

Homeowners Being Hung Out to Dry

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In 2011, we bought a Northgate Park property, through which flows what was once a small stream. Over decades, increasing stormwater drained/piped into this intermittent stream has eroded its banks to the house's edge. During even a small rain, the normally dry stream flows with a current rivaling the Eno and Haw Rivers. An enormous tree on one bank now has exposed roots and leans at a 450 angle due to soil erosion, and a dangerous, several-feet deep sinkhole has formed nearby.

I asked Soil and Water Conservation District employees, a private arborist, and an environmental landscaper for help. They recommended I get neighbors together, enlist many to donate conservation easements, and write a > \$100,000 grant for a comprehensive streambank restoration. This should be a city initiative, not the plight of property owners whose land has become a water-dumping ground. Everyone advised me to contact Durham's Stormwater Services (SS), because the problem is ultimately caused by the increasing volume and velocity of stormwater piped/directed from upstream development. (Ultimately we need upstream retention ponds, but they hold no profits for developers.)

SS employees told me that stormwater/drainage problems are the property owner's responsibility and that, even when they had funding to assist, SS could only address structures currently suffering damage from stormwater/erosion. DSS employees agreed that it's far more cost-effective to handle stormwater problems before they cause structural damage but said their hands are tied.

I was told SS had received many similar calls from residents of Northgate Park and else where. Later, friends informed me of tremendous runoff increases in Duke Park and numerous sinkholes in Cleveland Holloway.

Many believe that rain barrel and garden installations can single-handedly correct these problems, and several state-funded programs encourage these. But upstream property owners must voluntarily install these (they aren't required of new developments). I'm told changes will come with increasing costs of water and improvements to impaired waterways. Meanwhile, the costs fall on those onto whose property all this runoff is directed.

The 'Waterways' insert in our last water bill informed that residents cannot restrict the downhill flow of stormwater, but this is exactly what is required. 'Waterways' also listed 'Things to consider before buying property,' including researching drainage issues, reports to SS, and visiting the property during/after a rain.

So the person who owns property onto which others' properties are unsustainably draining is solely responsible for mitigating this communal detriment, to which he may not even contribute. How does this compare to the private property rights that developers demand when confronted with Jordan/Falls lake rules, many of which preempt or mitigate such runoff problems?

The stormwater fees that Durham residents now pay (via water bills) are salt in a widening wound. These fees are intended to correct stormwater problems affecting the quality of our water resources, but they are blatantly not used for runoff problems on property owned by the bill-payers.

What's more, Durham used stormwater funds to pay attorney Steve Levitas to weaken the Jordan and Falls Lake Rules (see http://www.thedurhamnews.com/2010/02/20/v-print/200935_council-oks-120k-for-falls-lake.html)! "Not proceeding to strongly advocate for the City's interest in this arena will place the City at risk for

long-term substantial financial loss due to regulatory costs and lost economic development activity," assistant stormwater manager Paul Wiebke wrote to City Manager Tom Bonfield. The city can certainly minimize financial losses by laying the cost on individual property owners.

Furthermore, SS has advised (repeatedly) that, if I attempt to reduce runoff destruction of my property, I'll be liable for any flooding/damage that may result on other properties. How's that for irony?

Wait. It gets better.

The Durham code of ordinances states that 'All construction of, or nonroutine maintenance work on a...drainage feature intended to prevent pollutants from entering the drainage system...shall require a permit or other approval from the city,' and that the city will charge 'appropriate fees to recover the costs of review of applications and issuance of permits and approvals ... and for the monitoring of BMPs and other drainage features....' The city may also require 'other financial guarantees or payment into a fund...to ensure the continuous upkeep and/or reconstruction of city-required BMPs or other pollution-prevention features.'

The downstream homeowner is not only expected to install/finance and maintain any bmp(s) to deal with upstream runoff from properties (s)he does not own, (s)he must also pay for that privilege. While it may be easier to sell the property, homebuyers following SS's advice (above) wouldn't want to buy it. Furthermore, any installation on his/her small property will likely be ineffective (and a waste of money) in the long run. Truly effective stormwater solutions involve broad areas and especially include upstream properties, which often cause but don't suffer from runoff problems and are, therefore, unlikely to voluntarily install (and finance) much-needed solutions.

The legalities surrounding stormwater issues are gray at best. Apparently, the state owns the water, the city owns the pipes and streams (though even that is debatable), and the property owners own the land. So who is accountable when stormwater redirected by private developers damages property downstream? The answer is further complicated because detrimental stormwater effects often go unnoticed for years, sometimes decades.

The system is broken. Help fix it by writing me with stormwater issues you know about (include address/location(s) and, if possible, photographs), so we can help the city readily ascertain the extent of the problem and begin to address it.