

JOHN COOPER
MAYOR



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

DEPARTMENT OF WATER AND SEWERAGE SERVICES
Development Services
800 Second Avenue South
P.O. Box 196300
Nashville, Tennessee 37219-6300

**Minutes
of the
Stormwater Management Committee (SWMC)
May 6, 2021

8:15 AM
700 Second Avenue South
Howard Office Building, Sonny West Conference Center**

**STORMWATER MANAGEMENT COMMITTEE
(Quorum Required: Four Members)**

Committee Members Present:

- Mr. Dodd Galbreath –Chair
- Ms. Anna Maddox, P. E. – Vice Chair
- Ms. Carrie Stokes, P. E.
- Mr. Roy Dale, P. E.
- Mr. Trey Lewis
- Mr. Kabir Sandhu, P. E.

Committee Members Absent:
Ms. Ronette Adams-Taylor

I. CALL TO ORDER

Mr. Dodd Galbreath, (chair) called meeting to order at 8:15 a.m.

II. APPROVAL OF JANUARY 7, 2021 MEETING MINUTES & DECISION LETTERS

A motion was made by Ms. Anna Maddox and seconded by Ms. Carrie Stokes on approval of January 7, 2021 minutes & decision letter as presented. Mr. Dodd Galbreath, Ms. Maddox, Ms. Stokes, Mr. Trey Lewis, Mr. Kabir Sandhu, and Mr. Roy Dale voted in favor of the motion. The motion carried.

New members of the Stormwater Management Committee, Mr. Trey Lewis and Mr. Kabir Sandhu were welcomed to the first in-person meeting. Members give a brief introduction of themselves.



If you need assistance or an accommodation, please contact Metro Water Services, at 615-862-4862, 1600 Second Avenue North, Nashville, Tennessee 37208.

III. STORMWATER MANAGEMENT COMMITTEE AGENDA

Comments were solicited from the Planning and Codes Departments for the following Agenda items.

1. 202100003 Lake Providence Missionary Baptist Church

5891 Nolensville Pike
Inspector: (Kenneth Tranter)

APN 17200007900
CD-04 (Robert Swope)

APPLICANT'S REQUEST: Request is to appeal the adverse decision of Metro Water Services (MWS) National Pollutant Discharge Elimination System (NPDES) Program regarding a Notice of Non-Compliance (NON) to Lake Providence Missionary Baptist Church, located at 5891 Nolensville Pike, Nashville, TN 37211 for disturbance of a regulated stream buffer. The no-disturb stream buffer requirements went into effect as a result of the original development activity under grading permit 2001-096.

A Notice of Non-Compliance was presented to Lake Providence August 14, 2020 informing the church that it was in violation of no-disturb stream buffer requirements that went into effect as a result of the original development activity under grading permit 2001-096. Notice stated, "cutting the trees disturbed a regulated stream buffer" and was in direct violation of Metro Nashville Stormwater Management Manual Section 6.9. The Appellant is appealing the decision of Metro Water Services.

APPELLANT: Lake Providence Missionary Church, Inc.

REPRESENTATIVE: James B. Johnson (Attorney)

COMMENTS:

SW STAFF: Case to be presented by staff

CODES: No comment provided

PLANNING: No comment provided

GREENWAYS: No comment provided

Ms. Rebecca Dohn and Ms. Liz Stienstraw (Metro Water Services) give history and timeline on the case of Lake Providence Missionary Baptist Church. Ms. Dohn discussed the original variance for the location which was to allow the clearing of the stream buffer and or floodway and floodway buffer along Whittemore Branch and stated that variance was approved.

Ms. Liz Stienstraw issued a Notice of Non-Compliance to Lake Providence on August 14, 2020 informing the church that it was in violation of no-disturb stream buffer requirements that went into effect as a result of the original development activity under grading permit 2001-096. Notice stated, "cutting the trees disturbed a regulated stream buffer" and was in direct violation of Metro Nashville Stormwater Management Manual Section 6.9.

Ms. Stienstraw concluded that "corrective action was required to include restoration of the disturbed stream buffer." The Storm Water Division instructed Lake Providence to implement the following corrective actions:

Submittal of a buffer restoration plan to her office by September 14, 2020. The restoration plan shall be prepared by a registered Landscape Architect (LA) and must include the replanting of at least 238 native trees to offset the tree removal. It was noted by Ms. Stienstraw that, the plan should detail a specific timeline for when the tree replacement schedule will be completed and shall detail 75 percent survivability of plantings through two full growing seasons. Replacement trees should be nursery stock, at least 1.5 inches DBH, and 6 feet tall. Understory and ornamental trees can be 1-inch DBH and 5 feet tall.

