

Heisley Park Homeowners Association, Inc.
Painesville, OH 44077

July 29, 2024

The Honorable County Commissioner John R. Hamercheck
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Subject: Lake County Stormwater Management Concerns – Lake County Response Follow-up

Gentlemen,

The Heisley Park HOA thanks you and Mr. Tim Miller of your organization for the response to our letter of May 15, 2024, where we expressed our concerns about the lack of stormwater management maintenance oversight in Lake County. However, Mr. Miller's response does not alleviate our concerns and in fact seems to confirm that there is indeed a lack of overall stormwater management oversight for Lake County and as a result we believe that Lake County residents continue to be at risk for stormwater issues.

We have provided a more detailed response to each of Mr. Miller's responses in the attached document. However, we want to emphasize some of the major points here.

- 1.) Mr. Miller states that "it is true that Lake County does not routinely inspect the drainage ditches." His response seems to confirm that unless someone identifies an issue that your organization has no standard periodic review of whether the regulations stipulated in the original stormwater management plans are being maintained or maintenance being routinely performed. Yet, adequate flow of stormwater to the lake assumes that the ditches (and all interconnected waterway paths) to the lake are being maintained by residents of Lake County. So, why shouldn't the county inspect the paths on a standard timetable?
- 2.) In another response Mr. Miller states that [as a minimum] "Periodic inspections of the water quality Stormwater Control Measures (SCM) are conducted to determine the functionality of the SCM and to determine if maintenance is required." But then he states that his responsibility stops there since the county has no regulatory or statutory responsibility to

ensure things are getting done. Mr. Miller's response begs the question as to whether he has asked the state for statutory or regulatory capabilities? If not, why not?

- 3.) Mr. Miller points out that not all cities are under Lake County Stormwater Management guidelines. The City of Mentor and other cities do their own thing. So, if Mentor is found to have better stormwater controls in place, why not pass the county stormwater functions over to Mentor? Or, alternatively, why doesn't the County have total oversight of stormwater plans and compliance within the County? Has the County sought overall oversight? If not, why not?
- 4.) Mr. Miller also points out that under the current stormwater management system, any issue that may occur, including major resident damage or flooding, that the primary resolution is after the fact and requires affected parties to be pushed to the court system to determine damages rather than having a legislative body taking a more preventive approach to stormwater management? So, why do you, as County Commissioners, believe that this approach is best for Lake County residents or businesses? Do we need another disaster like East Liverpool but this time with stormwater issues for the government to step up and take precautions for residents?

Respectfully submitted,

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The Honorable Jerry Cirino
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The Honorable Jamie Callender
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The Honorable Doug Lewis
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Attachment – July 29 Letter to Lake County Commissioners

1. Members of Painesville City and the County stated that they do not routinely inspect the trenches or outflow paths to ensure the flow of stormwater for areas adjacent to or North of Heisley Park. They will only react to an issue when identified by residents such as us.

Lake County cannot confirm what the City of Painesville may have stated, however, it is true that Lake County does not routinely inspect the drainage ditches within our member communities unless requested to do so by a member of the public or by request of a member community public official or employee.

HOA Response: Your response above confirms that unless someone identifies an issue your organization has no standard periodic review of whether the regulations stipulated in the original stormwater management plans are being maintained. In fact, you state that you only react to issues identified by a member community public official or a public resident within one. That itself indicates that there is no overall Lake County oversight to ensure stormwater management principles are being followed.

2. The Lake County Stormwater representative indicated that their responsibility ends when the initial studies occurred as the development phases were completed.

This is an inaccurate statement. While the Lake County Stormwater Management Department (LCSMD) conducts plan review for stormwater infrastructure during planning and development, our responsibility does not end at the conclusion of the review. Periodic inspections of the water quality Stormwater Control Measures (SCM) are conducted to determine the functionality of the SCM and to determine if maintenance is required. The owner of the SCM and/or the responsible party is sent an inspection report to notify them of the appropriate maintenance measure that should be implemented. These inspections are performed on the water quality SCM that have been constructed from 2008 until the present time.

HOA Response: In item 1 you state you do not routinely inspect ditches (trenches or outflow paths) and only react to complaints. Yet, in the second item you state that you do and are responsible for “Periodic inspections of the water quality Stormwater Control Measures (SCM) inspections.” One question then is how often are these inspections within the member communities and are they documented for public review and why should they not include basic stormwater infrastructure inspections for compliance? In addition, you point out that your periodic review does not include all communities that are not member communities even though they are in the county. We believe that this lack of overall oversight and control of stormwater management within the county, including the Railroad properties, put member communities and Lake County residents in jeopardy with regards to stormwater issues.

