

Threat of Lawsuit Led To Watershed District

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by Jeff Clark

Sometimes, you need to pay attention to the gorilla in the closet.

In 2007, the City of South Portland learned that Long Creek, a stream that wanders through the Maine Mall area, was contaminated with heavy metals and other pollutants carried by stormwater run-off from the impervious parking lots, roofs and streets of the highly developed watershed. The Conservation Law Foundation was threatening legal action to prevent the pollution from continuing into Clark's Pond, the Fore River and eventually Casco Bay.

Hundreds of retailers, private landowners, nonprofits and public and quasi-public agencies, as well as four municipal governments, faced the prospect of applying for individual environmental permits as well as undertaking expensive stormwater treatment projects.

Existing permits "covered only the teeniest part of the Long Creek watershed," said Tamara Lee Pinard, stormwater program manager at the Cumberland County Soil and Water Conservation District. "Everyone else was facing a serious problem." The Conservation Law Foundation already was actively pursuing lawsuits and petitions before the federal Environmental Protection Agency in Vermont and Massachusetts, "and they made it clear they would not back down on this one," Pinard recalled.

What followed was a unique public-private partnership that resulted in the creation of the Long Creek Watershed Management District, a voluntary stormwater utility that covers 93 percent of the impervious acreage in 3.4 square miles surrounding the Maine Mall. Pinard serves as its executive director. By banding together, the affected landowners cut their potential costs by 75 percent while satisfying the environmental permitting agencies. They also created a quasi-public entity that gives them a significant voice in dealing with stormwater issues in their area.

The process began in 2007 when South Portland city officials, recognizing the task ahead, landed a grant from the Maine Department of Environmental Protection to begin planning and organizing solutions. They hired a facilitator to contact the various businesses and public entities affected and to organize stakeholder meetings. The conservation district and the Casco Bay Estuary Partnership, a nonprofit dedicated to protecting and restoring Casco Bay, were brought in to help with technical and financial work.

SUCCESS CAME SLOWLY

Success was not a foregone conclusion. Many of the participants privately admit that four years ago they had little expectation of favorable results. "To be honest, I figured this would be a lawyer's full employment program for the next 10 years," said one.

"I came into it three years ago, a year into the process, and some people were still waiting to be persuaded," said Curtis Bohlen, executive director of the Casco Bay Estuary Project. "The municipalities – South Portland, Portland, Scarborough and Westbrook – understood what was involved. But we also had hundreds of businesses involved, and businesses don't by nature cooperate with each other."

Bohlen, Pinard and others credit facilitator Ann R. Gosline with putting the actors in one room and serving as a neutral third party in the ongoing negotiations.

“She wanted us to have the best product possible,” Pinard said. “She did a lot of outreach to the largest landowners to find out what their concerns were and what was needed to get them involved in the process.”

Always, in the background, was the Conservation Law Foundation, the “gorilla in the closet,” as Pinard puts it. “Businesses in particular realized they could get involved now and have a voice, or they could wait and be told what they were going to do.”

“The CLF certainly created a sense of urgency,” said Patrick Cloutier, South Portland’s water resource protection director, who was the city’s lead official in the project. “That was intentional on their part. We banded together to keep them at bay, and in that respect the CLF played a vital role. They were right there at the table, too, throughout the process.”

In the early years, everyone was feeling their way toward a solution. “We didn’t know exactly what the outcome would be until it started evolving,” said Cloutier. “One of the loftier goals was creating a true public-private partnership. As it developed, it led to the creation of a neutral overseeing agency, the utility district, to take over.”



An area in Long Creek that has been eroding due to the sheer volume water that flows through the stream during a storm event

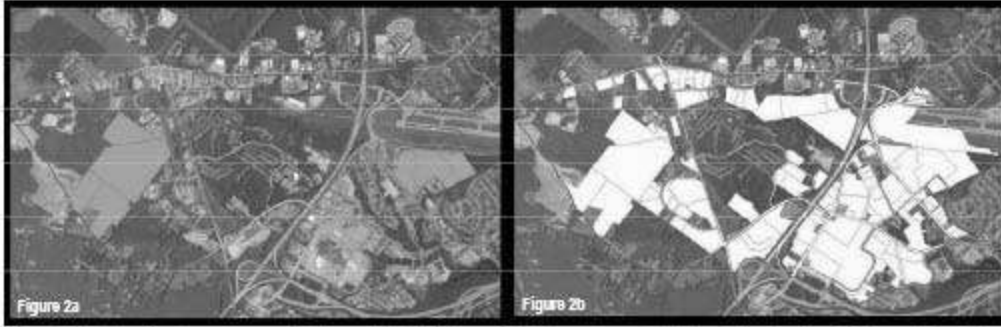


Figure 2a: Previously stormwater regulated parcels shaded; Figure 2b: Stormwater regulated parcels under Long Creek permit in white.

