

Businesses plan united challenge to DWSD's surprise runoff fees

BY KIRK PINHO

CRAIN'S DETROIT BUSINESS

A group of businesses is planning to fight the retroactive stormwater drainage fees the **Detroit Water and Sewerage Department** is charging, although it's not heading to court as a first step.

Ken Gold, an environmental law specialist and partner with **Honigman Miller Schwartz and Cohn LLP** in Detroit, said some business and property owners are banding together to challenge the DWSD on the fees it is assessing, following an internal review that found about 1,200 city businesses hadn't



Gold

been charged for stormwater drainage for years — or, in some cases, ever.

"The first step is not to file a lawsuit, it's to try to convince (the DWSD) that there are other ways to try to get an amicable resolution before we go to court, and I think that's what we'll do first," Gold said.

He declined to say how many businesses are involved in the ef-

fort to protest the \$600-per-month charges for each acre of impervious surfaces, such as parking lots and roofs.

Gold also said he's spoken to a business owner who, because of the unexpected stormwater drainage fees, was unable to hire a new employee and is moving his business out of the city.

"This is one company, and I'm sure there are others that are thinking along the same lines," he said.

Susan Harvey, senior vice president of the Canton Township office of New York City-based **Ashley Capital LLC**, an industrial and office



Harvey

real estate acquisition firm, said in a *Crain's* story published April 22 that she believes the stormwater runoff charges "are excessive and they influenced our decision not to buy any more industrial property in the city of Detroit."

Paul Magy, president of the metro Detroit chapter of the **Building Owners and Managers Association**, believes it's unlikely that businesses

will flee the city because of the retroactive drainage fees since BOMA members are "very upbeat about Detroit."

"I think business wants to get to the bottom of it, but I don't believe anybody is going to base a location or relocation decision on this," he said. "It would have to be the last straw."

Still, Magy said the BOMA chapter — which represents 400 owners with more than 250 million square feet of office and industrial space in Wayne, Oakland, Macomb, Monroe, Livingston, Genesee, Lapeer, Washtenaw and St. Clair counties — is "trying to get our arms around the whole thing and help our members develop an appropriate response."

He said there are more questions than answers at this point.

"Is there a possibility of negotiating with the (DWSD) for some kind of a payment plan in light of the fact that this is all coming at once?" Magy said. "It's likely that the businesses will not be able to afford this on a charge that would normally be spread out over several years. Will there now be interest and penalties?"

DWSD Director Sue McCormick said Wednesday at a **Board of Water Commissioners** meeting that at least four "situational conditions" led to the businesses not being charged for stormwater drainage, noting that the first known stormwater drainage charge was in 1985.

For example, one of those scenarios would be if commercial water service was shut off. When that happened, stormwater drainage charges were discontinued as well, even though the service was still provided at the site.

McCormick did not elaborate on the other scenarios, and couldn't be reached for an interview last week.

The charges affect only Detroit businesses because the DWSD is not responsible for stormwater drainage services in suburban communities.

The exact amount the DWSD is owed for the unbilled drainage charges is unknown, but it "could ultimately be in the millions," Bill Johnson, a DWSD spokesman, said this month.

Johnson said in an email that businesses were not given advance warning of the drainage fees and that the DWSD is working on a new customer service strategy.

While it's unlikely that the affected businesses will have what they owe eliminated, the "DWSD understand that in some cases these costs created a burden on particularly small businesses and is willing to work out a payment plan in hardship cases," Johnson said.

He added that "there is a strong possibility that interest and penalties will not be included."

One northeast Detroit business owner — who spoke on the condition of anonymity because he had not yet been charged the stormwater drainage fee — called it "arbitrary."

"We are talking \$72,000 a year," he said. "My real estate taxes are about \$150,000 a year. As far as I'm concerned, they are giving me a 50 percent real estate tax hike."

Kirk Pinho: (313) 446-0412, kpinho@crain.com. Twitter: @kirkpinhoCDB

What's the connection between a qualified workforce and our community?"

Oakland Community College. Yes, OCC. Each year, we educate and train thousands of people who come to OCC to enrich their lives and enhance their careers. From students looking to transfer to four-year institutions, to those pursuing vocational and technical careers, to workers seeking to upgrade their skills, we're creating the kind of dynamic workforce that stays in Michigan, keeps companies in our area competitive and even attracts new businesses to our region. Why place so much emphasis on the prosperity of our community? Because at OCC, community is our middle name.