3. Both Painesville and Lake County representative stated in their responses that they have no proactive plan to ensure that stormwater flows effectively to the lake. They seem to merely assume that all property owners are maintaining those paths properly and that mainly someone (residents) will tell them if they believe a stormwater problem exists (flooding, seeing debris in the streams.)

Again, Lake County cannot confirm what the City of Painesville may have stated, however, LCSMD will actively investigate any issue that is brought to our attention to determine if the issue may be impacting the functionality of an SCM. In the State of Ohio, the landowner that the drainage course lies on is responsible for the maintenance of that drainage course. In some cases, the LCSMD will assist our member communities with funding to address issues on regional drainage courses should the member community request that assistance, however, the member community nor LCSMD are required to do so, but we do have the authority to do so at our discretion.

HOA Response: We see the above as one of the key issues surrounding adequate stormwater management for Lake County. You do not have the authority to ensure that all entities conform to adequate or defined stormwater management principles to ensure the safety of residents or their property within a County. It begs the question who has overall regulatory or statutory responsibility for stormwater management in Lake County, or for that matter any County in Ohio? If not at a county level, should the overall regulatory and statutory authority reside with a state stormwater management department? And do they perform Stormwater Control Measures (SCM) reviews, or have they delegated that responsibly to the Counties rather than individual communities? Under the premise that Storm Water Management is a county responsibility, wouldn't this include Mentor and all other non-member communities?

4. The overall monitoring of stormwater issues seems to be hampered by the fact that stormwater trenches or streams are on private property and are either in adjacent cities or belong to the railroads. Because they are on private property or specifically railroad properties, the only thing the city can do is ask owners, adjacent cities, or the railroads to clean up the trenches and stormwater paths when specifically notified of an issue. This implies that an HOA such as us inspects all adjacent owner properties to determine if our stormwater will flow as designed to the Lake, which is an impossible task and beyond our stormwater management capabilities.

LCSMD does not imply that the HOA is responsible for inspecting all adjacent owner properties. If the HOA observes an abnormal condition within the SCM within the subdivision, then the HOA can contact the City or the LCSMD to perform an assessment to determine what might be the cause.

LCSMD is also not responsible for any properties in the City of Mentor as they have their own Stormwater Management Program and likely have different programs and methods for conducting their SCM assessments.

The railroads are also considered to be individual private property owners with the same rights as those described thus far and are responsible to maintain drainage within their Right of Way.

HOA Response: Again, the above statements indicate that there are no overall coordinated stormwater management principles being maintained for the safety of Lake County residents or their property. And should the railroads be required to be under a county review to ensure County wide compliance? Your comment about the railroads begs the question of should the Federal Government require railroad cooperation with respect to storm water management in Ohio, especially given the 2023 East Liverpool train derailment and the 2007 Painesville train derailment within Heisley Park?

5. The Painesville representative also emphasized that the Railroads will only act if called upon by God or the Federal Government to perform maintenance. The Railroad will only act when a catastrophic event like a train derailment occurs and is called upon by the Federal Government to address the situation.

LCSMD cannot confirm the statement by the City of Painesville.

HOA Response: The prime example is the 2023 East Liverpool train derailment.

6. The City of Painesville representatives stated also they cannot require adjacent cities or property owners in adjacent cities to correct a potential stormwater issue.

LCSMD cannot confirm the statement by the City of Painesville, but in practice it is likely accurate that the City cannot require adjacent cities to correct potential stormwater issues. In general, if an adjacent landowner has not maintained a drainage course on their property and it is causing a hardship to an upstream landowner, then it is considered a civil matter between the landowners and the courts can determine the appropriate action.

HOA Response: Again, an indication that there is a lack of overall statutory or regulatory responsibilities for stormwater management within Lake County and the State of Ohio. The statement only points out that only after an issue occurs it shifts to the courts to determine a fault rather than a storm water management preventive approach.

7. A similar point made by the County representative indicated that they too had no responsibility to ensure that paths are adequately and routinely cleaned or working to maintain the stormwater flows to the lake.

LCSMD will actively investigate any report of a potential stormwater issue and will assist the landowner with a course of action, however, it is accurate that LCSMD does not have the authority to require a landowner to perform maintenance on the drainage course on

their property. LCSMD does have authority to require a developer or HOA to make repairs to any SCM that was installed as a requirement of the Ohio EPA Non-Point Discharge Elimination System (NPDES) Permit that LCSMD assists member communities of maintaining compliance with. LCSMD's main responsibility is to maintain compliance with the NPDES Permit.

