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April 4, 2005

Patrick J. Carome

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By Hand

Ms. Gerrily Kress
Director
District of Columbia Office of Zoning
441 4th Street, N.W.
Suite 210 South
Washington, DC 20001

Re: *BZA Appeal No. 17285*

Dear Ms. Kress:

Enclosed for filing and inclusion in the above-referenced Appeal, and for distribution to the members of the Board of Zoning Adjustment, are an original and twenty copies of the Third Affidavit of Patrick J. Carome, which we are submitting *in rebuttal* to materials that the Economides submitted to the Board under a cover letter dated March 29, 2005.

Please circulate this set of materials to the members of the Board of Zoning Adjustment in advance of next Tuesday's continued hearing in this Appeal.

Please return to my courier one of the copies with a date-stamp confirming its filing. Thank you for your cooperation.

Sincerely,



Patrick J. Carome

Enclosures

cc w/ enclosures (by hand):
Richard L. Aguglia, Esq., Hunton & Williams
Alma Gates, ANC
David Murphy, U.S. Park Service
Jeffrey Bernstein, U.S. Dept. of the Interior
Lisa Bell, DCRA

BZA

Case No. 17285
Exhibit No. 58

Board of Zoning Adjustment
District of Columbia
CASE NO. 17285
EXHIBIT NO. 58

RECEIVED
D.C. OFFICE OF ZONING
2005 APR -4 PM 2:30

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of Patrick J. Carome

of Building Permit
No. B460927

4825 Dexter Terrace, NW
Frank & Dina Economides, Owners

BZA Appeal No. 17285

Hearing Date: March 1, 2005

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2005 APR -4 PM 2:52

THIRD AFFIDAVIT OF PATRICK J. CAROME

I, Patrick J. Carome, being duly sworn, depose and say:

1. I am submitting this affidavit in rebuttal to materials dated March 29, 2005, that the Economides submitted to the Board of Zoning Adjustment on or about March 29, 2005 (hereinafter the "Economides March 29 Submission").
2. The Economides March 29 Submission appears to argue that, "with the exception of a discarded piece of piping, since removed," there is no encroachment by the Walled Platform Structure onto the federal parkland. This is false in numerous respects, including the following:
 - A. In fact, the Walled Platform Structure includes, as one of its integral parts, a buried drainage pipe that spews a gushing, concentrated, silt-laden flow of water onto the federal parkland during and after periods of rain. This buried drainage pipe is at least twenty-feet long and emerges from the ground on the parkland side of the boundary markers. Contrary to the Economides March 29 Submission, this buried and functioning drainage pipe is not a "discarded piece of piping" and has not been "since removed." Attached as Exhibit B hereto are annotated photographs that fairly and accurately depict the appearance and location of the exposed end of this pipe during and after a period of rain on April 2, 2005.
 - B. A further integral component of the Walled Platform Structure is comprised by the failing and dysfunctional silt fences that are located on the federal parkland. Attached as Exhibit A hereto are copies of photographs that fairly and accurately depict the appearance and location of these silt fences, as well as the concentrated and highly damaging silt-laden streams that emerge from behind these silt fences and flow onto and over the federal parkland below. Attached as Exhibit A hereto are annotated photographs that fairly and accurately depict the appearance and

location of these encroaching silt fences and these streams during a period of rain on April 2, 2005.

3. The 35th page of photographs reflected in the Economides March 29 Submission depicts the outlet of a storm water pipe in Wesley Heights Park. The Economides appear to be attempting to suggest that the severe new erosion that is occurring at the point immediately before the stream in the park passes under 49th Street (previously shown in the first two pages of Appellant's Exhibit 43 (Volume I)) is being caused by water that exits this storm water pipe, rather than the streams of water that now cascade into the park from the Walled Platform Structure. Any such suggestion is false. Even during heavy storms, no significant amount of water currently flows through this storm water pipe. The cause of the erosion is damming of the stream by silt debris from the Walled Platform Structure, which has caused the stream to change course and carve a new channel under 49th Street. Attached as Exhibit C hereto are annotated photographs that fairly and accurately depict this phenomenon occurring during a period of rain on April 2, 2005.
4. Attached as Exhibit D hereto is an annotated photograph that fairly and accurately depicts a concentrated stream of water cascading from between two courses of mesa blocks near the top of the exterior northern wall of the Walled Platform Structure during a period of rain on April 2, 2005.
5. One of the new photographs contained in the Economides March 29 Submission depicts a walled structure next to a sidewalk that runs parallel to and near the western side lot line of the residential property located at 4815 Dexter Street. (See 21st page of photographs in Economides March 29 Submission.) I surmise that the Economides intend to assert that this walled structure is evidence that a structure akin to their Walled Platform Structure exists elsewhere in their neighborhood. Any such assertion would be false. In fact, the walled structure at 4815 Dexter Street does not appear to present some or all of the zoning defects inherent in the Economides Walled Platform Structure because it is not located within the required eight (8)-foot side yard at 4815 Dexter Street. Attached as Exhibit D hereto are annotated photographs that fairly and accurately depict the appearance and location of the walled structure at 4815 Dexter Street.
6. The 18th page of photographs contained in the Economides March 29 Submission appears to depict an upward looking, side view of a walled platform structure located at 2620 Foxhall Road. The true nature of this structure, including its paved upper surface (topped and surrounded by a chain-link fence that exceeds seven feet in height), is fairly and accurately depicted in annotated photographs that are attached hereto as Exhibit F.
7. The 17th page of photographs contained in the Economides March 29 Submission appears to depict an old fence wall that runs along a portion of the front and eastern side of their property at 4825 Dexter Terrace. The view shown in this photograph is from the unfinished driveway between the house that they are constructing and Dexter Terrace (which is above and to the right of this old fence wall). I surmise that the Economides may intend to assert that this fence wall is evidence that a structure akin to the Walled Platform Structure already existed elsewhere on the property at 4825 Dexter Terrace.

Any such assertion would be false. In fact, much of this structure was built *below pre-existing grade*, as can readily be seen from the side of this fence wall that is not depicted in the photograph submitted by the Economides. Attached hereto as Exhibit G are annotated photographs that fairly and accurately depict the appearance and height of this fence wall. As these annotated photographs show, this fence wall is not more than 7 feet above the pre-existing grade on the outer side of the wall.

8. The 36th (and last) page of photographs contained in the Economides March 29 Submission depicts part of a retaining wall that runs alongside the driveway behind my own house at 4747 Fulton Street, N.W. I surmise that the Economides may intend to assert that this retaining wall is evidence that I have on my own property a structure akin to the Walled Platform Structure. Any such assertion would be false. The retaining wall depicted in this photograph is matched by a second and similar retaining wall on the other side of the driveway. The garage at the upper end of this driveway is at or below the basement level of my house. The retaining walls on either side of the drive retain pre-existing earth – their obvious function is to keep that pre-existing earth from collapsing on top of the driveway, which is below pre-existing grade. Attached hereto as Exhibit H is a photocopy of a page of the 1940 blueprints for my home. This blueprint plainly demonstrates that the tops of the retaining walls on either side of the driveway at the rear of my house are at the approximate level of the pre-existing grade, and their purpose was to permit a below-grade driveway to access the below-grade, basement-level garage.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 4th day of April, 2005.

Washington
District of Columbia


Patrick J. Carome

SUBSCRIBED AND SWORN TO before me, this 4th day of April 2005.

