



## **MEMORANDUM**

### **SPRING BROOK 1 / DRAINAGE DITCH 1 / STREAMS LAKES EXECUTIVE SUMMARY**

**TO:** The Honorable Mayor and City Council

**FROM:** Jim Knippen & Sarah Kallas

**DATE:** August 5, 2021

**RE:** Spring Brook 1/ Drainage Ditch 1/Streams Lakes

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#### **I** **DEFINITIONS**

For purposes of this memorandum, the following definitions may be helpful. Drainage Ditch No. 1 (“DD1”) can be conceptualized as a manmade channel that runs through the Spring Brook Creek Watershed. Spring Brook Creek (“Creek”) is the original natural watercourse running through the Spring Brook Creek Watershed prior to its alteration by the construction of Drainage Ditch No. 1 and is now referred to by FEMA as Springbrook #1. The Spring Brook Watershed is a basin that collects precipitation and other surface water and ultimately drains into the West Branch of the DuPage River.

Lake 2 in the Streams Lakes has become a sedimentation basin for upstream Spring Brook Creek requiring remediation from time to time. Due to the cost and the frequency of the past remediations by dredging, the issue arose as to whether the City has a duty to remediate sedimentation and whether there were any remediation alternatives. The question of whether there are remediation alternatives is an engineering question as well as a legal question due to Illinois

drainage law. What may be cost effective or not cost effective in terms of alternative remediation options is also affected by that law.

## II

### **WHETHER THE CITY HAS A LEGAL OR EQUITABLE DUTY TO REMEDIATE THE SEDIMENTATION ISSUE IN SPRING BROOK 1 AND THE STREAMS LAKES?**

1. Spring Brook was originally a watershed which was subsequently “improved” in 1896 by the construction of Drainage Ditch No. 1 by the Union Drainage District No. 1 which was an independent unit of government formed in Milton Township.

2. The Union Drainage District appears to have disappeared after constructing the ditch and engaging in certain litigation it brought against the City of Wheaton and against it by DuPage County State’s Attorney Slusser and private litigants to detach portions of the area that the drainage district purported to incorporate into the drainage district’s jurisdiction.

3. The Union Drainage District was never dissolved in accordance with state statute. If it was not rendered void by court order, it still legally exists and could be reactivated.

4. The likelihood this could occur, however, is remote based on the expense of doing so and the fact that the new drainage district would have only those options which the City may have if it elects to voluntarily remediate the sedimentation issue.

5. The City of Wheaton does not own Drainage Ditch 1, Spring Brook 1, the Streams Lakes, or any of the property immediately contiguous thereto, except with regard to roads and bridges that cross Spring Brook Creek and the inlets and sewer outlets that deposit drainage into Spring Brook Lakes 1 and 2.

6. As a matter of Illinois law, either, under the Illinois Drainage Act, and its predecessors, or Illinois common law, the City has the legal right to deposit and transmit stormwater drainage into Spring Brook #1, Drainage Ditch 1, and the Lakes without paying property owners for those discharges. This is based upon the legal rule of “natural drainage” which derives from the essential proposition that water flows downhill. The City as a dominant estate holder under drainage law assembles and transports drainage water from the areas north of Roosevelt Road into Drainage Ditch No. 1/Spring Brook #1 through the City’s northern drainage systems and out through the Kelly Park headwall where Spring Brook #1 daylight and flows as an open channel until it leaves the City’s corporate limits.

7. The City also has the right to discharge stormwater drainage without costs south of the Kelly Park headwall into Spring Brook #1/Drainage Ditch 1 from City drainage systems constructed south of the headwall and annexed gradually over decades.

8. If the City has a duty or voluntarily elects to dredge all or any portion of Spring Brook #1, including the Streams Lakes, it can cross private property in a reasonable fashion and do so without paying any compensation for that purpose.

9. Based upon our research, it is our legal opinion that the City probably does not have a legal duty to remediate the sedimentation issue in Spring Brook Creek or the Streams Lakes leg of Spring Brook Creek. The Streams Lakes are actually part of the Spring Brook Creek Watershed.

