm water?

18. We attempted to obtain input from other Bainbridge taxing authorities /rate payers in our city such as Schools, Parks, the Library and the Fire Department. They have not been availed adequate time to respond.

19. The stated purpose for the report was threefold: 1) To establish the value to the City's SSWM program of the City's street system, 2) To develop alternative strategies for SSWM charges for City roads, and 3) To survey approaches of other jurisdictions to the same issue. Of these, items 1) and 2) most directly respond to Judge Hartman's decision that a 30 percent charge was 'arbitrary and capricious.' The study clearly meets all three of the goals that it has established. The study provides a survey of other jurisdictions, criteria for evaluation, alternative strategies, and analysis of each alternative by the designated criteria, and recommendations on a strategy going forward. Notwithstanding the fact that the study does not provide an analysis of case law or other legal considerations, the analysis provides an adequate basis for determination of a strategy that is not 'arbitrary and capricious.' This is a question of logic and the study has provided justifications and a possible rationale for each alternative strategy.

20. The study provides an estimate of the present value of the drainage portion of the City's combined road and drainage system. The fact that parts of the City's road and drainage system were originally constructed by private developers is immaterial to determination of the present asset value. Those originally, privately-funded improvements are now City property and are appropriately included in the total current asset value. Also, the fact that many drainage elements of the City's system were constructed long ago by Kitsap County is likewise irrelevant to the current asset value. They are currently City property and responsibility. Therefore, a present value based on a calculation of the estimated cost today to build the drainage system provided with City streets is an appropriate way to satisfy goal number 1) above and this has been adequately provided by the study.

21. The analysis presents the results of a survey of other jurisdictions, thus fulfilling goal 3) above. The survey found that 85 percent of the jurisdictions surveyed exempted streets from storm water system fees, 8 percent used a rate of 30 percent of the total impervious surface of the roads, 3 percent charged 50 percent of the full rate, and 4 percent charged 100 percent of the road impervious service as a charge to the storm water utility. The survey did not pursue the reasons that the other jurisdictions used to justify these charges. Given constraints of time and budget this seems a reasonable approach. The fact that an overwhelming majority of the jurisdictions surveyed exempt their roads is the compelling fact.

22. Alternative 5, says "… the city already appropriately allocates the cost of stormwater system maintenance provide through the Street Fund to the SSWM utility." Therefore if the city chooses to provide a credit, this could be considered double dipping

23. On August 8th at the joint UAC/Council Workshop, when FCS was asked where have you used these recommendations in prior actions or recommendations you have made to other clients? FCS responded – "To be honest we've learned from this study."…… and "No, I can't site examples where we have used any of these options……"We did help the city of Redmond calculate their 50%, but for the most part its' been charge them or don't charge them. And that has been our best management practice up to this point."

24. On August 8th at the joint UAC/Council Workshop, when FCS was asked "Is there anything in the law that allows you to include in your inventory of capital assets, a credit towards your expenses items that have been paid for by others?" FCS Response - "I don't know".

Submitted this day by the Utility Advisory Committee.

As adopted by the Utility Advisory Committee on September 4, 2012.

FCS RESPONSES

TO INDIVIDUAL UAC MEMBERS

WRITTEN QUESTIONS

ATTACHED

FCS GROUP
Solutions-Oriented Consulting

Memorandum

To: Ms. Morgan Smith, Interim City Manager **Date:** August 30, 2012

From: John Ghilarducci

RE: Responses to UAC Questions

Thank you for the opportunity to respond to the questions raised by individual members of the Utility Advisory Committee. I have reproduced each question as we received it and provided a response in italics immediately following.

- Page 6, 2nd paragraph they say:… "Approximately 69% of the…"

  Is there a workpaper illustrating the calculation of this number? If yes I would like to examine the workpaper.