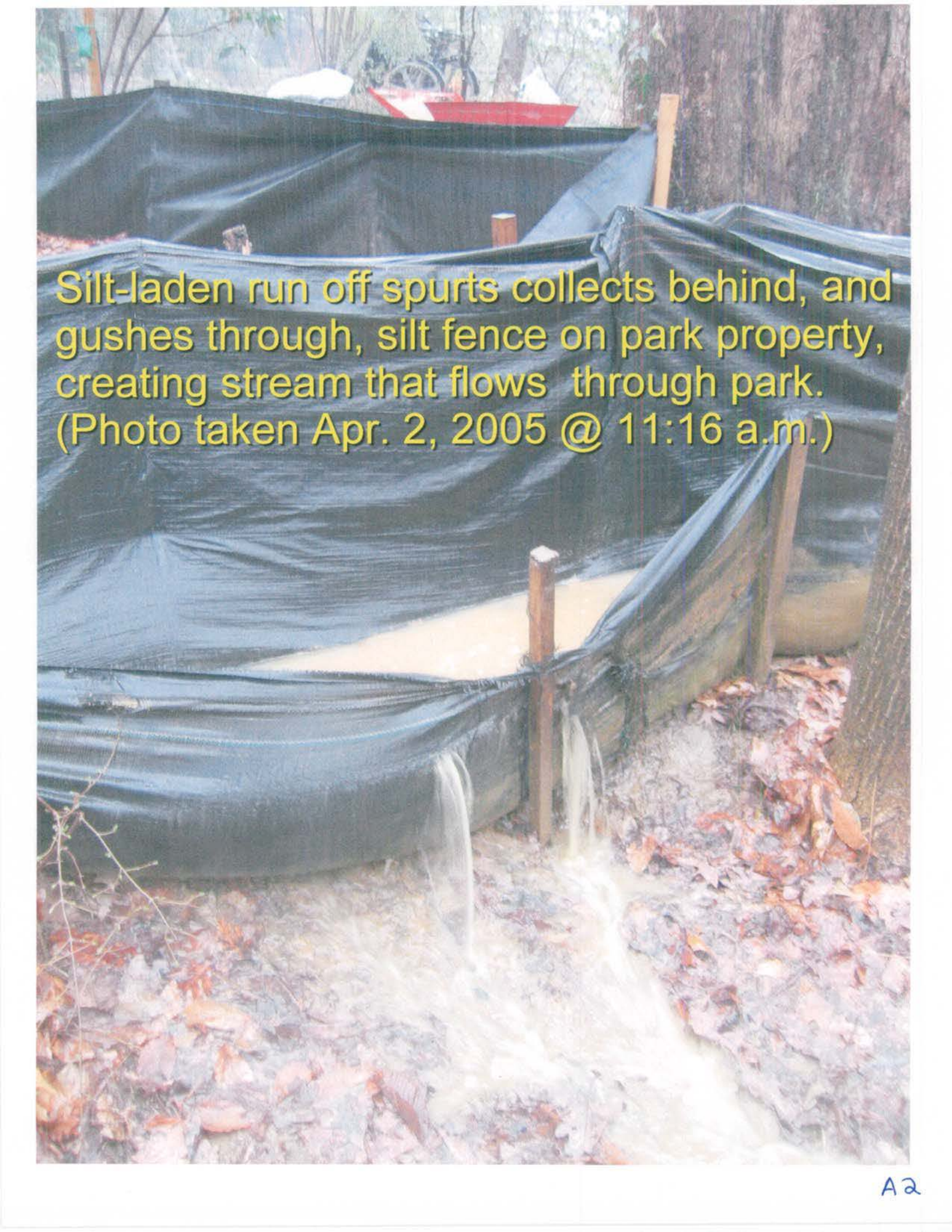

Notary Public

CINDY L. FISH
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires June 14, 2007

Drainage Back-up Behind Silt Fence at Northwest Exterior Corner of Walled Platform Structure

Approx. Location of Drainage Hose Outflow

(Photo taken Apr. 2, 2005 @ 11:19 a.m.)



Silt-laden run off spurts collects behind, and gushes through, silt fence on park property, creating stream that flows through park. (Photo taken Apr. 2, 2005 @ 11:16 a.m.)



Park boundary marker

West fork of new "Economides Stream" that originates near northwest corner of Walled Platform Structure.

Stream exits from behind silt fence.

(Photo taken Apr. 2, 2005
@ 11:17 a.m.)

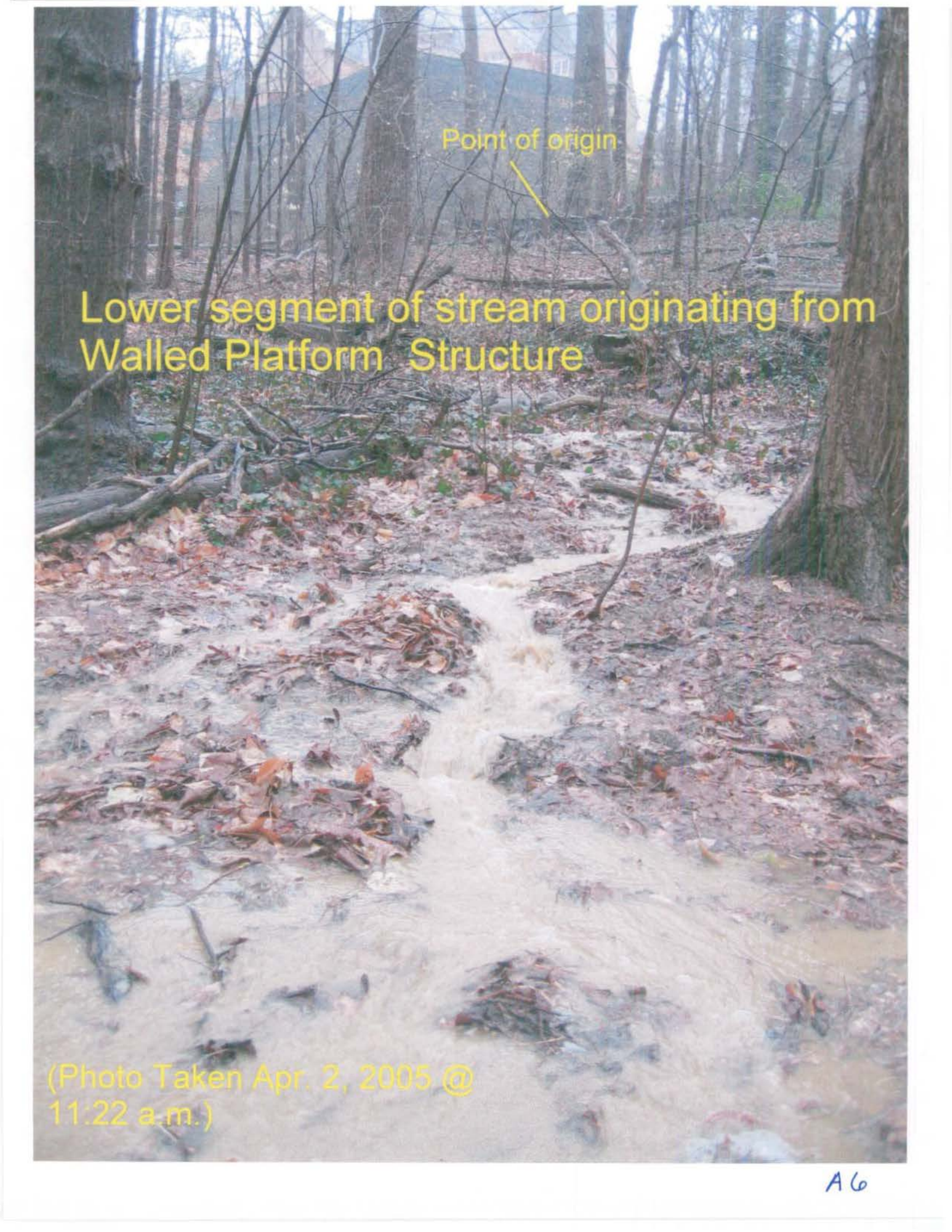


(Photo taken Apr. 2005 @ 11:31 a.m.)

Close-up of silt filled stream in park.



(Photo taken Apr. 2, 2005 @ 11:17 a.m.)



Point of origin

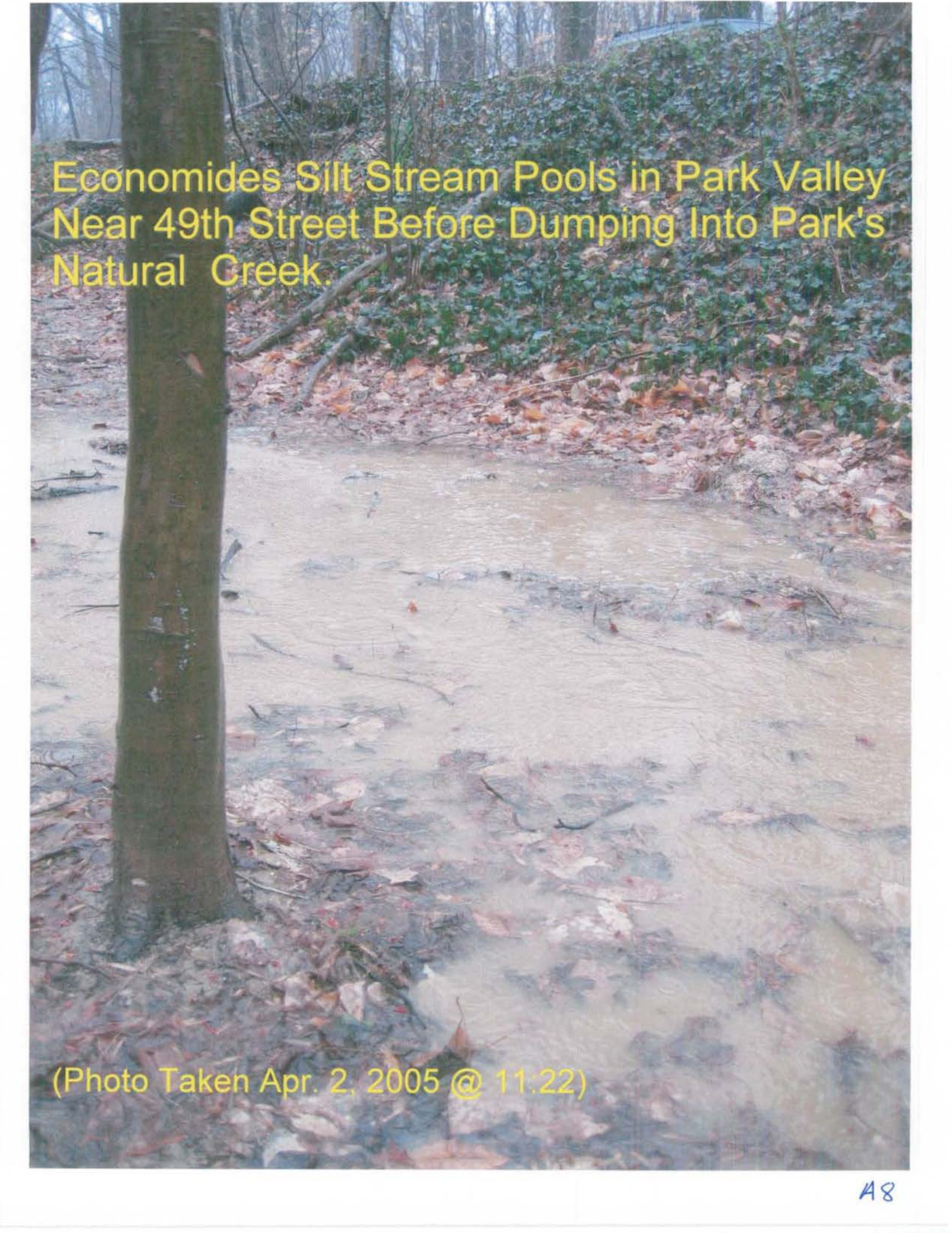
Lower segment of stream originating from
Walled Platform Structure

(Photo Taken Apr. 2, 2005 @
11:22 a.m.)