10. This opinion might be somewhat qualified if the Lake sediments are polluted to the point that the law requires remediation.

11. The issue of whether or not the City has an equitable duty to remediate sedimentation in Lake 2 is a complex legal question that could probably not be resolved in absence of litigation.

12. It is our legal opinion that if the City elected a remediation option other than dredging, it could probably do so legally without a probability that a lawsuit against the City in inverse condemnation, complaining about the nature of the alternative remedy, would be successful. The owners of real property located on the perimeter of the watershed that are not contiguous to the lakes technically have no right to use other properties in the watershed other than for drainage because the watershed properties and lakes are private property, not public property. The City should not be liable to maintain the current appearance of the Lakes.

13. Whether alternative remediation would work and be cost effective is an engineering question.

14. Public sentiment related to the aesthetics of different remediation strategies may also influence the Council's policy decisions.

### **III**

#### **INITIAL RECOMMENDATIONS**

1. In order to answer some of these questions, staff recommends that the Council consider retaining an engineering firm to update a Patrick Engineering study of Streams Lakes remediation which was done in April 1987. This is due to the fact that alternative remediation strategies have become more studied and applied since the Patrick Engineering report was completed.

2. Part of that study would include a review of the Spring Brook Creek Watershed Plan prepared by DuPage County in 2015 which offers detailed recommendations with regard to how to reduce the sedimentation in Spring Brook Creek, which may, in part, be longer lasting remediation than just dredging.

# **Springbrook Water and Sedimentation History and Legalities**

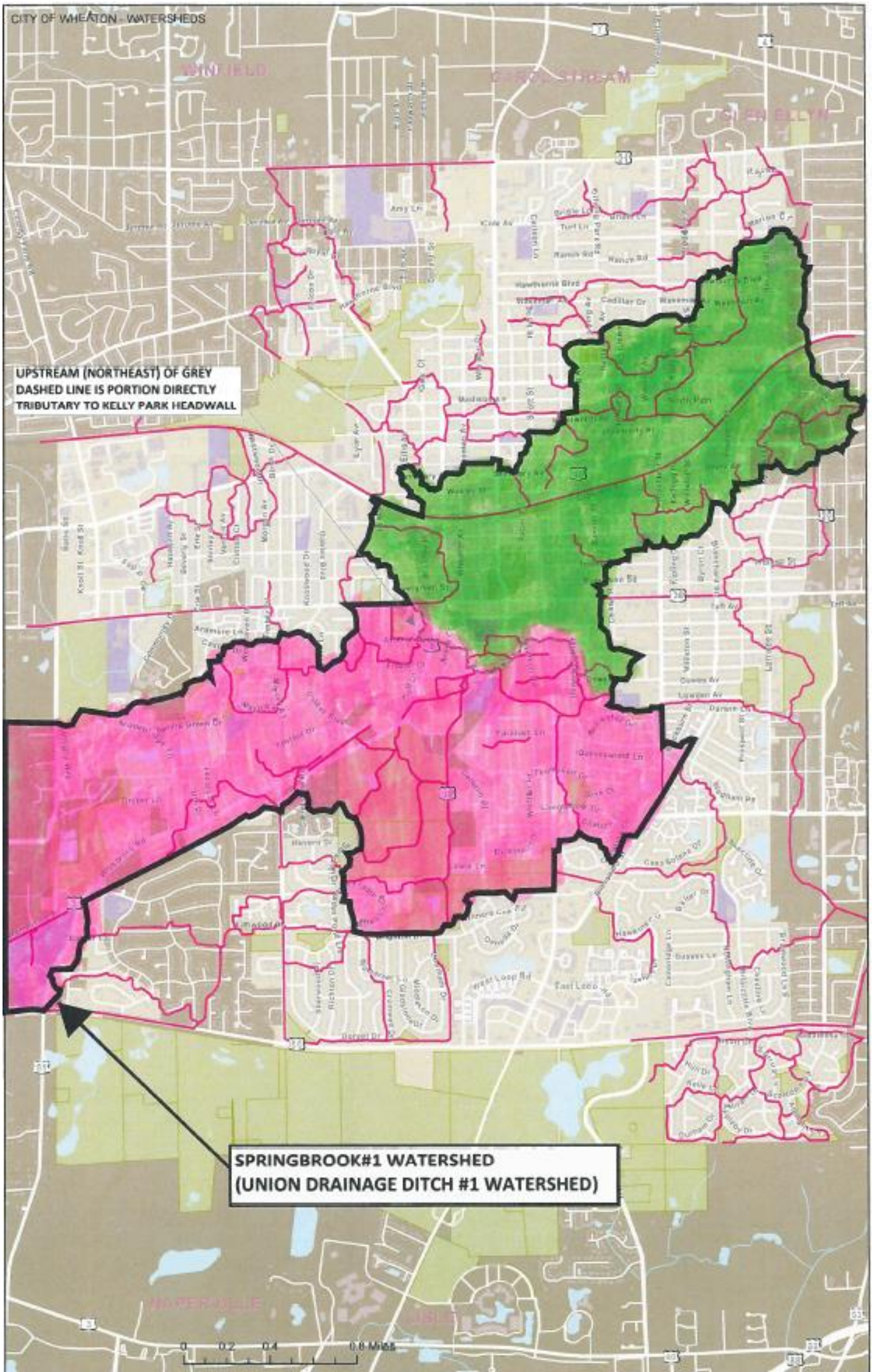
# **Union Drainage Ditch 1 constructed by men and mules in 1896**



