

MINUTES OF THE STORMWATER MANAGEMENT COMMITTEE

Meeting Held: Wednesday, April 25, 2012-Leawood City Hall, Main Conference Room

COMMITTEE MEMBERS PRESENT:

Jim Rawlings, Councilmember Ward 2 and CHAIR
Julie Cain, Councilmember Ward 4
Debra Filla Councilmember Ward 1
Pat Dunn
John Kahl
Carole Lechevin
Mike Levitan
Alec Weinberg

COMMITTEE MEMBERS ABSENT:

Gary Bussing, Councilmember Ward 3
Skip Johnson

GUESTS: (by order of sign in sheet)

Curtis Holland, Polsinelli, Shughart PC, 6201 College #500, Shawnee Mission, KS 66211 (attorney for home builder)
Roger Cassity, 11490 Strang Line, Olathe, KS, 66062 (engineer for home builder)
Tom French, 18199 Melrose Drive, Bucyrus, KS, 66013 (home builder)
Kris Gilmore, 3914 W 140th Drive, Leawood, KS 66224
Jon Gilmore, 3914 W 140th Drive, Leawood, KS 66224
Sue Vandenberg, 4005 W 138th Terrace, Leawood, KS 66224

STAFF PRESENT: Patty Bennett, Joe Johnson, David Ley, Julie Stasi

Chair Jim Rawlings called the meeting to order at 7:30 AM. Committee Members, staff and guests introduced themselves.

- **Review Minutes of the Previous Meeting**

Alec Weinberg Motioned to approve the February 29, 2012 Minutes as written.

Pat Dunn seconded the Motion, all attending members in favor. Motion passed.

- **Review Drainage Concerns on a Vacant Lot in Merry Lea Farms, 140th & Mission Road area. [Lot east of 3914 W 140th Drive]**

Curtis Holland introduced himself as a lawyer with the Polsinelli Shughart Firm and his client is Heartland Development. Heartland Development is Tom French and Chris Kamberis. Tom has built many homes in Johnson County. Also Roger Cassidy is a Civil Engineer working with Tom and Chris on the development of a lot and hopefully the construction of a home on a lot in what is known as Merry Lea Farms. Mr. Holland advised they were here at the Stormwater Committee because they have a stormwater problem. There is a down-stream storm drainage system out there and it is not taking the water sufficiently, so what occurs even during minor rain events (such as a 5 year storm), is a pond that develops on the property they are trying to develop. Mr. Holland displayed a video that was taken on Lot 7 of Merry Lea Farms by a neighbor; Mrs. Gilmore. Video showing water running across the lots in a minor rain event.

Curtis Holland advised the City has a seventy foot wide drainage easement across the neighboring property where the Gilmores reside. Mr. Holland said the water is collecting and sitting in the drainage easement. Mr. Holland said there is a 36” storm drain pipe downstream that receives this water and the Gilmores driveway has a 36” pipe under it as well.

Joe Johnson advised the property was developed back in the 1970’s and most was left as an open channel. The existing grade of the lot and before the houses were built downstream, had a forty to fifty foot wide natural swale that took the water.

Curtis Holland described how the water comes from the northeast area across the French Property, flowing to the southwest. The water goes underneath the Gilmore driveway and heads further southwest to the west side of the Gilmore Property to another culvert pipe. The water ponds and is trying to get through the pipe on the Gilmore’s Property heading to the south. Mr. Holland said they believe the structure of the Gilmore’s drive is blocking the water and damming the water and causing the water to become a lake on the French/Kamberis Property. Area also described as the Willow Creek Plat.

Joe Johnson said the water eventually gets to the Worthington Subdivision. When Willow Creek was platted the easement was made to handle the overland flow. Originally it was graded to do that. The easement was to contain the overland flow. Lot 7 and 8 were originally part of the other plat.

David Ley advised Willow Creek was platted in 1999 or 2000 and Merry Lea Farms platted back in 1970’s.