A photograph of a muddy stream flowing through a forest. The stream is filled with brown silt and water, winding through a path covered in fallen brown and orange leaves. In the foreground on the left, there is a large, freshly cut tree stump. The background shows a dense forest of tall, thin trees with bare branches, suggesting a late autumn or winter setting. The overall scene depicts environmental degradation in a natural area.

Economides Silt Stream Swamps and Ruins
Running Path in Wesley Heights Park.

(Photo taken Apr. 2, 2005 @ 11:22 a.m.)



Economides Silt Stream Pools in Park Valley
Near 49th Street Before Dumping Into Park's
Natural Creek.

(Photo Taken Apr. 2, 2005 @ 11:22)

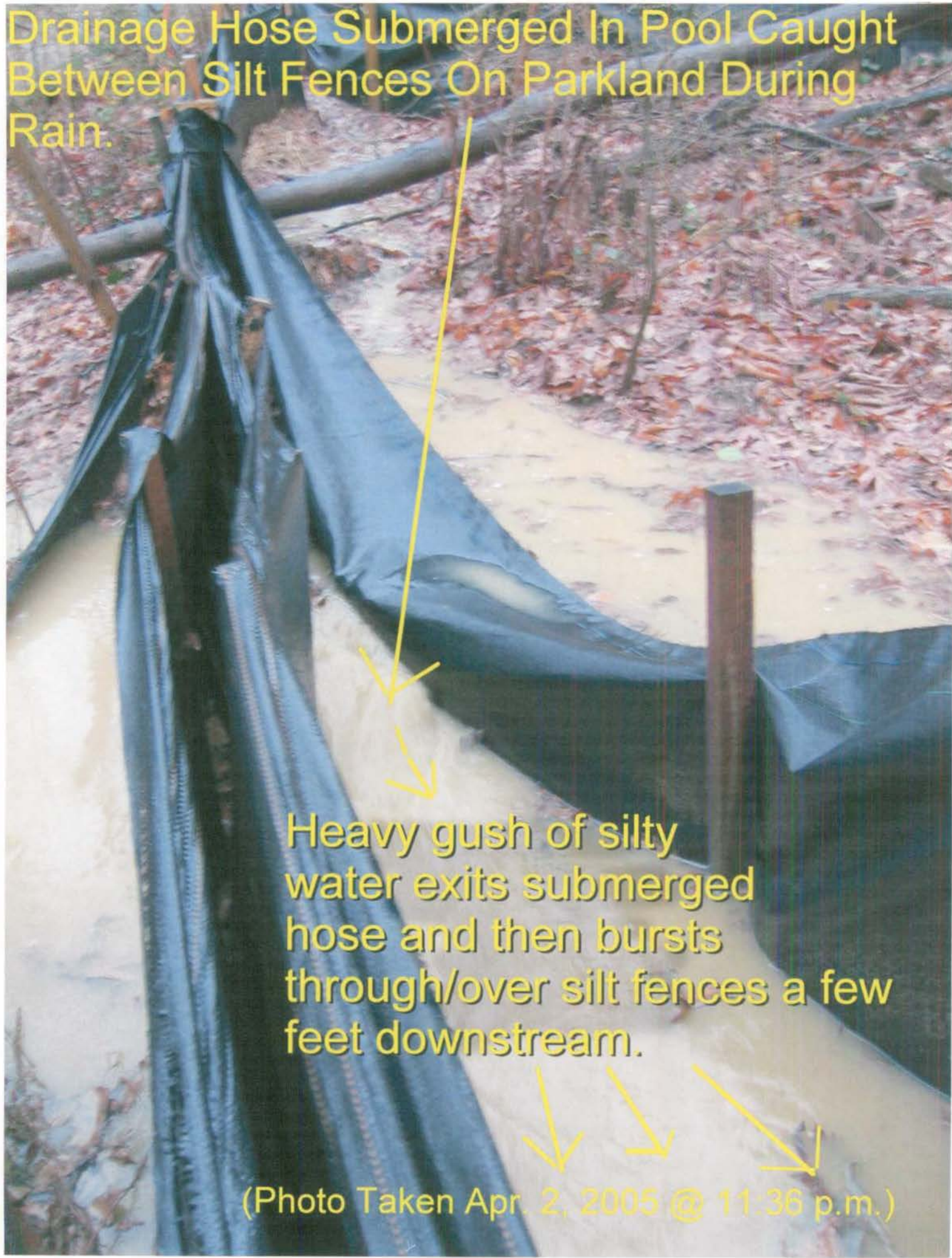


(Photo taken Apr. 2, 2005 @ 11:23 a.m.)

Tree encircled by mesh fencing ---
a failed protection effort.

Economides Silt Stream Pools and Drowns Young
Trees That NPS Has Sought to Protect.

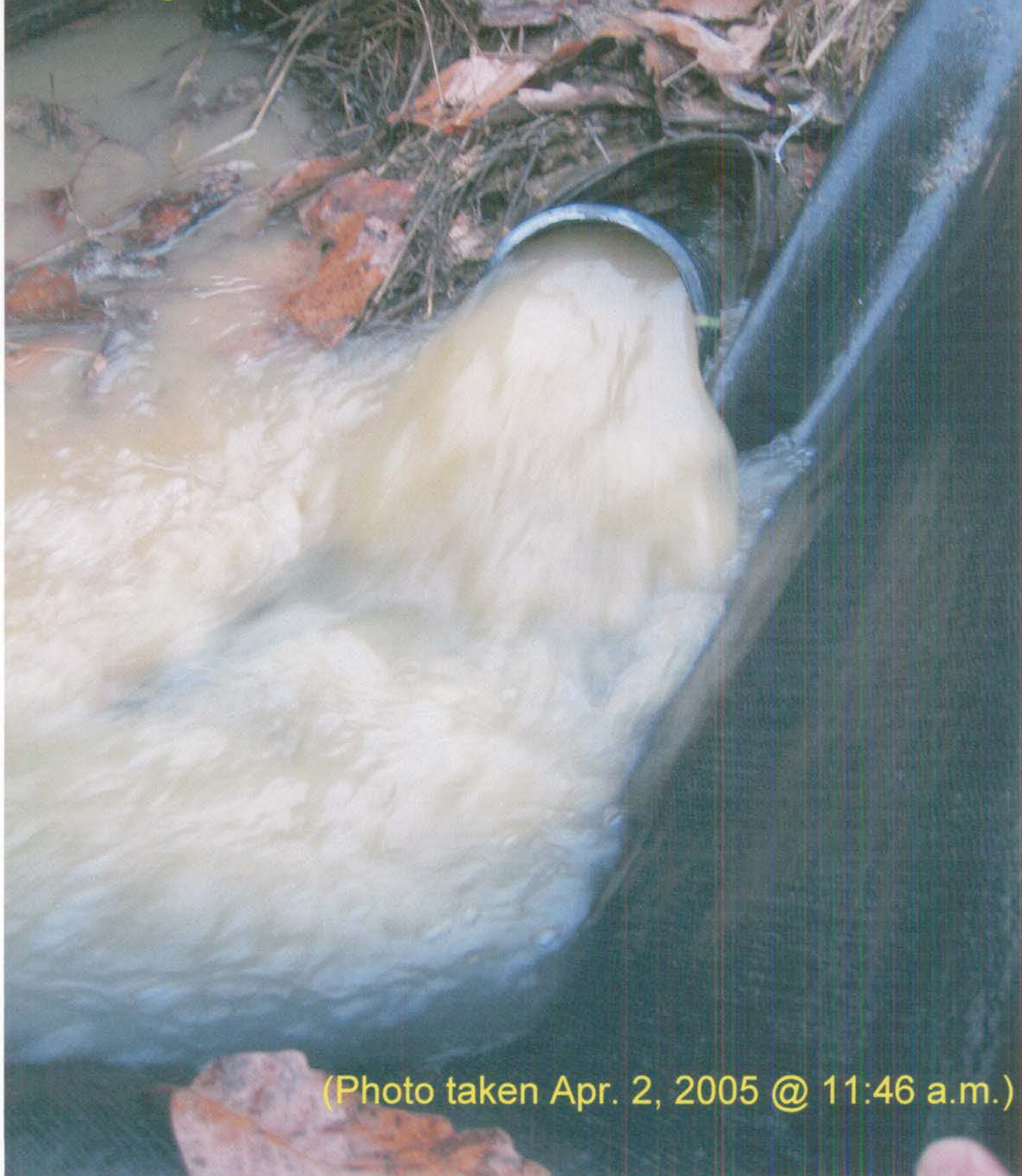
Drainage Hose Submerged In Pool Caught
Between Silt Fences On Parkland During
Rain.