OAKLAND COMMUNITY COLLEGE®
Community is our middle name.

www.oaklandcc.edu

OPINION

Surprise runoff fees a debacle for DWSD

Business needs certainty. Detroit needs business. But business attraction and retention are taking a big hit because the Detroit Water and Sewerage Department has badly bungled efforts to recoup fees it neglected to charge property owners for years for treating "water runoff."

As Kirk Pinho reported last week, 1,200 commercial and industrial property owners were stunned to receive huge bills — as high as \$54,000 for a year — for water treatment services.

The fees, based on acreage, aren't unique. Many municipalities charge similar fees, said Paul Magy, president of the Building Owners and Managers Association of Metropolitan Detroit. But Magy said his members were surprised by no communication, no payment schedule and no transparency in explaining how the fees were calculated.

Department spokesman Bill Johnson said an internal audit revealed many of the city's 4,000 commercial/industrial customers were not billed for at least six years for treating water that runs off parking lots, roofs and other surfaces into the city's sanitary sewer system.

But Johnson could not answer questions that Magy's association is asking, including how bills were calculated. The Detroit fees are significantly higher than those charged by Ann Arbor, where DWSD Director Sue McCormick formerly worked.

McCormick, director since late 2011, has overseen the restructuring since the DWSD was freed from federal court oversight in March. Saddling tens of thousands of dollars on property owners — without notice and without much of a plan for appeals or even a simple communication plan — is a bad stumble.

Johnson pledged last week that there will be both a payment and a communication plan. That's good, but a little late.

Responsibility for this debacle rests solely with McCormick and the newly appointed Board of Water Commissioners. This is not a good start to the department's new era.

Support freer flow of craft brews

The Michigan Beer and Wine Wholesalers Association is one of the state's most powerful lobbies.

But it's time to take the cap off the bottle(neck) and let craft breweries and wineries operate more freely and distribute product directly to consumers.

Proposed legislation, first reported by Crain's in March, could help build the growing craft beer industry and contribute to "place-making" to attract tourism and young talent.

Last week, The Detroit News reported Gov. Snyder and the Michigan Liquor Control Commission director are on board to enact the changes.

We support the changes and hope the Legislature will, too.

LETTERS

Jones Day was the right choice

After reading the *Crain's* editorial "We hired an EM, not his employer," April 14, we felt compelled to share our perspective.

We agree that the process to secure firms to assist in Detroit's restructuring and resurgence must be beyond reproach. We respectfully submit that the process to bring the Jones Day law firm on board absolutely met that high standard.

Jones Day was selected by the city through a stringent request-for-proposal process that included a review of 15 bids, submitted by top firms from across the U.S. The process also included numerous face-to-face interviews with representatives of several firms that reached the final point of consideration in the RFP process. At the end of the review of select proposals, through a unanimous vote of a 10-member panel, including members of the Bing administration and the Financial Advisory Board, it was determined that Jones Day was the right choice to assist in the restruc-

Crain's Detroit Business

welcomes letters to the editor. All letters will be considered for publication, provided they are signed and do not defame individuals or organizations. Letters may be edited for length and clarity.

Write: Editor, *Crain's Detroit Business*, 1155 Gratiot Ave., Detroit, MI 48207-2997

Email: cgoodaker@crain.com

turing of the city of Detroit.

It is important to note that the RFP process was not only separate from the financial review of the city (which had been completed by that point), the RFP process was underway long before Kevyn Orr was a potential emergency manager candidate.

Additionally, the panel that selected Jones Day was unaware that Mr. Orr might eventually be considered for the post. As soon as Mr. Orr became aware that he

could be considered, he removed himself from any and all involvement in the firm's effort to secure the contract. During private sector restructurings, it is common for a court-appointed restructuring officer to remain with his or her firm. In contrast, upon his appointment as emergency manager, Mr. Orr severed all ties, financial and otherwise, to the Jones Day law firm.

We agree with your editorial in one respect: The expertise offered to the city of Detroit by Jones Day cannot be questioned. The firm is consistently recognized as one of the best restructuring firms in the world.

As two of the members of the city's Financial Advisory Board, we would be hard-pressed to find a better partner to help address Detroit's long-standing financial crisis than Jones Day.

Sandy Pierce
CEO, FirstMerit Corp.