Pastor Bruce Maxwell (Pastor of Lake Providence Missionary Baptist Church), Attorney James Johnson (representing attorney), and Mr. Clyde Rountree (Rountree & Associates), spoke on the location of 5891 Nolensville Pike. Paster Maxwell stated that, on March 3, 2020, a severe tornado hit the city of Nashville, and several severe storms occurred in the city between the time March 2020 and June 2020. As a result of the storms, the stream in front of the property of Lake Providence Missionary Baptist Church overflowed on several occasions, washing away some of the embankment in the stream, weakening the soil system, and causing some trees inside the stream buffer to fall.

Pastor Maxwell went further to state that, the first Sunday of May 2020, another storm went through the area and uprooted trees, broke several trees in half, blew the roof off the church and caused other damage to the property and stream. However, the problems that were described to the SWMC on October 15, 2002 were still present in May 2020 and had become worse after the recent storms that occurred in the area. It was concluded that the damages from the storms had created a safety hazard to the property, people visiting the property and the stream itself. Therefore, it was concluded that the damaged trees and others needed to be removed.

Pastor Maxwell asked the committee to notice the following: 1) Lake Providence acted in good faith and attempted to obtain consent from the agency it believed had jurisdiction over the stream buffer. TDEC's representative met with the Lake Providence representatives and gave verbal consent to cut down the trees. 2) After receiving the Notice of Non-Compliance from MWSSD, Lake Providence continued to operate in good faith as it hired a landscape architect who prepared a buffer restoration plan in accordance with Section 6.9.6.1 of the Stormwater Management Manual. 3) Lake Providence's proposal cost for the church was between \$19,600 and \$24,600. However, MWSSD's required replanting will cost for the church was between \$41,650 and \$50,575. (Tables were submitted for review). 4) MWSSD's only objection to the Lake Providence restoration plan was that, Lake Providence's plan recommended the replanting of 74 trees instead of the 238 trees recommended by MWSSD. Noting neither plan will achieve significant restoration of the stream buffer. 5) MWSSD's suggested number of 238 replacement trees appears to be arbitrary and capricious when using the formulas identified by MWSSD. The RTR formula appears to be subjective as MWSSD has not provided Lake Providence with any evidence which establishes that "Metro's tree replacement schedule" is reliable authority for determining the RTR. Hence, the RTR numbers are not reliable and should be negotiable.

Mr. Rountree stated that he prepared a Conceptual Landscape Plan that was supported with detailed written notes. Under his plan, Lake Providence would provide a two-year survival guarantee. The planting will occur during optimal planting season. Also, the newly planted trees will be installed by professional landscape contractors who will comply with industry standards. The plan proposes to install slope stabilizing grasses to shore up the embankment's erosion and provide filtration and shade to the stream buffer.

Mr. Rountree stated, the plan addresses all of the following: scope of work, inspection and approval, job conditions, materials (including topsoil, planting mix), seed, sod, mulch, fertilizer, and the establishment of grass to all the disturbed areas in the site.

Mr. Johnson stated to the committee that Lake Providence did receive consent to remove the trees, however that consent was given to them by Tennessee Department of Environment and Conservation ("TDEC") and realized later that this is not who was needed to contact for this matter.

Mr. Johnson went further to state that at today's meeting was the first time that he has heard the word compromise from Metro Water and its staff and would like to take a further look at what is being proposed.

The Committee Members were advised of comments sent into Metro Water on variance # 202100003 Lake Providence Missionary Baptist Church and that these comments were provided to them for review. Mr. Steve Mishu (Metro Water Services) noted that all comments were in favor of the church replacing trees at the location.

Mr. Roy Dale stated that he felt one of the things that the committee members needed to examine is what is necessary to restore the tributary.

After discussion during the Executive Session of the Committee on May 6, 2021 and review of the information presented Mr. Dodd Galbreath made a motion to defer and Mr. Roy Dale seconded the motion. Ms. Carrie Stokes, Ms. Anna Maddox, Mr. Dale, Mr. Trey Lewis, Mr. Kabir Sandhu, and Mr. Galbreath voted in favor of the motion. The motion carried.

The applicants are to work with staff to see if a compromise can be met.

NOW THEREFORE, it is the decision of the Committee that the request in Variance Request No. 202100003 as set out above and further described in the case record, be and is hereby **DEFERRED.**"

2. 202100004 The Farm at Natchez Trace

9479 Highway 96

Inspector: (Leigh Nelson)

APN 17800003400

CD-35 (Dave Rosenberg)

Given some confusion regarding their site's Grading Permit-related buffer provisions, the site was found to be mowing "no-disturb" areas of their buffer as a normal course of site maintenance (during a stormwater control measure inspection).