Heavy gush of silty
water exits submerged
hose and then bursts
through/over silt fences a few
feet downstream.

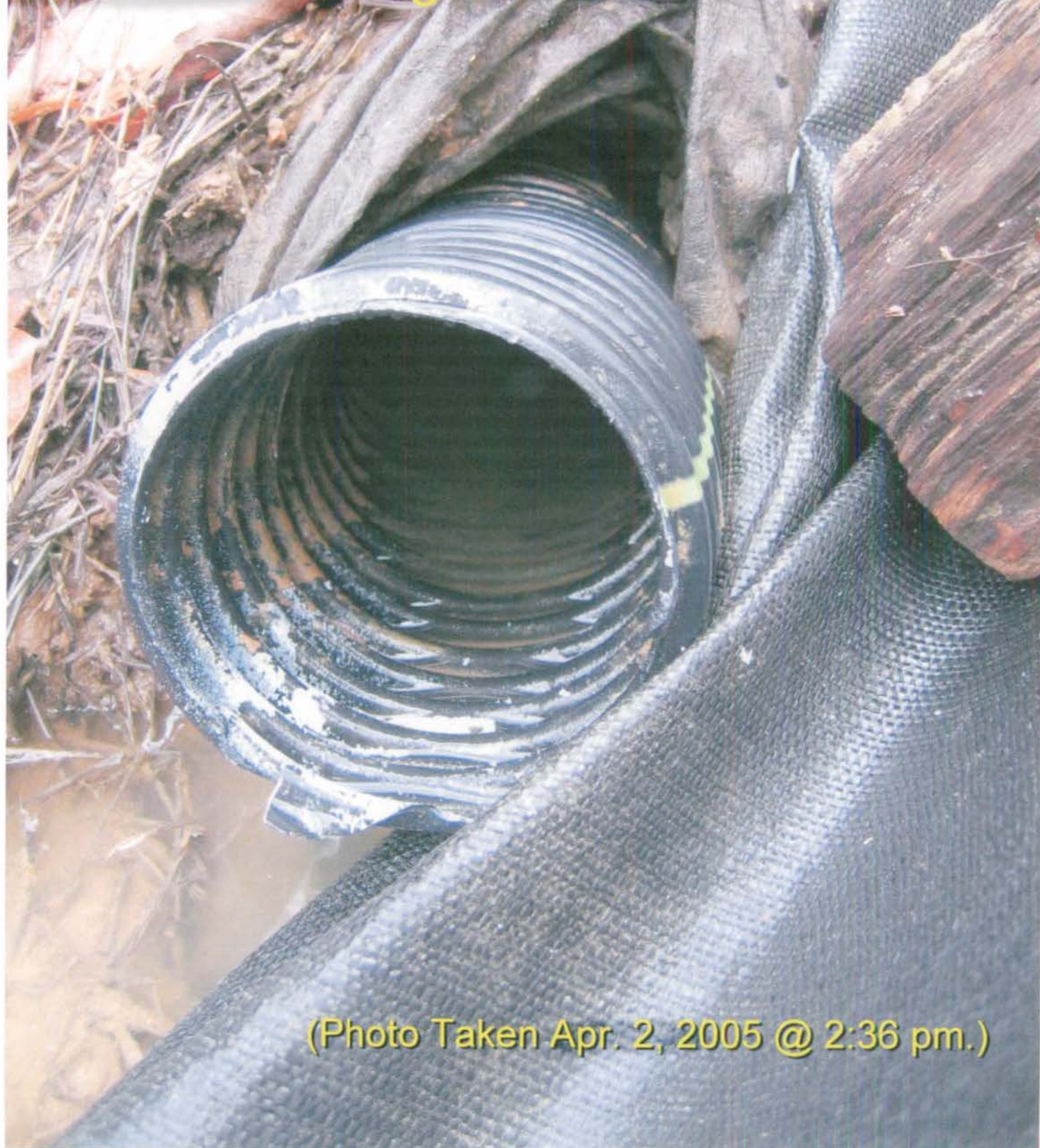
(Photo Taken Apr. 2, 2005 @ 11:36 p.m.)

Silt-filled water gushes from end of drainage hose on park property -- concecntrated drainage from Walled Platform Structure.

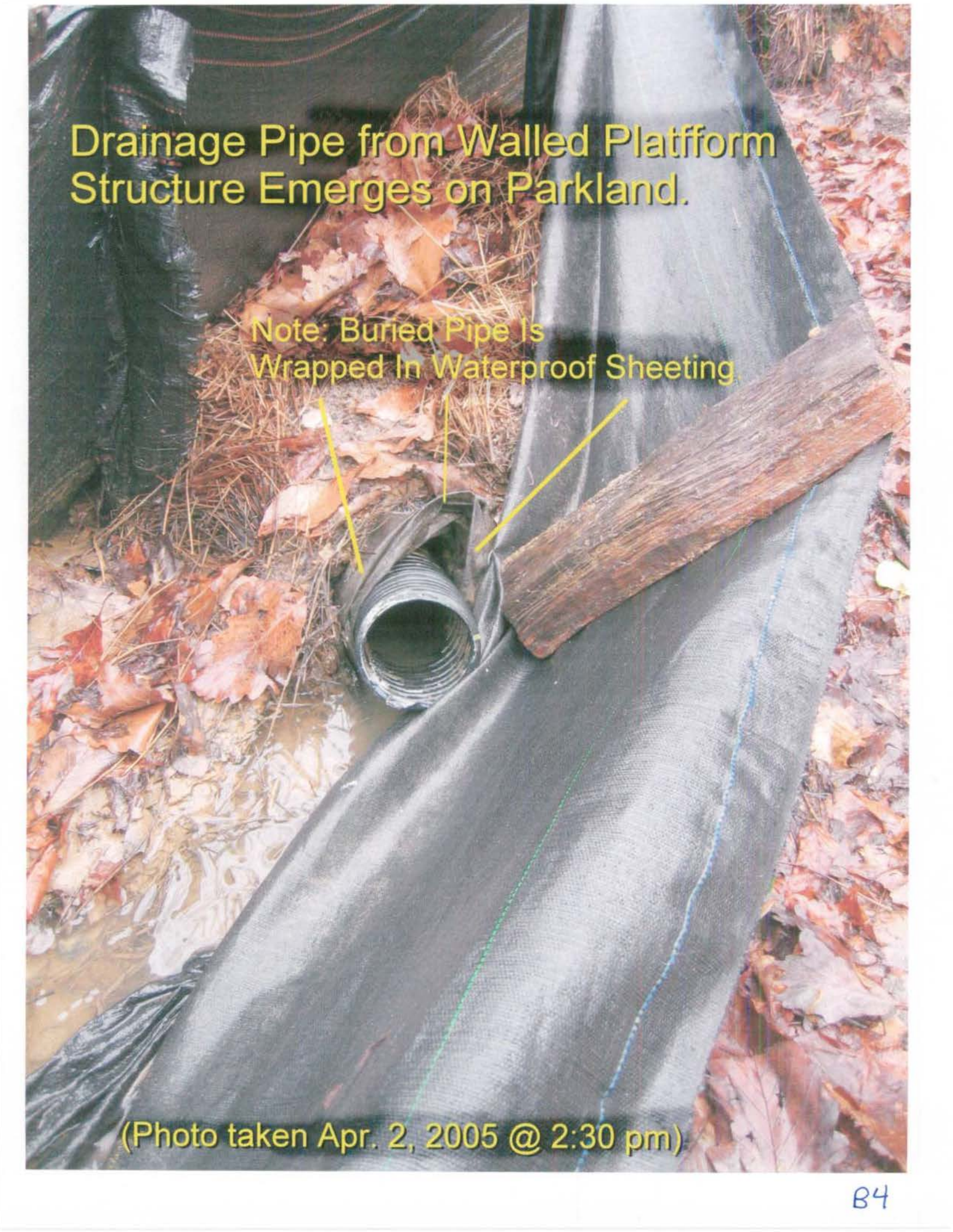


(Photo taken Apr. 2, 2005 @ 11:46 a.m.)

Buried Drainage Hose for Economides
Walled Platform Structure Surfaces on
Parkland. This Is Source For Economides
Streams That Plague Park.



