10 August 2022

Thanks for your inquiry, and sorry for the tardy response. I wanted to touch base with our maintenance folks for some more clarification on some of your inquiries.  The work for my project only included portions of East Toll Gate Creek between E Crestline Cir and E Progress Cir. We were unable to secure easements from the property owner xxx. however we were able to construct improvements both upstream and downstream of that property. While not having this easement did have some impacts on our design, the reality is that we are limited as to how much we can “reroute” channels due to Federal environmental permitting constraints.  We were still able to meet our project goals in spite of not having that easement. Our project goal was to essentially lower and stabilize the channel back to it’s original level prior to the upstream watershed development as much as possible. This also included restoring and/or reducing the floodplain limits with our project boundaries.  We still do have some open “Environmental” permits within or project footprint including a Grading, Erosion, and Sediment Control  (GESC) Permit, a State Stormwater Discharge (SWMP) Permit and a Federal (404) environmental Permit. These permits cannot be closed until the area has been satisfactorily re-vegetated and the wetlands restored. As such we will be more active in treating the project area for weeds, and will be actively monitoring the wetland areas. During this time we would ask that the HOA not do any mowing within those areas until we are able to close those permits out. SEMSWA will maintain these areas until we are able to close those permits.  This could take up to 5 years, in the case of the 404 permit, however we will close the GESC and SWMP permits asap (generally at least 2 growing seasons and sometimes 3 are required). Once those permits are closed the HOA is welcome to maintain/mow the bridal easements as they see fit, and SEMSWA will continue to be responsible for the maintenance of the actual channel sections where we have easements. We will notify the HOA once we get those permits closed.

At present we do not have any additional capital improvement projects planned for this reach within the Dove Hill HOA. Please see specific responses to the inquiries below (responses are italicized in blue):

Take a look at my responses, and feel free to contact me if you would like to discuss further.

*Jon Nelson II   PE, CFM*

***Capital Improvements Project Manager***

***Southeast Metro Stormwater Authority***

Jon,

We have not tagged up since a year ago, but I have been getting conflicting info from the homeowners, so I wanted to reach out to you.

Last year you completed the work on the north side of Crestline, and had no plans for the south side of the road.-*Correct*

I have at least one homeowner that believes you have additional work to do on the north side of the creek, and that you are waiting on something from the Board or that the Board has in some way prohibited SMSWA from completing the work. *To the best of my knowledge at present SEMSWA has no plans within Dove Hill so that we can do additional work. The construction of our capital project is complete, and going forward our work will be generally confined to routine maintenance activities within the easements that we currently have.  As in general, it benefits both the property owners and HOAs to cooperate with SEMSWA we don’t generally try to force property owners or HOAs to grant easements. In very rare cases we might use “Imminent Domain” if a project was critical for the protection of a community or critical facilities from a severe flood risk, however this is not the case for Dove Hill.*

*I appreciate the support and cooperation of the property owners that did grant the easements, and the project was successful in helping to stabilize those portions of the creek and reduce the overall floodplain footprint. We were able to somewhat work around the properties that either were unwilling to grant easements, or only granted easements on specific areas of the creek on their property.*

Below questions forwarded on behalf of the community:

1. We understand that the creek was re-routed to avoid work on the xxx property, if true, can SMSWA provide an updated map of the creek, and the flood plain? This would be particularly helpful as we also updating our covenants and may want to include language about creek maintenance. -*The creek was not re-routed by our work to avoid the xxx property. Based on Google Earth Imagery it does appear that the creek may have clipped the corner of the xxx lot before 2012, however the severe aggregation that occurred starting around 2012 caused the thalweg to shift to west, and become less defined. Our project reestablished a new thalweg, but the location was approximately where it was as near as we could tell prior to our work. You are correct that we were unable to secure an easement from xxx property, however future maintenance efforts should not need to access that parcel to maintain the channel.   We are currently working with FEMA on a Letter of Map Revision (LOMR) to update the current FEMA Floodplain mapping to reflect the improvements and the reduced floodplain within the  project reach. We will be happy to provide as-built drawings that illustrate where the channel is currently located once they are complete.*
2. Regarding cat tails, who is responsible for creek maintenance or flood plain maintenance? There is a considerable amount of debate on this particular topic, as it is not specifically addressed in the current HOA covenants. *In general SEMSWA is responsible for the maintenance of public drainageways, and will maintain those drainageways to the extent that our time and budget allows. However where creeks flow on private property we can only do this work if we have a permanent drainage easement that includes the areas that the creek or channels flows thru within that property.  If we don’t have an easement then neither SEMSWA nor the Mile High Flood District can perform maintenance activities. Creeks and drainageways on private property outside of an easement would either be responsibility of the property owner or HOA to maintain depending on what agreements are in place.  In the case of my CIP project we do not have an easement for the portion of the creek that runs thru xxx and we do not have an easement for the portion of the creek that bisects the northern portion of the property at xxx. Thus we cannot maintain those portions of the creek that are outside of our easements. Those areas would therefore fall to the property owner or possibly the HOA to maintain. Please note that we did get an easement from the property at xxx for the portion of the creek that runs across the southern portion of his lot, as well a small portion where the creek bisects the northern section of his property. However he did not grant a complete easement for the norther portion of the creek on his property as he did not want is property bisected by the easement.*
3. Related. Is the county or other ordinance that specifies required maintenance? *There is not a specific ordinance to my knowledge that would compel a property owner to perform specific maintenance activities on a creek or drainageway that flows thru their property, especially maintenance related to “natural” aggregation and vegetation issues. There are certainly some constraints and limits on activities by property owners that would impact the floodplain such as placing fill or building within the floodplain.*
4. Related. Who is responsible for enforcement? HOA, county, SMSWA? If HOA, see previous question, what specifically grants the HOA power to enforce. *Floodplain violations within the County would ultimately be the responsibility of the County to enforce, however SEMSWA and the County would likely coordinate on any enforcement actions.  As discussed above enforcement on a “lack of maintenance” for natural aggregation or vegetation issues  is very murky at best.*