RISK FOR MUNICIPALITIES

Cloutier acknowledged that the government officials involved – especially those in South Portland, which most needed a successful resolution – knew they were taking some risks by going along with a collaborative approach, rather than creating a top-down agency to mandate compliance.

“This way, though, everyone came away with the sense that they truly had a say in the final outcome,” Cloutier said. “There was this enormous level of buy-in by all the participants.”

A major argument in favor of working together came from Bohlen’s financial modeling.

“I estimated that doing this cooperatively would cost only a fraction of doing it individually,” he said. “That became a major part of the basis for building a collaborative model.”

Today, Pinard said, members of the district pay \$3,000 per acre of impervious surface per year to maintain and upgrade the necessary treatment facilities, as well as educate members in methods of reducing stormwater run-off. Going it alone would have cost a landowner \$12,000 an acre, she said.

One key element was developing a participating landowner agreement acceptable to everyone in the district. The agreement is basically an easement that allows the utility district to work on the private property of its members. “That took 10 months and 20 drafts,” she recalled.



First stakeholder meeting that was held on Sept 27, 2007 at National Semiconductor in South Portland.

APPROACH IN LEWISTON

Other Maine cities have chosen different models to deal with stormwater management issues. Lewiston, for example, created a municipal utility district in 2006 as a result of a citywide effort to separate its stormwater and sewage systems. Urban areas in particular have faced pressure to solve combined sewer overflow problems, which occur when heavy rain or snowmelt overwhelm sewage treatment systems and force the discharge of untreated sewage into rivers and streams.

The district levies a fee on each property, with homeowners paying a flat \$44 a year and commercial landowners paying in proportion to the amount of impervious surface on their properties. Nonprofit landowners, who normally do not pay property taxes, are included in the fee structure.

“Creating the utility district was quite controversial at the time,” said Lewiston City Manager Edward Barrett. “It ended up going to a citywide referendum and passed.”

Even so, a business property owner has taken the district to court, arguing that the levy is actually a tax rather than a fee. An initial court decision in May supported the city.

Until earlier this year, Barrett was city manager in Bangor, which also is wrestling with stormwater management issues. Initially, attention was focused on Birch Stream, which passes near Bangor International Airport, and Penjajawoc Marsh near the Bangor Mall retail development area. The state Department of Environmental Protection deemed that both areas had water quality problems. Three other waterways also will require remediation in the future.

The city formed an advisory group comprised mainly of landowners to apply for state and federal grant money to help with management efforts. The city currently is looking at forming a utility district, though, as the effort and expense involved keep growing. “That would provide a way to fund improvements for all five waterways,” Barrett explained.

OVERLAP IN BANGOR

“We’ve used a DEP grant to create a model of what a utility district would look like in Bangor,” said Wendy Warren, the city’s environmental coordinator. “Currently, we’re doing numerous presentations to city residents and landowners to explain why we need a utility district and the requirements that we’re facing.”

The utility would have elements of both the Long Creek and Lewiston management districts, with strong landowner participation and a universal fee structure.

Warren said the situation overlaps significantly with the city’s stormwater separation project, which is about 70 percent complete. “If you do a good job of stormwater control, it reduces sewer overflow problems and pollution issues at the same time,” Warren said.

Initially at least, the stormwater utility would serve only Bangor, but neighboring municipalities are paying close attention to Bangor’s experience. “They’re facing their own major sewer separation issues pretty soon,” said Warren. Seven municipalities are members of the Bangor Area Stormwater Group, a nonprofit that helps municipalities comply with DEP and EPA stormwater regulations.

In the final analysis, stormwater management solutions depend largely on local conditions and situations. Bohlen, of the Casco Bay Estuary Project, doubts the Long Creek model has a universal application, although its legal structure as nonprofit voluntary organization with a contract to provide a service is transferable.

Today the South Portland Land Trust has developed trails along Long Creek, and Pinard said the management district’s future is bright.

“It was all pretty remarkable,” Cloutier mused. “Today, when you hear that things aren’t going so well in government, this is an example of how government can work.”

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