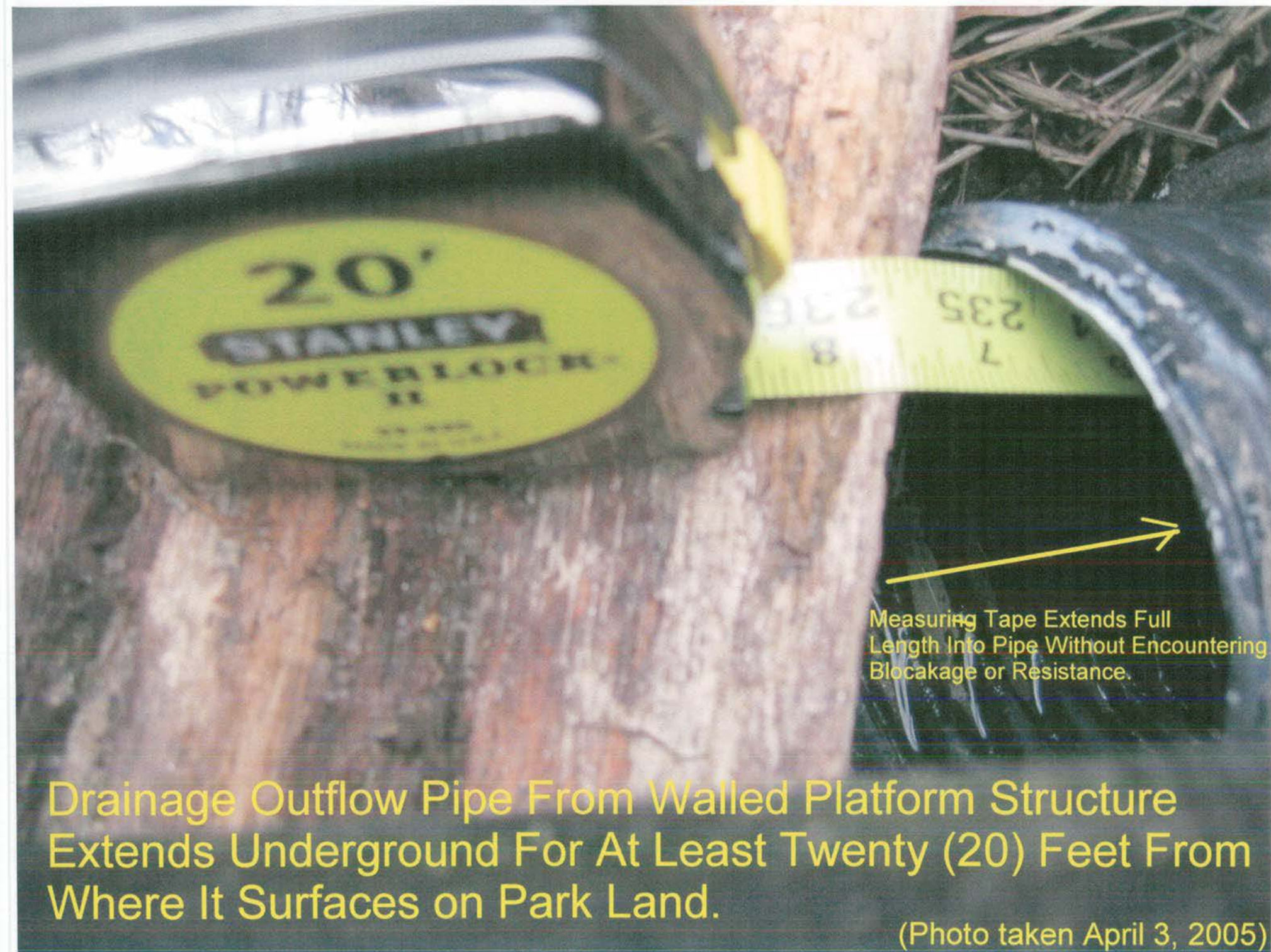
(Photo Taken Apr. 2, 2005 @ 2:36 pm.)



Drainage Pipe from Walled Platform Structure Emerges on Parkland.

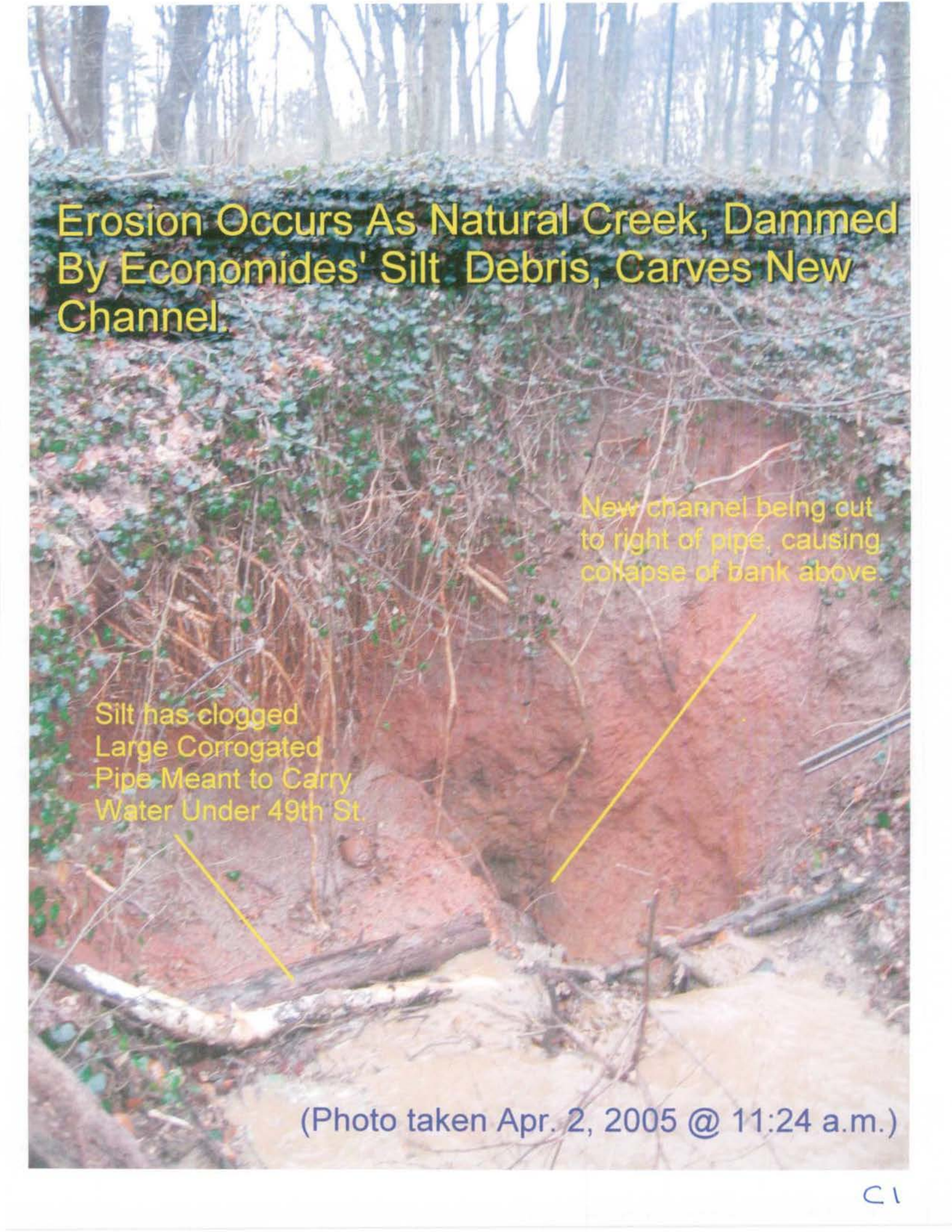
Note: Buried Pipe Is
Wrapped In Waterproof Sheeting.

(Photo taken Apr. 2, 2005 @ 2:30 pm)



Drainage Outflow Pipe From Walled Platform Structure
Extends Underground For At Least Twenty (20) Feet From
Where It Surfaces on Park Land.

(Photo taken April 3, 2005)