  The calculation of the 69% / 31% split is included in Appendix D. The calculation is "approximate" based on the number of street and total ERUs, since calculating the actual runoff split is impossible due to lot size, type of development, soil and lot slope differences, as well as the change in the last 10 years to a requirement that new development provide "on site" detention. Additional hydraulic analysis is also provided in Appendix D. It illustrates that the runoff contribution of private property varies from 34% to 73% depending on the street classification and type of development. The spreadsheet we used to estimate the total number of non-street ERUs is attached as further background.

- The fourth bullet on the same page "… based on past capital investment is widely accepted in stormwater ratemaking."?

  Please explain how you determined it is widely accepted.

  Of the people surveyed, what % of them use this method?

  Please provide a list of these entities.

  Local stormwater utilities are authorized to charge a discounted stormwater rate to the Washington State Department of Transportation (WSDOT) for the stormwater impacts of state highways. The rate reduction is in part based on the past capital investment made by WSDOT.

  RCW 90.03.525(1) states the following:

  > *"The legislature finds that the aforesaid rates are presumptively fair and equitable because of the traditional and continuing expenditures of the department of transportation for the construction, operation, and maintenance of storm water control facilities designed to control surface water or storm water runoff from state highway rights-of-way."*

  We did not ask for the specific rationale used to credit or exempt local streets from stormwater charges. However, the following jurisdictions recovered local stormwater-related costs from WSDOT in the last biennium utilizing this statute.

  Bellevue, Bellingham, Bothell, Kent, Olympia, Renton, SeaTac, Tukwila, Clark County, Douglas County, King County, Kitsap County, Pierce County, Skagit County, and Snohomish County.

- Page 3, Evaluation Criteria, Accurate - Could you expand on the definition of the "accurate" criterion?

Basically, this criterion boils down to our assessment of whether the data is available to calculate a reliable result, and whether that result would be precise enough to be defensible.

- Page 6, Discussion of Alternative 3 - I agree that whether stormwater facilities were paid for by developers, local, state, or Federal funds; the asset value of stormwater facilities is now owned by the City and this should be the index of the contribution of the General Fund to stormwater management. I think I also agree in using a present value without depreciation for calculation of that asset value. I think that the argument for this could be further expanded, however, beyond what is given in the text.

  In approaching this analysis, we are not trying to establish the value of the asset to a potential "buyer" or for a balance sheet, rather we are trying to estimate the value of the stormwater system that the Street Fund is responsible for. If we used the original cost of the assets at the time they were constructed, we would undervalue that system when compared to more recent investments in infrastructure. We are trying to equalize the system value by establishing its current year cost. Depreciating the cost would likewise undervalue the investment made in stormwater facilities, regardless of the current condition of the facilities. The lives of stormwater collection, conveyance, and disposal facilities are typically in excess of fifty years.

- Page 6, First bullet "Such an approach would be accurate, if validated by further analysis." - What kind of further analysis would be required to confirm the accuracy?

  First, the cost data used to estimate the $39.2 million value of stormwater system assets associated with City streets was based on recent cost data for other communities. Those unit costs could be further tailored to the City of Bainbridge Island. Second, as indicated in our first bulleted response, we estimated the runoff split between City streets and other developed property using an ERU-based methodology that relies on an assumption that City streets convey runoff from all developed property in the City. This assumption could be replaced by an analysis that takes into account the amount of runoff actually conveyed by the street system – and / or runoff capacity provided by the street system.

FCS GROUP
Solutions-Oriented Consulting

Memorandum

To: Ms. Morgan Smith, Interim City Manager **Date:** August 31, 2012

From: John Ghilarducci

RE: Responses to UAC Questions - 2

We received the following additional questions from the UAC, reproduced below with a response in italics immediately following.

- While the report purports to subject each of the recommended alternatives to an appropriateness evaluation for Accuracy /"Accurate", Fairness/"Fair", Clarity /"Clear", and Legitimacy/"Based on Legitimate Rational", (See Page 3 EVALUATION CRITERIA) . Nowhere in the report do I find comment or evaluation criteria to address the consistency with rate structure as it applies to other customers, or legal defensibility of the individual recommendations addressed. Who is addressing the legal defensibility criteria of the individual recommendations and will it be provided to the UAC?