APPLICANT'S REQUEST:

1. Stream buffer disturbance
2. Continuous mowing & maintenance of the buffer

APPELLANT: Linda F. Burnsed.

REPRESENTATIVE: Skip Heibert (Heibert + Ball Land Design, LLC)

COMMENTS:

SW STAFF: No comment provided

CODES: No comment provided

PLANNING: No comment provided

GREENWAYS: No comment provided

Mr. Michael Hunt (Metro Water Services) gave staff comments and brief background for the location of The Farm at Natchez Trace. Mr. Hunt stated that the location has some historical usage of what was a zone one buffer that owner was unaware had to end once site was developed. Instead of allowing the area to grow-up some mowing was taking place.

Mr. Hunt went further to state that the property has been and is currently being used as a pet boarding facility. The area along the stream is used to walk dogs during their stay at the facility. It is a policy of the facility that the pets are always walked on a leash and the handlers always carry plastic bags to pick up any solid waste. The pets are never left unattended. This is a very important component of the day to day operations of the facility. The area is mowed to allow access for this activity.

Ms. Linda Burnsed (Appellant) and Mr. Skip Heibert (Heibert + Ball Land Design, LLC) spoke on the location of 9479 Highway 96. Ms. Burnsed gave background of the property and her usage of the location when first purchased in 1999. When property was purchased, Little East Fork Road was still in use and was an asphalt surface road. Ms. Burnsed stated that she ceased use of the road, the majority of the asphalt was removed, and the roadbed was scarified, and is currently a grassed area which now helps filter and slows any runoff from the abandoned road bed into the stream.

Ms. Burnsed made note as well that the handlers carry plastic bags to pick-up any solid waste and that the area is mowed to allow access for this activity. Ms. Burnsed stated that she would like to be able to continue the mowing and maintenance in the area and proposed some planting to provide additional filtration along the steam.

Mr. Heibert stated that he has six mitigation measures for the site which include:

1. A detention/ bio pond which was installed in 2014 during the construction of the new barn (Grading Permit #201400113) providing natural infiltration and detention.
2. Soil and turf have been installed over the existing asphalt roadbed. This provides a pretreatment filter for runoff drainage toward the creek.
3. Indigenous species will be planted at the inlet of the bio pond to provide additional filtration of runoff from the large bio pond.
4. River rounds (4"-6" diameter) will be installed at the inlet and outlet of the culvert from the bio pond to the river to provide additional filtration and dissipate the energy of the water flow.
5. Additional indigenous plantings along stream bank are proposed for planting to provide additional filtration along the steam.
6. All existing trees will remain undisturbed. No trees will be removed.

After discussion during the Executive Session of the Committee on May 6, 2021 and review of the information presented Mr. Roy Dale made a motion to approve as presented with the following standard Conditions # 1-2 and Mr. Trey Lewis seconded the motion. Ms. Carrie Stokes, Ms. Anna Maddox, Mr. Dale, Mr. Lewis, Mr. Kabir Sandhu, and Mr. Dodd Galbreath voted in favor of the motion. The motion passed.

1. The Appellant shall have the landscaper who installs the required mitigation plantings to certify to the MWS Stormwater – NPDES Office, in writing (referencing Variance #202100004), once plantings are installed per approved variance plans, and again once plantings have been found to meet a two full growing season requirement. The owner shall maintain a minimum of 75 percent survivability of plantings through two full growing seasons.
2. This variance will expire on May 6, 2022. However, if a Grading Permit, Stormwater Single Family Permit, or Building Permit is issued within that period, the variance expiration date will run concurrent with that permit expiration date. The variance is valid only so long as the plan presented to the Stormwater Management Committee does not change.

NOW THEREFORE, it is the decision of the Committee that the request in Variance Request No. 202100004 as set out above and further described in the case record, be and is hereby **GRANTED.**”

V. ITEMS OF BUSINESS

SR# 830338 Resolution Letter-5135 Hickory Hollow Parkway (Lynda Kelley – Metro Water). Ms. Kelly gave update on 2020 Buffer and Floodplain Monitoring Report for the location of 5135 Hickory Hollow Parkway which was approved under variance #201700004.

A Notice of Violation (NOV) and Stop Work Order (SWO), SR# 830338, was issued to the site on February 1, 2017 (with a \$1,400 penalty) for the following violations:

1. Grading/Filling without Permit
2. Inadequate Erosion/Sediment Controls
3. Buffer Disturbance
4. Clearing of 12+/- acres of property located in the floodway

Owners BDY Environmental met with the Metro Stormwater staff and discuss the Long-Term Maintenance Plan, Declaration of Restrictions and Covenants, and Greenways Conservation easement. Additionally, BDY and stormwater staff discussed revisions to the original *Buffer and Floodplain Restoration Plan* dated March 1, 2017. The revisions were based upon site observations by both BDY and Metro after a flood event that occurred on April 22, 2017 and recent natural regeneration and stabilization observed within the limits of the disturbed area since the issuance of the variance.