Curtis Holland described a seventy foot wide drainage easement that goes across the Gilmores property and the neighbor’s property to the west of them. Mr. Holland said the drainage easement description indicates it is the City’s and pertinent language to the easement that is in relation to their issue is that it says “the drainage easement shall be kept free and clear of any and all obstructions; which interfere with the construction of proper maintenance”. Specifically there should not be built any obstruction-except with the written permission of the City. They think the Gilmore’s driveway creates a dam and that it has been built within that easement; creating an obstruction within the City’s drainage easement and it is causing the flooding upstream on the French/Kamberis property.

Curtis Holland said they are coming here today to explain a situation between the property owner, the Gilmores and the City. Secondly, to find a fix for the issue and how to go about it. A couple of solutions have been thought of:

The first option: A continuous pipe system with the stormwater placed into an underground storm drainage pipe system. A preferred option and the most expensive option.

The second option: Would be to grade the French Property and essentially you would have a drainage ditch cut in to the back side of the lot and direct the water into a defined drainage ditch under the Gilmore’s Property. In that case possibly add another one or two pipes under the Gilmores driveway-probably not where their bridge is but north of that structure.

John Kahl asked if a low water crossing would be allowed on the Gilmores Property?

David Ley said we have not allowed that in the past.

Joe Johnson said the issue you would have here with a low water crossing is you may or may not be

trapped in or out of your house. The 36" pipe is designed for a ten year storm, it is not designed for a 100 year storm.

John Kahl-Is the downstream pipe not a 36" pipe? It looks like in the video the water is backed up in front of the Gilmores too. So two 36" Pipes put through their driveway doesn't give us. The concept of what is being presented on this slide is to add a different 36" pipe yet a short distance downstream we only have one 36" pipe taking the water away so not quite sure why adding a second 36" pipe is going to solve the problem.

Roger Cassity. What would happen is it would get the water through the Gilmore's Property and not pond so much on The French Property. And it ponds further to the east of the French Property. If you get a couple more pipes in there you could essentially create more capacity in there and get the water off of it.

John Kahl-but a short distance downstream you still only have one 36" pipe which has to be contributing to the backup itself. So how does this solution address that issue?

Roger Cassity. That pipe is 5 feet plus or minus lower so it doesn't really have any effect on the French Property (the one down-stream there). It is going to pond down there and then overflow and then go into that cul-de-sac.

Kris Gilmore to her understanding, if the water does pond up on their property and they get more, than the people to the west of them who have the other 36" pipe (which was approved by the City), (our pipe was approved by the City; our bridge and the construction)...if we have more water on our property then we risk having the water in our house. From her understanding also by the engineers who have looked, is that the issue that was presented is that on the property, that the other 36" pipe that is 2 west of us, that is backing the water up onto our property, should have been 2 ½ feet lower so the water can go over. Obviously -I do not know how that would flow over but those people to the west of us do not want to be driving into water when they are entering their driveway either.

Jon Gilmore-If there is no way to drain it from their property then the only drainage area is ours and our neighbors drainage basin.

Deb Filla asked if others have had water issues in other storms that were 100 year.

Sue Vandenberg advised the drainage from 138th Terrace on the north side of these lots is the source of all this water. There also used to be a cattle pond on Mr. French's property years ago. There are springs all over the different properties. There had also been another pond on another property. It was old farm property that has been built on and with each new building the run off increases. Instead of being able to drain naturally like it did when it was farm country, it is now being channeled and not channeled effectively.

Joe Johnson. In the late 90's pipe was put in to tie into Worthington when it was developed.

John Kahl-What is it we are being asked to consider?

Curtis Holland-In our perfect world the City would have built a storm drainage system the way it should have been built in the first place.

John Kahl-I don't know why the City has an obligation to do that for a developer for purpose of individual profit.

Curtis Holland-What we have here in my opinion is a damning situation that is causing flooding on our property.

John Kahl, then that would be an issue between you and the adjacent land owner.

Curtis Holland-Except for the City has approved their structures and allowed for the damn to be built in their easement when the easement language said that there shouldn't be any obstructions built within their easement.

Patty Bennett-Unless it's approved and we approved it. So you're kind of circling back around. From a legal standpoint, I do not think the City has an obligation. I believe the approval-- and that is where you guys talk about day-lighting the pipe. The pipe is no bigger than the two pipes that are downstream, in fact I think it's a little smaller and then it takes it overland. So the pipes are maybe not sized correctly, but they are equal once they go down stream and I can see why the engineer approved it back then. So from a legal standpoint the City is on good ground; we've talked about this.