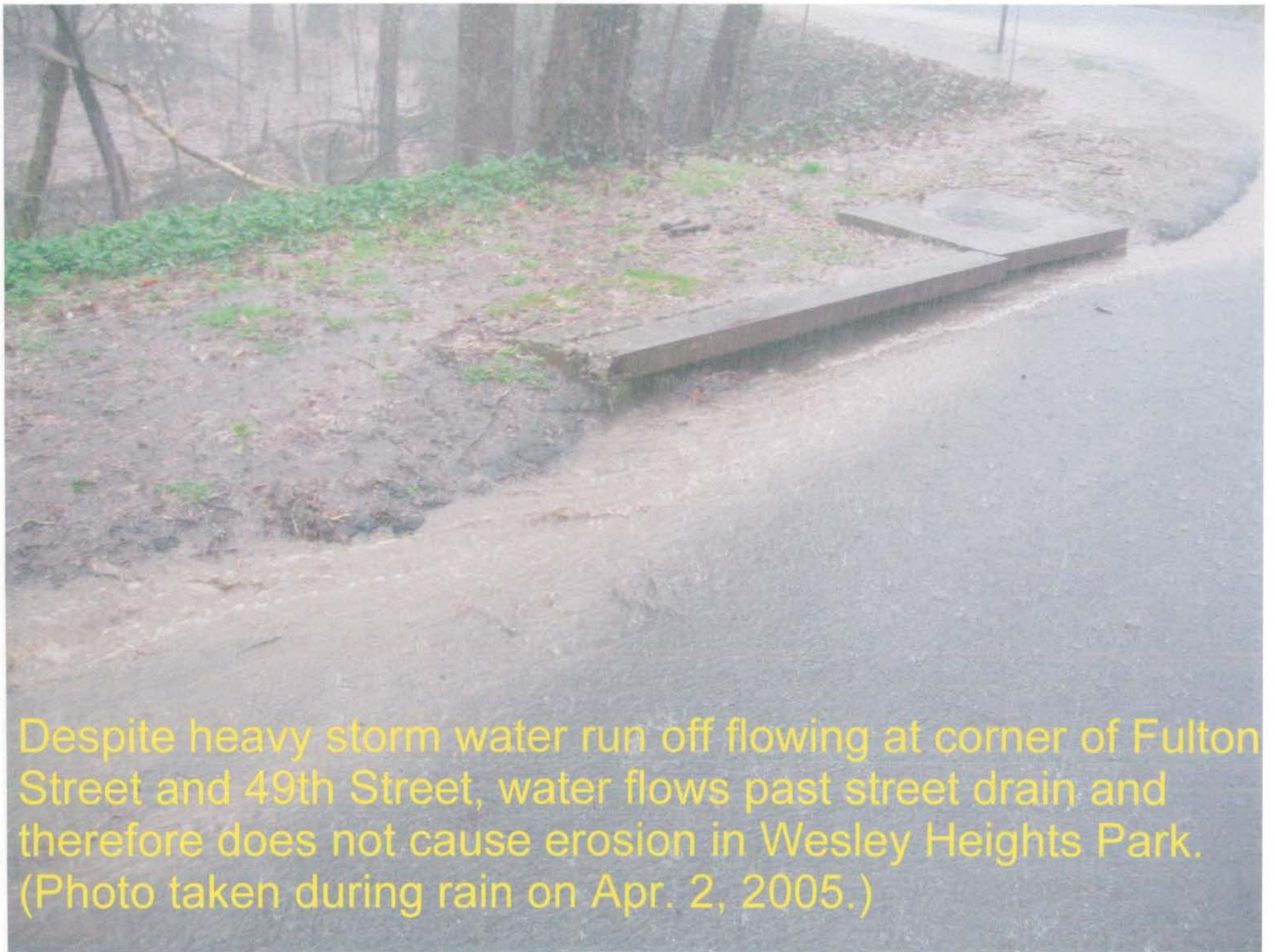


Erosion Occurs As Natural Creek, Dammed By Economides' Silt Debris, Carves New Channel.

New channel being cut to right of pipe, causing collapse of bank above.

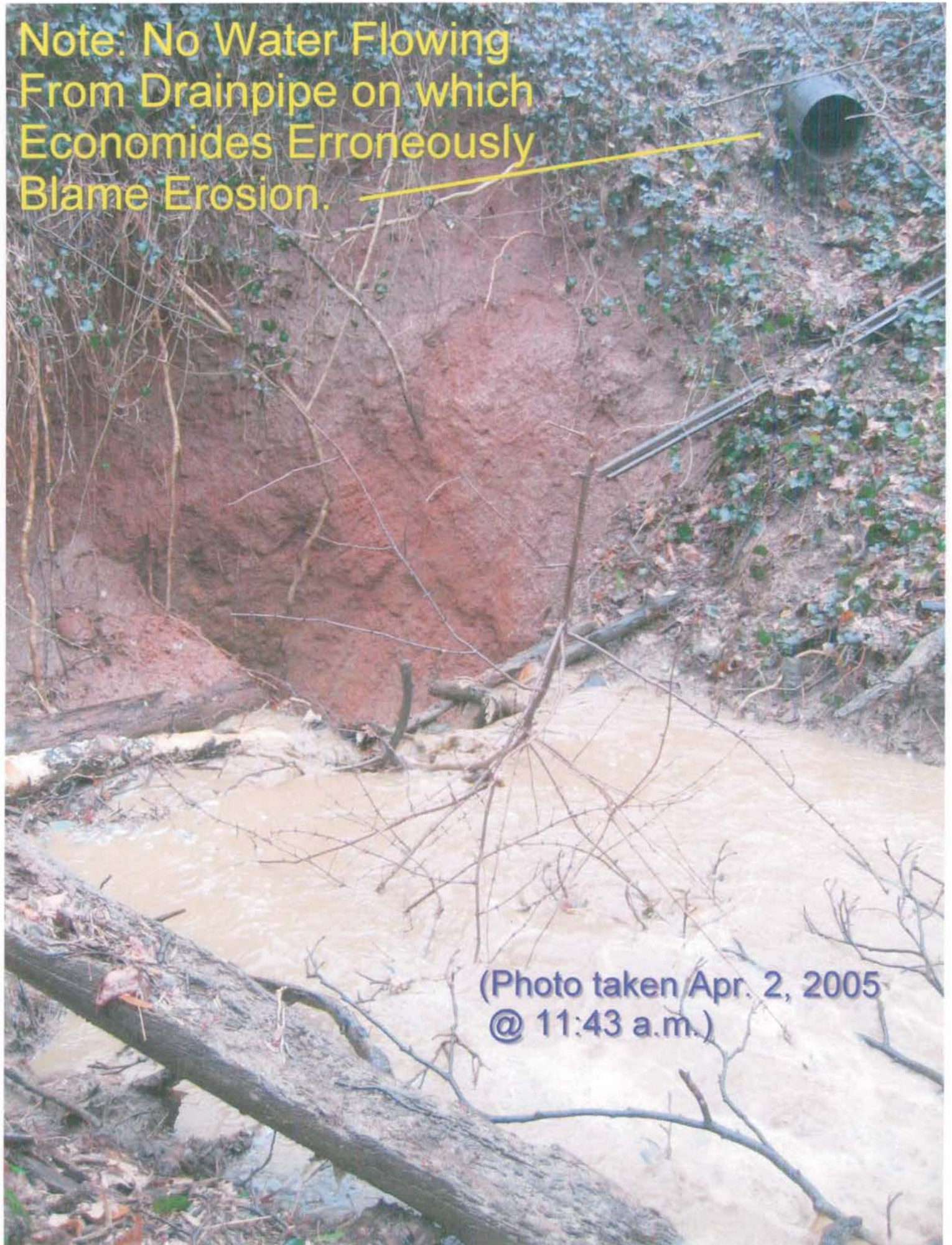
Silt has clogged Large Corroged Pipe Meant to Carry Water Under 49th St.

(Photo taken Apr. 2, 2005 @ 11:24 a.m.)

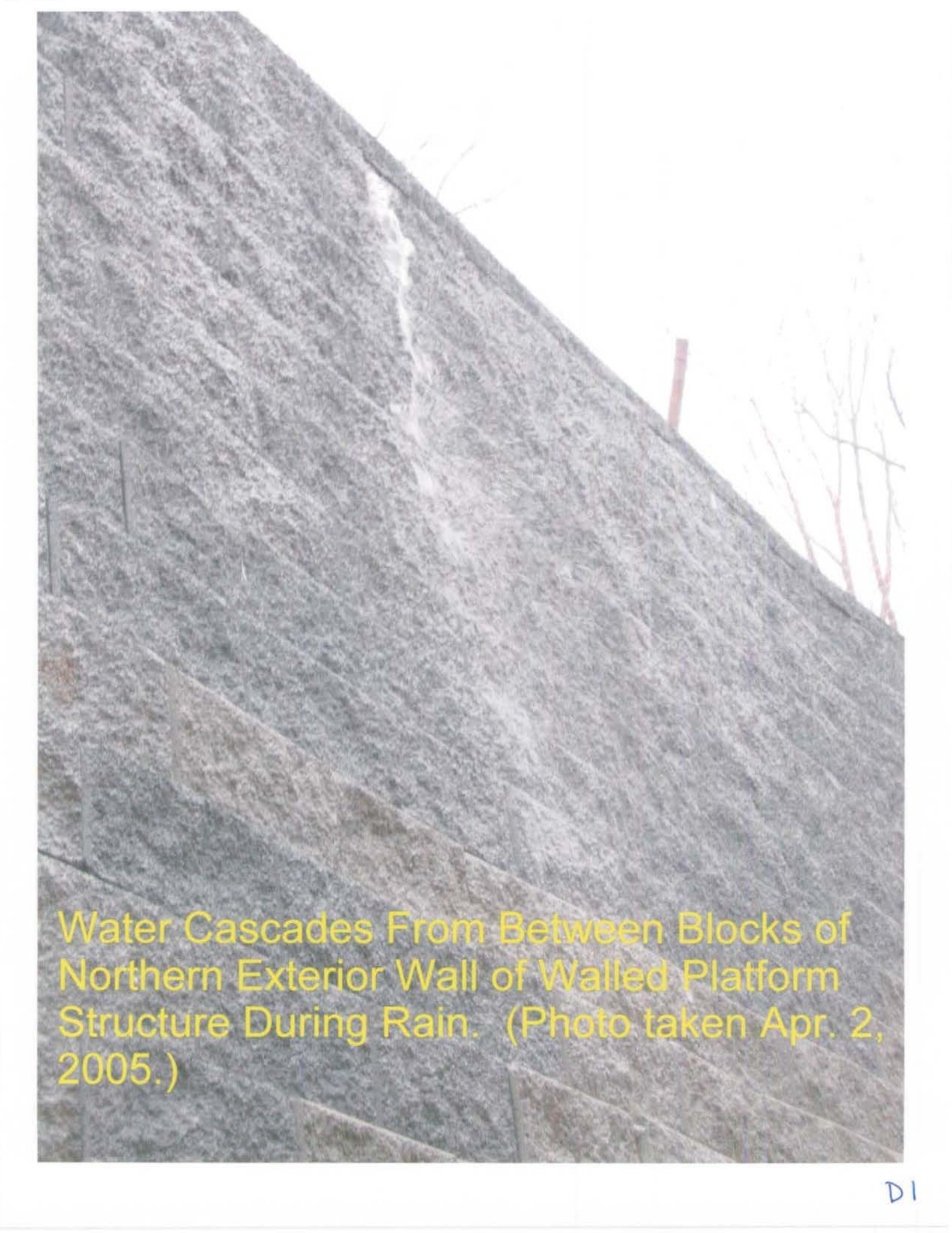


Despite heavy storm water run off flowing at corner of Fulton Street and 49th Street, water flows past street drain and therefore does not cause erosion in Wesley Heights Park. (Photo taken during rain on Apr. 2, 2005.)

