Public Works & Utilities – Stormwater Management Division

Mr. Alan King, Director
Public Works
City of Wichita
455 N. Main – 8th Floor
Wichita, KS 67202

Re: Storm Water Advisory Committee response to POE and Associates Letter, dated November 14, 2011.

Dear Mr. King;

Please accept this letter from the Wichita/Sedgwick County Stormwater Advisory Board in response to the referenced letter from POE and Associates authored by Tim Austin, P.E., which you forwarded to the Board for consideration in November, 2011. The Board has reviewed the letter, heard commentary from Mr. Austin at our January 20, 2012 meeting, and we believe a response at this time is appropriate.

The letter included specific bulleted issues for consideration, and in order; following is our response:

1. Restrictive Covenant: The concern related in the letter consists of recording a Restrictive Covenant against the title of a property on which a permanent storm water facility is constructed and the potential for future liabilities, potentially "clouding" the title.

2. Recording O&M Manual with Register of Deeds: Again, concerns with title and successive ownership, and the inability of the O&M Manual to be a fluid document without re-recording.

Response: The SWAB has formed an Operations and Maintenance Committee to address these concerns. The work of this committee is underway and we will work to provide clarity regarding these two concerns.

3. Private Project Drainage: The issue presented is there is not an established process for private project review, fees, and plan requirements.

Response: There is a formal, private project submittal and review process for properties located in the City of Wichita. Reference is made to the *City of Wichita Construction of*

Infrastructure Improvements by Private Contract, specifically the section detailing the PPD (Private Project Drainage). We recommend that Mr. Scott Lindebak of your staff provide Mr. Austin copies of the information regarding this process. In regard to Sedgwick County, we will ask them to define the process for private plan submittal and review.

4. Water Quality Infrastructure: Concerns in this section relate to the placement of storm water facilities in public easements or Reserves, thereby inferring that the improvements are public. The question posed is in regards to the requirement for private maintenance of a public facility and the ability to utilize special assessments for the improvements. Another point made is regarding an owner's water quality responsibilities when an off-site water quality/detention facility provides (or will provide) treatment.

Response: The City of Wichita has long allowed developers to utilize special assessment financing to develop and build storm water facilities within appropriately designated drainage easements and platted Reserve areas. In the case of platted Reserves, the City's Bond Counsel does require a "blanket" easement to be recorded which overlays the Reserve, allowing the publicly funded facility to be constructed in the privately owned Reserve. This easement, along with standard platting language, places the responsibility of operation and maintenance of the Reserve on the owner of the property, typically a homeowner's or business owner's association. The Board does not see the need for modifications to this policy.

The second point is regarding an owner's concern of when he can utilize an off-site facility for detention/water quality. This is a valid concern as the KDHE permit issued to the City specifically states that on-site treatment is required. The Stormwater Manual allows a fee-in-lieu of assessment to be determined for properties/projects that may fall into this category and the issue of off-site treatment and possible equivalencies of cost is an item being considered by the Board, specifically by our Liaison Committee.

Longer time frame considerations mentioned in the POE letter include:

5. Review MS4 Permit: The main point of this concern is to validate the actual level of storm water pollutants actually introduced into downstream flows by the development process. Mr. Austin relays the idea of engaging outside legal counsel familiar with EPA directives to assure the City is compliant with the mandates in the most reasonable and cost efficient manner.

Response: The SWAB has formed a Liaison subcommittee charged with the task of communicating with other similarly sized municipalities in the mid-west, finding measures and means by which they have developed to be deemed in compliance with EPA (and their state regulatory agency) regulations. The Board hopes to discover options and alternatives to consider after a review of these findings. The Board also understands the "moving target" which is the continuing flow of regulations and clarifications mandated by the EPA which will continue to pass through the KDHE for their implementation. A recommendation of the use of

outside counsel to help in this determination may be in order and will be considered by this Board after some initial study has been conducted.

6. Subdivision and Zoning Code Changes: Mr. Austin points out there exists contradictions between current development standards (subdivision and zoning regulations) and some of the site development practices that could be utilized to help comply with water quality standards as detailed in the Storm Water Manual.

Response: The Board has considered this topic and believes the development community should assist in this effort by detailing elements they believe worthy of review and presenting them in a formal manner to the Wichita/Sedgwick County Planning Department(s). The SWAB should be involved in this process secondarily, after an initial review by Planning. In the interim, the Board recommends developers utilize administrative adjustment requests and work with the Planning Department(s) for variances from current development policies that support water quality in their developments.

7. Mitigation Credits: The issue presented is the scoring of credits for alternative methods of achieving the reduction of silt and residues from developed properties from other activities; such as street/parking lot sweeping.

Response: This issue will be considered by the Liaison Committee as they determine methods and processes utilized by other municipalities. This could be a viable site credit and the structure of its use will be considered.

8. Regional Approach: This last point goes to the use of regional (or common use) storm water treatment facilities and their use in the development process.

Response: The SWAB understands the viability of the use of regional treatment facilities. Issues to be considered include a fee-in-lieu system of financial equity and how the use of a regional facility would affect the mandate for on-site treatment of water quality in the current City of Wichita MS4 Permit issued by KDHE. The Board will consider, with the assistance of the Liaison Committee, how this approach has been successfully developed in other communities.

The SWAB will continue to keep the elements of this letter in mind as we work through issues brought forward for consideration. Please use this information as you see fit in your response to Mr. Austin and POE and Associates. The Board will continue to update you as we make progress on these and other issues over the coming months.

Respectively,

Clement. Bohm
Chair

The Storm Water Advisory Board