John Kahl-Has done a lot of stormwater design in his days and he has found it's pretty poor practice to try to put buildings on top of natural drainage paths. You do that and you are just asking for a flood to occur. Water will always try to return where you took it away from. Does not know that he would recommend developing that lot to begin with and if he did, if it was being developed, does not know that the City has any real obligation to be involved in the process. Certainly there are things that can be done to address the challenges that would be faced with trying to build on that lot. Not sure where the City's role is in that.

Kris Gilmore said they knew when they developed their property that they would not have a front yard, because of the easement. She took the video years ago because she had little kids at the time and was not aware of the volume of water coming through there. Her issue was more of a safety issue at the time when the children were little. Advised her kids are grown now; so they are fine with it. They do not get flooded in their house. She is fine with the way it is now.

Curtis Holland asked Joe, as an Engineer, what could they do to make the lot buildable?

John Kahl-pointed out on the south side of the lot there looks to be enough room to build a house similar to what is on the east side of this property. A smaller house on the south portion of the lot would fit; closer to the street.

Joe Johnson-there are two options. You push the drainage more toward the rear of the lot and get it underneath the driveway or you look at doing the storm sewer construction.

Curtis Holland-to do a pipe across the Gilmore property would be about \$180,000 range. To do a drainage swale to the rear of the property and then more direct it toward the Gilmore pipe and adding a pipe under the Gilmore Driveway (which they will not allow), is probably in the \$40 to \$60,000 range. There is a big difference in the cost.

Tom French-We expected to do some work back there. We knew there was an issue when we received the engineering drawings from Phelps as we put sewers in and created sewers for those lots that we purchased. We knew we would have to do some work back there but we never ever thought it would be to the extent like that for only a 5 year storm. I believe you calculated about an 8 foot deep swale that would put all that water to the back of the lot and then bring in around, that is beyond what we would have ever expected and we thought if there were easements there then things would have been calculated right. That's what we expected.

Roger Cassity-when we develop a property we cannot increase the water on an abutting property. When you look at the video you can see that the driveway on the Gilmores is a damn and it is creating a water build up on the French and the property east of that and on the Vandenberg's.

Jon Gilmore-Did you design the property? Because then you didn't mind doing it to us. There is only a drainage easement on our property because that was done when it was re-platted for Willow Creek. I'll allow as many pipes onto our property as there are going out. Thinks the water coming from Leawood Meadows needs to have a pipe that goes into a stormwater system. There are 20 some acres that dump into the yard north and then into Toms lot and then into ours. After that it becomes no issue because everything is piped in.

Deb Filla-This whole situation of talking about building on a lot –it is wrought with all sorts of danger. I am glad that Patty is able to ascertain that in terms of the City's involvement, this sounds like the neighbors need to come together and come up with a plan. And the developer needs to figure how much you want to spend on this, but we as a Stormwater Committee have actually addressed this issue now that you cannot profit from moving the water problem to someone else lot and water flows downhill. The more you pave and the less place there is for water to go, you create an expediential problem. Lots up stream flow do lots downstream.

Curtis Holland-And we are stuck in the middle, we have water coming from upstream and then someone blow damming it up and it's coming back onto our property.

Debra Filla-If you'll excuse me, but if that the understanding is that it is your obligation to figure out if you want to develop that. Otherwise it might just be undevelopable. We have a golf course in an area where it just has land that is not developable. A lot of times you get gifted those lots that are not developable. So it is not our obligation to make every single square inch in the City developable for someone else's profit and pay for all infrastructure. If you as all neighbors can figure out how this all benefits every neighbor up-stream and down-stream then come back to us with a plan, but we are not obligated (in my opinion) to solve this problem that is not a problem right now (except you can't make a profit on that lot).

Curtis Holland-Not only can we not make a profit, but we can't build on that lot.

Debra Filla-Well that is not the City's problem.

Pat Dunn-One more question. That low area on the subject lot that is undeveloped, could that be turned into a pond? Would that make a difference? Could you contain it by deepening the area so you can predict where the water will be; more than where it currently is.