HOA Response: Your response states that your main responsibility is to maintain compliance with the NPDES Permit. Our opinion is that without adequate, timely and documented review of properties designed under NPDES Permit, we question whether they currently meet original design standards even if reviewed using the compliance measurements. This is especially a concern since your stormwater management department seems to rely on residents or member officials in member communities to report non-compliance. When was the last time the NPDES permitted properties were reviewed? And what entity in the state reviews non-member properties or the railroads for compliance? We suggest and your responses seem to confirm that overall regulatory and statutory compliance is lacking! Hence, it seems like the wild west when it comes to storm water management for Lake County Residents!

8. Both above points were extremely troubling since we believe the City and the County are the stormwater utilities that we, as Lake County citizens, depend on to prevent stormwater issues. In fact, given their response, we must question why as residents of the city and county are we paying stormwater management fees on our water and tax bills?

As stated previously, LCSMD has the primary responsibility to ensure compliance with the Ohio EPA NPDES permit that is required by 20 of the 23 political subdivisions in Lake County. 17 of those subdivisions within Lake County have chosen to become members of the LCSMD. The remaining 3, including the City of Mentor, have decided to implement their own program and as such, LCSMD has no regulatory authority over them.

HOA Response: Your response to the above seems to point out that to provide an overall coordinated Lake County effort that the State may have to require legislative action to ensure that there is a unified county wide approach to stormwater management with regulatory and statutory oversight.

The Ohio NPDES Permit requires the political subdivisions to implement a Stormwater Management Program, (SMP) that includes the following components:

Minimum Control Measure Number 1: Public Education. The program must include a policy on implementing public education practices to educate the public on the effects of stormwater pollution.

Minimum Control Measure Number 2: Public Participation and Involvement. The program must include a policy on involving the public in community events and/or stream cleanups to improve the water quality of the streams, rivers and ultimately Lake Erie within our communities.

Minimum control Measure 3: Illicit Discharge Detection and Elimination. The program must include a policy to screen storm water outfalls to determine if there is a pollutant being discharged into a storm sewer system, a receiving water body such as a stream channel, river, roadside ditch or Lake Erie. If a pollutant is discovered, then it is tracked to its origin and the property owner is required to eliminate it in a timely manner.

Minimum Control Measure 4: Erosion and Sediment Controls. The program must contain a policy and procedure for implementing stormwater erosion and sediment controls on active construction sites.

Minimum Control Measure 5: Post Construction Water Quality Controls. The program must contain a policy and procedure for implementing water quality features in SCM on development sites. This is essentially requiring developers to provide a plan for LCSMD to review to ensure that water quality features are designed properly and an inspection upon construction completion to ensure that the feature was constructed properly.

Minimum Control Measure 6: Pollution Prevention and Good Housekeeping. The program must contain a policy and procedure for Municipal Road Departments to review their operations and inspect their facilities to ensure that stormwater runoff is not being polluted by their operations.

All of these Minimum Control Measures are to reported Ohio EPA annually to ensure that compliance of our member communities is being met.

A portion of the stormwater user fee collected by LCSMD goes to regulatory compliance and a portion goes back to the communities in the form of infrastructure.

improvements and operation and maintenance of the storm sewer system within each community.

9. As residents of Lake County and the state of Ohio we ask ourselves why isn't there a comprehensive stormwater management (maintenance) inspection plan for the county that includes representatives from the Railroads who have lines in the county? Why don't the cities and county have joint oversight and performance measurements for property owners? Why isn't stormwater management performance for the county done on a pro-active versus reactive inspection basis?

I think that the answers to these questions have been previously addressed in the previous bullet points, namely, LCSMD has no regulatory or statutory authority to require landowners, including the railroads, to perform routine maintenance on drainage courses within their properties.

LCSMD is proactive in inspecting Storm Water Control Measures that we're required to be constructed as part of the NPDES Permit.

HOA Response: And yet there appears to be no annual review as to whether the periodic inspection continues to meet the original design standards of the permit. Your periodic inspection measures assume that Permit measures are as designed. Your measure does not reflect any design standard review or documentation of results.

As our elected local and Federal officials, we continue to ask that you create such an oversight committee, chaired by the Lake County Engineer, or his appointed representative, to ensure that preventative maintenance by property owners occurs in each city and by the Railroads and that you petition for overall regulatory and statutory responsibility for Lake County Ohio. Your response is requested.

The Lake County Engineer does not have the regulatory or statutory authority to require landowners to perform maintenance on a drainage course within their property either.

HOA Response: The above response identifies a problem that needs to be addressed for the citizens of Lake County and Storm Water Management within the County. It begs the question as to whether the County should request regulatory or statutory authority for the entire county from the State Legislature.