Ms. Kelly stated that as outlined in the long-term maintenance plan, BDY conducted monitoring on October 16, 2020 within the previously disturbed areas to document the density of sapling in these areas and determine if the total number of volunteer saplings and planted trees were more than 75% of the initial number of planted trees. This inventory was documented to show the previously disturbed area is undergoing natural succession and is transitioning back into a forested floodplain.

Stormwater Management Committee

May 6, 2021

Page 7

Fontanel – Update (Michael Hunt – Metro Water)

Mr. Michael Hunt spoke on the “ Floodway Impact Terms Agreement” between Metro Water Service Stormwater and Fontanel per Metro Stormwater Management Committee Variance #202000014 – Condition #9; which went into effect 5/1/2021 “The applicant shall coordinate with Stormwater Staff on the frequency, duration, and size of events that would be allowed to utilize parking within the floodplain and floodway stream buffers of White's Creek.”

The Agreement states:

- 48 Impact Days per year will be permitted in each of the Floodway Impact Zones as depicted on exhibit A-1 (which was a part of slide presented).
- The parking of vehicles or motorcycles shall not be permitted in Field A.
- The owner shall make best efforts to place food trucks and portable toilets away from Whites Creek and the associated buffer.

Records of the date of the impact day and which Floodway Buffer Zone was utilized shall be kept by Fontanel’s Event Manager and sent to Stormwater Management staff on a quarterly basis. Beginning May 1, 2022, an annual meeting shall be held on site with Fontanel’s Event Manager and Stormwater Management staff to review the years activities and reports. The agreement terms shall remain in place for a period of three years and thereafter may be amended or revised with agreement from both parties. Mr. Hunt stated that condition #9 is now met.

River North – Update (Steve Mishu – Metro Water)

Mr. Mishu spoke on Variance #202000001 which was presented before the committee on several occasion in 2020 requesting uncompensated fill in the flood plan. At the last meeting that the case was placed on the agenda, it was deferred, and appellant decided not to return to the committee.

Mr. Mishu stated that River North at the location of 520 Cowan Street has a buyer for the property and according to report will not be looking to go before the committee for a variance based on discusses with the new designer.

FEMA Flood Insurance Changes (Roger Lindsey – Metro Water)

Mr. Lindsey spoke on articles referencing Risk Rating 2.0 and its effects on the rising cost of Flood Insurance. The National Flood Insurance Policy (NFIP), which is run by the Federal Emergency Management Agency, is overhauling its methodology for setting flood insurance prices for the first time in about 50 years. Starting Oct. 1, premiums for new NFIP policies will be based on individual properties' flood risk and the estimated cost of rebuilding those properties if flood damage occurs.

Mr. Lindsey went further to state that, about 95% of current policyholders in Tennessee will see their premiums decrease or increase by \$20 or less per month under the new system, according to FEMA. In Tennessee, FEMA expects Risk Rating 2.0 will decrease premiums for 28% of the state's existing flood insurance policies. About 59% are expected to see an average premium increase of \$0 to \$10 per month (or \$0 to \$120 per year).

Mr. Lindsey stated that there is work being done in congress on affordability to find ways to make flood insurance more accessible.

Ethics Training (Theresa Costonis – Metro Legal)

Ms. Costonis stated that the refresh on Ethics Training was recommended by the “Mayors Taskforce on Integrity” and to be presented to all metro boards and committees. Ms. Costonis discussed the six “Goals of Training” which are:

1. Understand that you cannot accept benefits related to your role on the board.
2. Understand when you may be biased or have a conflict and should recuse yourself.
3. Remember to disclose knowledge you have received about an agenda item from outside the meeting.
4. Remember to articulate the specific reasons and basis for your decision.
5. Understand that the Open Meetings Act prohibits deliberation outside board meetings & Public Records Act makes almost all your emails open to the public.
6. Understand best practices for making informed decisions.

VI. ADJOURNMENT

Mr. Roy Dale made a motion to adjourn the May 6, 2021 Stormwater Management Meeting and seconded by Ms. Anna Maddox. Mr. Trey Lewis, Ms. Carrie Stokes, Ms. Maddox, Mr. Dale, Mr. Kabir Sandhu, and Mr. Dodd Galbreath voted in favor of the motion. The motion passed.

The meeting adjourned at 12:00 p.m.

Metropolitan Stormwater Management Committee
Approved:

By: Peninsula Gilbert
Secretary

Date: 07/01/2021