Joe Johnson-It may help downstream from there, but when you get to the 100 year event (this is about 60' across and maybe that is the extent). But of course it would limit what you can put on the lot, and I think that is the issue. When that area gets so large, you are limiting what you can do with the lot as far as the ability to develop it. But yes, you can always grade it out so you know exactly where it is going to be and you could build around it. The swale is 40' wide, so putting a driveway there; does it have some impact? Yes, but you still have a swale that is 40' wide that came from Toms lot, across the Gilmores lot and eventually getting into the storm sewer pipe. That's just how the water flows. The right way to have done this would have been before anybody built was to look at it and address it in the very beginning. Of course that doesn't work because you have plats of different years and builders come in at different times and is one of those deals where it is the last lot on the block and there is not a whole lot of opportunities to go back in without addressing many property owners for a fix.

John Kahl-Points to a contour that represents the backup area. Then points to another area on the front of the lot where a house similar to the east lot could go in on the front of the lot. A smaller structure would be a better fit, so he does not know why you say the lot is not developable. It may not be

developable for a house as expansive as one to the west is but it would certainly be developable for a house as expansive like the one to the east of it.

Joe Johnson -One option would be to talk to all the property owners that back up to where the storm sewer discharges and see if they are interested in participating in a Benefit District. Where all or some of the cost depending on how it ends up is spread amongst all the property owners where the storm sewer crosses. You saw on the video, the drainage area goes from Mission Road all the way west of the Gilmores. It takes all the area overland in addition to what is in the pipe. Once you capture the pipe flow you eliminate 50% of the drainage but you still have surface drainage that you will have to address. You still have to look at overland swales to move that water. You can't build a storm sewer system big enough to capture all the water.

Joe Johnson-When we first talked about this we said if you are going to come to the Committee, come to them with a plan or what you want to do. But we do not have the forum for the Committee and staff to design it here. Staffs first recommendation was for them to go to talk to the neighbors and come up with a plan. What issues do they have and what are they willing to do, if anything. Does not see the City going in condemning easements to do a stormwater project.

Alec Weinberg-Back to John's question, what are we to do? It is certainly a complicated issue and there's certainly some conflict between the neighbors and what is out there. But does not see anything for the Committee to act on. This has been very informational and thinks that if all of the neighbors and the developer can come up with something for us to act on, then lets talk about it again sometime in the future.

Curtis Holland-that is a good approach. We did not come here with a specific solution only to make you aware of this so that going forward we can try to work together and work it out and hopefully have some City involvement review/approval/assistance, whatever. Thinks it is smart to review with the neighbors to see what can be done and come back.

Sue Vandenberg-If we broke out into separate groups, could we come to Joe Johnson or staff to see if something could be reviewed or approved to help (without wasting the Committee's time). To talk to someone who could guide us in the right direction?

Joe Johnson-Yes, David Ley or myself would be happy to meet with you or your neighbors to talk about possible solutions. If something is going to be done, it would be better to do it all at once and not piecemeal. We would be glad to look at any plans they devise.

Consensus from the Committee is for the Builder to speak with the neighbors of the lot they are trying to develop. The builder and property owners next door to vacant lot should come to some kind of agreement between them on the drainage issues.

Committee Members along with City Attorney feels this is not a City Problem.

Remains an Open item. No Action Taken.

- **Discussion of Cost-Share Program regarding installation of Stormwater Treatment Structures (rain barrels and/or installations of Best Management Practices).**

Deb Filla-advised a letter had been sent by a resident talking about this had how two cities in Johnson County have done this and asked if Leawood would join in, so that is why it was referred to the Council. They are trying to promote programs that encourage people to do best management practices. Not everyone has it figured out and education is a huge item on any program. This program looks at

rain barrels and rain gardens. A program may also be a mechanism to work towards getting funding or something for a green street.

Deb Filla made Motion to come back to this topic after the rain barrels are addressed in May by the Planning Department. [once Leawood Code would allow them].

Alec Weinberg seconds the motion; all present members agree. Motion passed.

- **Chair Rawlings adjourned the meeting at 8:56AM.**
- Minutes transcribed by Julie Stasi, Leawood Public Works Department