Kenneth Whipple

Retired chairman, CEO, CMS Energy Corp.

TALK ON THE WEB

From www.craindetroit.com

Re: Michigan House plan has no money for film incentives

No funds for economic development but roads. Yeah, that's the way to rebuild an economy. Keep the contractors happy by letting them redo the same roads every couple of years.

flairdetroit

Re: Brewster-Douglass towers demolition plan expected within weeks

That is great that they want to take it down, but is there a plan to build something else there? This entire area from Woodward to I-75 should be carefully planned as a complete, walkable neighborhood with residential opportunity for all levels of income and ages.

BloggerDave

Re: Wanted: 650 IT workers

Why don't we have sufficient IT workers? Because we haven't created the kind of environments

Reader responses to stories and blogs that appeared on *Crain's* website. Comments may be edited for length and clarity.

they want: vibrant urban communities with police and fire departments that get the job done, streetlights that work and parks that are inviting places.

It's not about the job — young talent can find jobs anywhere. But they are **looking for diverse, transit-friendly cities** like Chicago, Minneapolis, New York and San Francisco that meet their needs and desires.

MWAC

Re: Editorial: Oakland chamber exit hurts region, itself

I must say I am disappointed in *Crain's* opinion. It is shocking that the Detroit Regional Chamber put its effort to prevent a new hospital in Oakland County on its list. I fail to see how this can even be in its

mission. I live north of Independence Township and have a business in the township, and I find the blocking of McLaren's hospital to be unacceptable. First of all, those of us in the township and surrounding area deserve a nearby hospital. Second, I don't see how anyone in this economy can fight a project that can only bring jobs. Finally, the fact that Michigan even has a CON law is so anti-American and anti-free enterprise. It will only increase health costs. It will only increase competition, resulting in better care for everyone. **Shame on Crain's** for taking this narrow-minded viewpoint.

Bryan of Clarkston

Re: M1 Rail gets key government OK

Hellooooo! **It doesn't go anywhere!** Commuters? Nope. Shoppers? Nope. Who is gonna use it? Oh yeah, it will probably connect to the People Mover.

See Talk, Page 9

KEITH CRAIN: Peter Brown started it all, 28 years ago

Peter Brown will be retiring from Crain Communications at the end of this week. He is the publisher of *Automotive News*, a sister publication of *Crain's Detroit Business*.

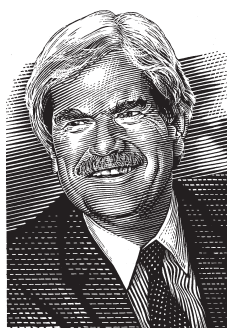
But 28 years ago, we started *Crain's*, and he was the founding editor. Later, he became editor and associate publisher before transferring to *Automotive News*.

Peter was working for the *Detroit Free Press* and happened to be interviewed for the job by the Pulitzer Prize-winning author David Halberstam. David was in town working on a book about Ford and was at a reception we were having after the De-

troit Grand Prix. David and I sat Peter down and spent some time with him. Afterward, David turned to me and said, "Hire him, he's good." Happily, I had come to the same conclusion and he became our editor.

Ironically, our first issue had a story on the JOA, the joint operating agreement that allowed both Detroit daily newspapers to combine with an exemption from antitrust. It's still in effect.

I had a simple idea for the con-



cept of *Crain's*: "There is more to Detroit than just cars." It worked then and still does. I insisted that we simply ignore the Big Three, now the Detroit 3. They were well covered, and no one realized that there was so much more news to report in Southeast Michigan beyond the auto industry.

Peter set the standard for great journalism at *Crain's*, and he did one more important thing — found his replacement, Mary Kramer.



Brown

lasted more than two years at a job. I took a chance and it was good.

Crain's Detroit Business had a great beginning that has contin-

I ended up with some great editors and wonderful assets to our company.

But after almost 30 years, Peter Brown will be retiring. This from a guy who warned me that he never

ued through to this day. Peter was a great editor and also not a shabby reporter. He understood the importance of a great editorial product with a great staff.

All of us at Crain Communications will miss Peter Brown. It was fun and a great pleasure to work with him over the years on both publications.

But it's not often in a journalist's life you can say you launched a new publication and that almost 30 years later it's still as prosperous as ever.

Peter Brown was and is a great editor. I will miss him.