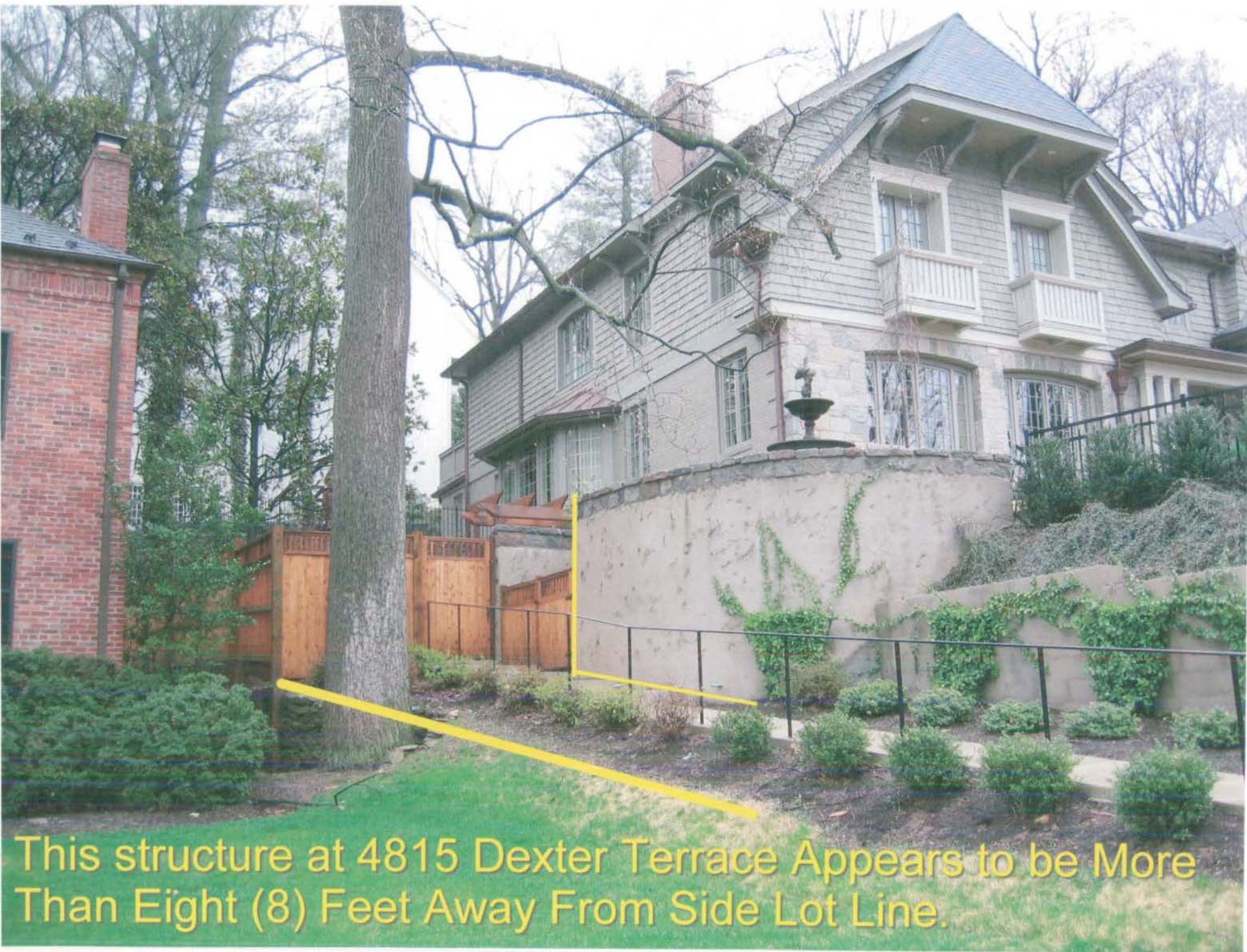
Note: No Water Flowing
From Drainpipe on which
Economides Erroneously
Blame Erosion.



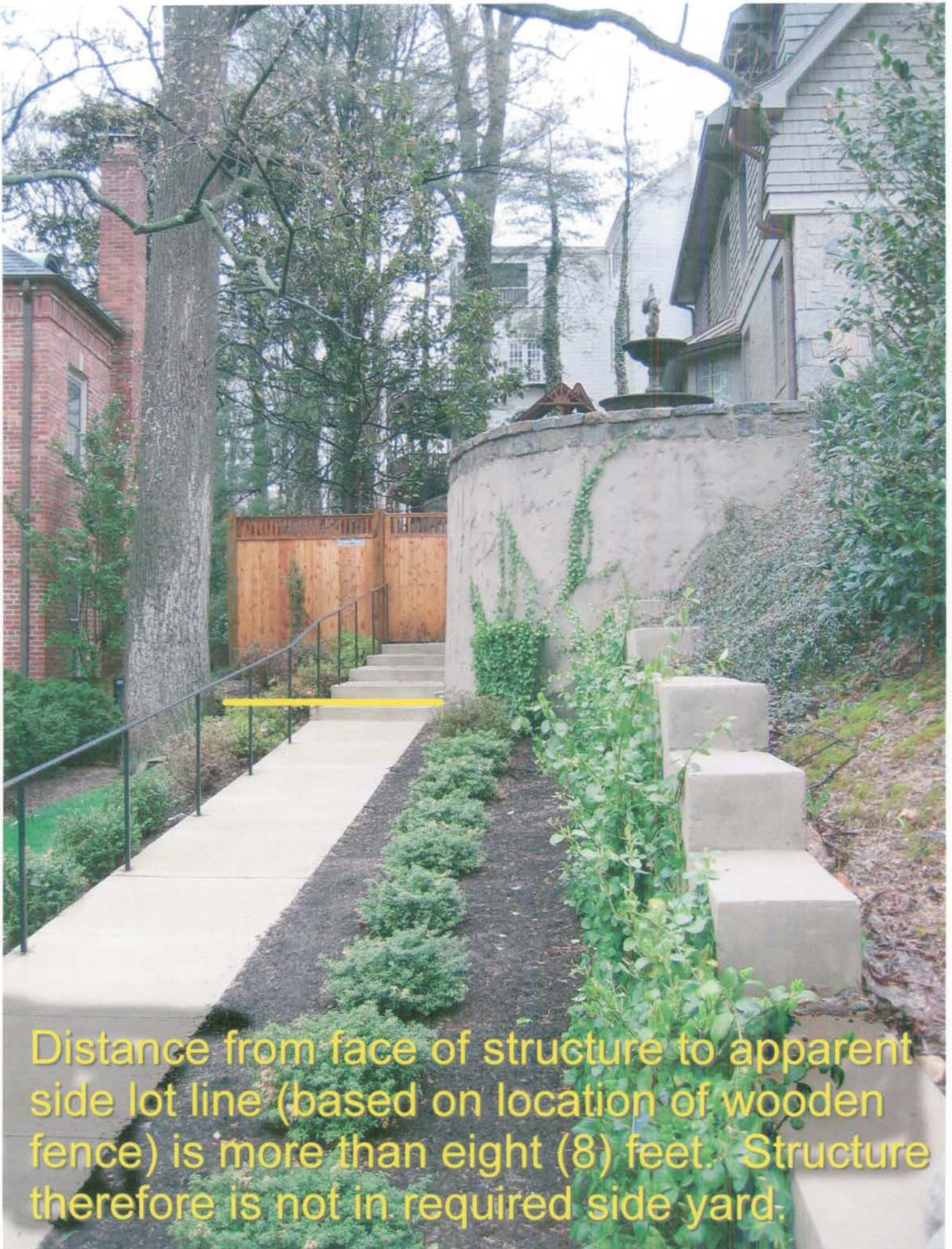
(Photo taken Apr. 2, 2005
@ 11:43 a.m.)



Water Cascades From Between Blocks of Northern Exterior Wall of Walled Platform Structure During Rain. (Photo taken Apr. 2, 2005.)