  First, our work was limited to addressing the issue of stormwater charges to City streets, apart from the rates charged to any other customers. Second, to the issue of who is addressing the legal defensibility criterion, we used the "Based on a Legitimate Rationale" criterion in lieu of legal defensibility. It is our understanding that basing the approach on a legitimate rationale will greatly increase its legal defensibility, but no one can say with certainty if an option is legally defensible or not.

- Clearly streets have runoff and contribute significant roadway contaminants to the stormwater system. Aside from your theory that the streets are due a credit for past capital investments made by the City to construct streets because streets, or at least a portion thereof, are in fact a part of the stormwater system, is there any basis in fact or law to support this exemption?

  As stated in the report, the Washington Phase II Municipal Stormwater Permit, applicable to the City of Bainbridge Island, defines a stormwater conveyance system to include municipal streets.

  In addition, RCW 90.03.525 justifies the reduced local stormwater rate that can be charged to state highways by citing past capital investment in stormwater facilities made by the State. RCW 90.03.525 (1) states the following:

  > *"The legislature finds that the aforesaid rates are presumptively fair and equitable because of the traditional and continuing expenditures of the department of transportation for the **construction**, operation, and maintenance **of storm water control facilities** designed to control surface water or storm water runoff from state highway rights-of-way."*

- Please explain how the equity (fairness), consistency and legal defensibility criteria have been met when the City is provided exemption or credit for their past capital investments that "supplement" the stormwater conveyance system, while other parties who have made similar capital investments do not receive the same benefit?

  The City does provide rate credits for its other customers providing qualifying on-site mitigation. However, generally, the stormwater facilities present on other developed property have been constructed to mitigate the runoff from that property, and are not providing capacity that is of system benefit, in contrast with the conveyance capacity associated with City streets.

- The report notes that exempting City streets is the practice used by a number of other Washington Municipalities. The report does not however elaborate on the basis these other Cities have used to support this exemption or the quantitative methods used to determine the exemption or associated credit. Has any effort been made to determine the basis of the exemption these other cities claim or whether it too is based on philosophical grounds? And if the basis of these other Cities exemptions has been established has any effort been made to determine where this methodology falls within your established evaluation criteria?

  We did not ask specifically what rationale was used for exemptions offered by survey participants. However, based on our specific knowledge of some programs and available code language, we know that the following cities exempt city streets in recognition of the benefit they provide to the stormwater system or based on the rationale that City streets are part of the stormwater system: Battle Ground, Burien, Burlington, Covington, Gig Harbor, Kirkland, Mill Creek, and Mount Vernon.

- The City's roads were constructed over time using City or County tax fund revenue or by individual developers who were required to construct roadways and associated improvements as part of their property development process. It appears from the information provided by Parametrix that the street cost figures used to justify the exemption or credit includes all city roads regardless of who paid for them. What efforts have been made to reduce the claimed credit due to eliminate the depreciation costs the City has claimed for the roads over time and the value of roadways included in the City's inventory but which were in fact paid for by others? If not, what basis is claimed to include these items in the inventory and associated value calculations?

  As stated in the first set of responses to UAC questions, we are not trying to establish the value of each stormwater asset to a potential "buyer" or for a balance sheet, rather we are trying to estimate the value of the stormwater system that the Street Fund is responsible for. If we used the original cost of the assets at the time they were constructed, we would undervalue that system when compared to more recent investments in infrastructure. We are trying to equalize the system value by establishing its current year cost. Depreciating the cost would likewise undervalue the investment made in stormwater facilities, regardless of the current condition of the facilities. The lives of stormwater collection, conveyance, and disposal facilities are typically in excess of fifty years.