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# Geographic Boundaries of Springbrook Creek Watershed

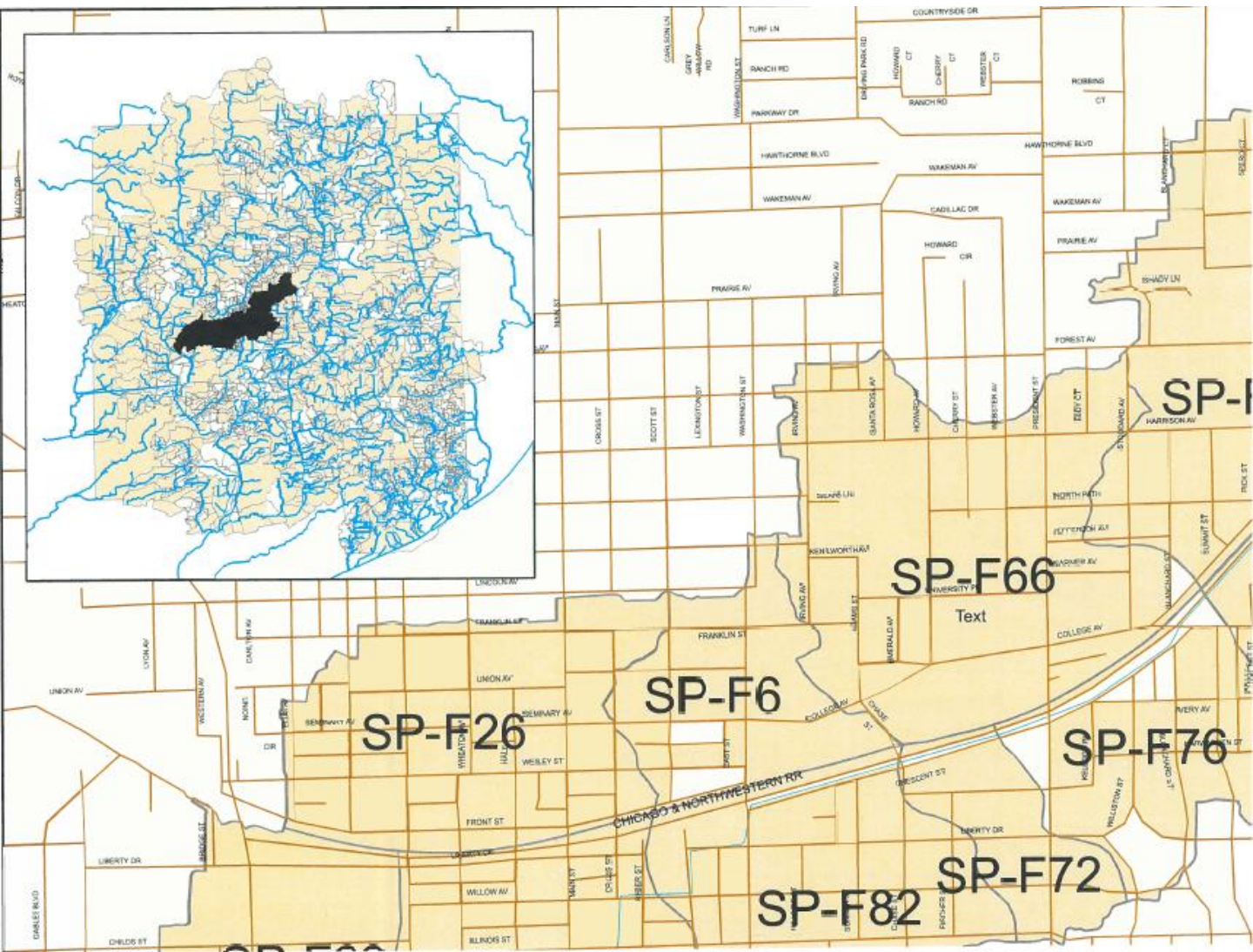


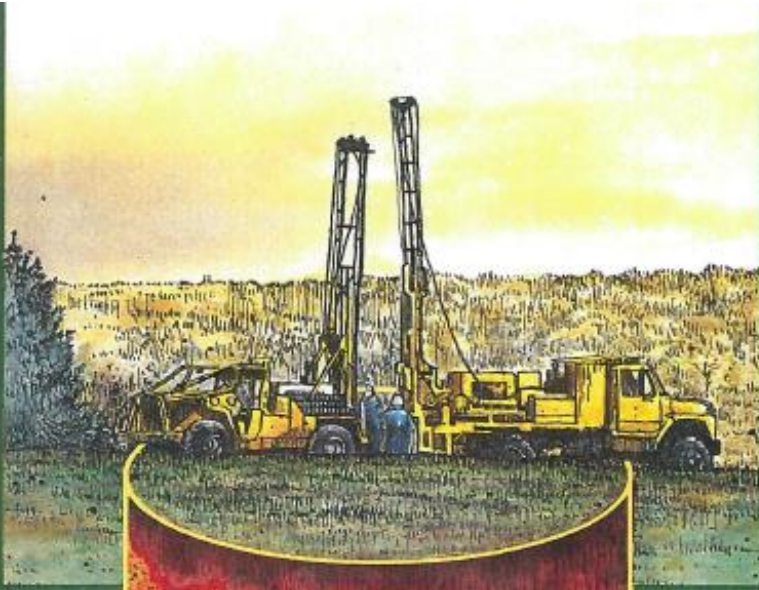
# The Mystery of Milton Township Drainage Districts





# SUBBASINS TRIBUTARY TO SPRINGBROOK CREEK





**PRELIMINARY  
ENGINEERING  
STUDY REPORT**

**FOR THE**

**STREAMS LAKE  
SYSTEM  
WHEATON,  
ILLINOIS**

**PREPARED  
FOR THE**

**CITY OF WHEATON**

**PROJECT  
NO. 266**

**APRIL, 1987**

**PATRICK  
ENGINEERING, INC.**

- Engineers
- Geologists
- Hydrologists

# **MEANDERING OF SPRINGBROOK CREEK IN ST. JAMES FARM FOREST PRESERVE**



# SPRING BROOK No. 1 WATERSHED PLAN



DUPAGE COUNTY STORMWATER MANAGEMENT

NOVEMBER 2015