This structure at 4815 Dexter Terrace Appears to be More Than Eight (8) Feet Away From Side Lot Line.



Measurement from exterior of structure to apparent lot line, showing structure is not in required side yard.





Measurement reflects at least eight feet from exterior of structure to apparent side lot line.

Top of Platform Structure Behind House at 2620 Foxhall Road (a structure that Economides contend is similar to their Walled Platform Structure).



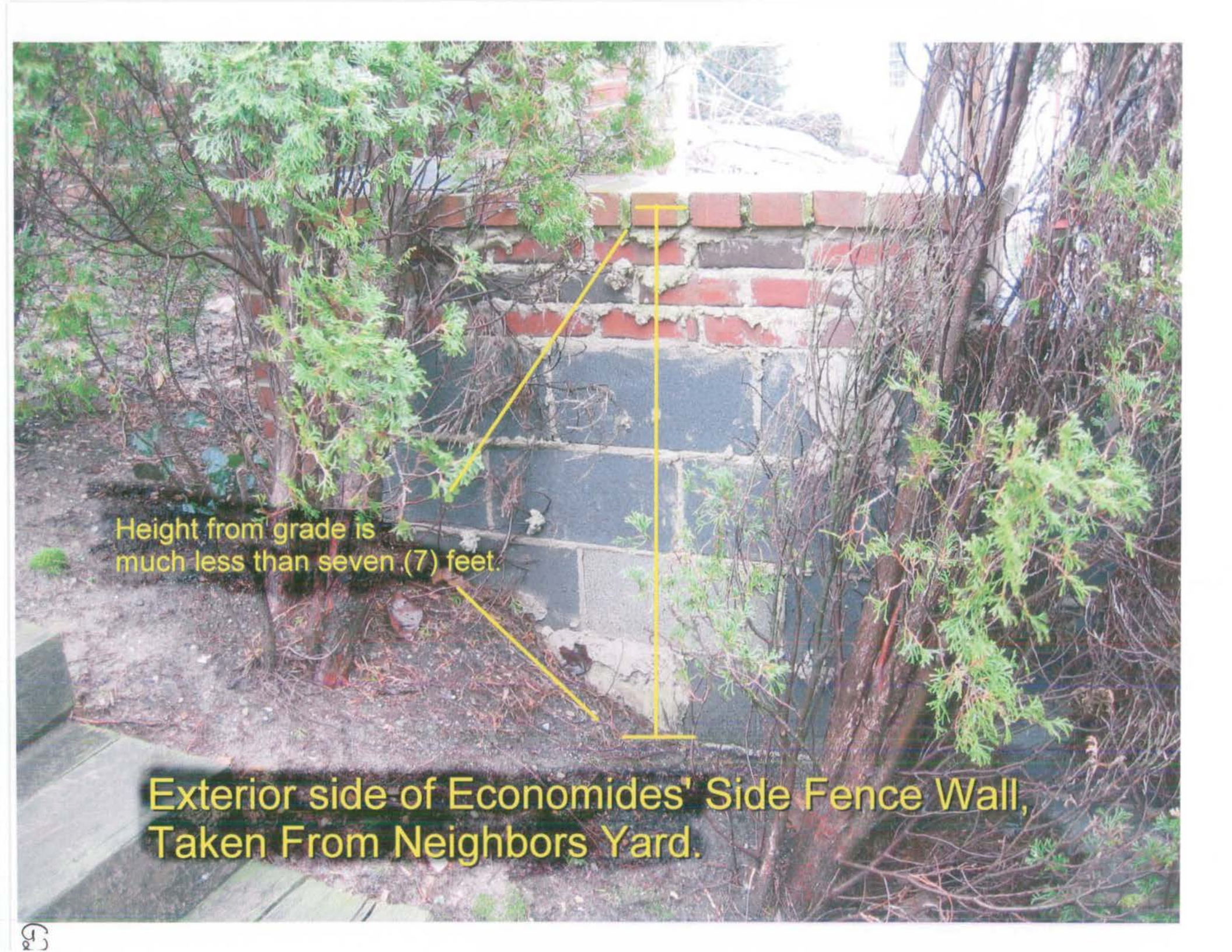
Another View of Paved Top Surface of Platform Structure at 2620 Foxhall Road (supposedly comparable structure identified by Economides) (outside of WHOD) (no evidence in record regarding proximity to lot lines or any relevant zoning decision).



Exterior side of Wall Fence Along East Side of Economomides Property

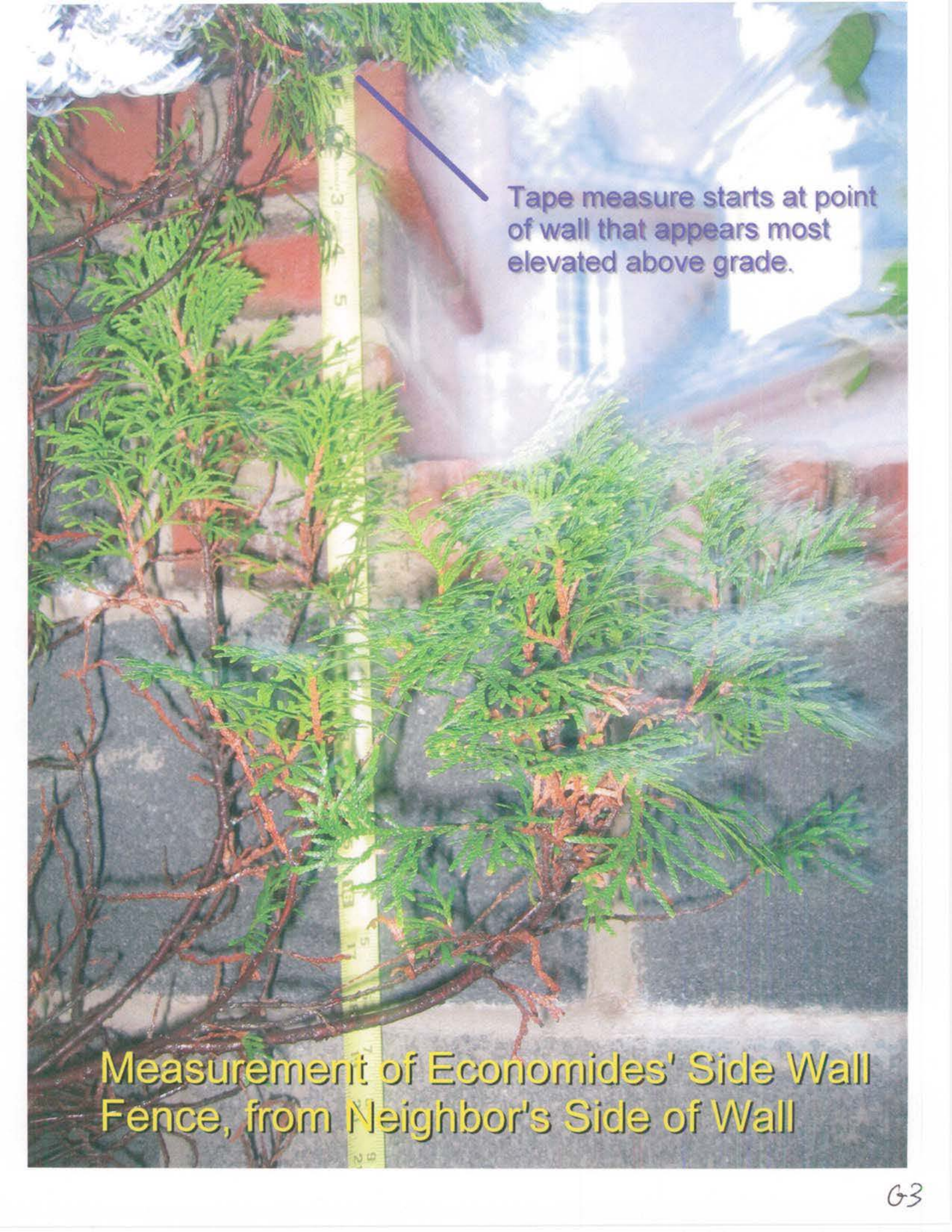


Note: pre-existing grade on outside of wall is just a few feet below top of wall.

A photograph of a fence wall. The wall is constructed with red bricks on top and grey concrete blocks below. A yellow vertical line is drawn from the ground level to the top of the brick section, with horizontal tick marks at both ends. Two yellow diagonal lines point from the text 'Height from grade is much less than seven (7) feet.' to the ground and the top of the brick section. The fence is surrounded by green bushes and trees. The ground in the foreground is dirt and mulch.

Height from grade is
much less than seven (7) feet.

Exterior side of Economides' Side Fence Wall,
Taken From Neighbors Yard.



Tape measure starts at point
of wall that appears most
elevated above grade.

Measurement of Economides' Side Wall
Fence, from Neighbor's Side of Wall

Height of Economides Side Wall-Fence,
From Top Point in Prior Photo to Grade
on Neighbors' Side, Is 78 Inches
(Less than 7 Feet)

JB



CASE 17285

EXHIBIT 58

HAS OVERSIZED DOCUMENT

SEE FILE AT ZONING COMMISSION