

**1365.04 ROOFS, GUTTERS AND DOWNSPOUTS.**

All roofs of any human habitation and any building shall be maintained weathertight and roof drainage shall be handled by suitable collectors and downspouts connected to a public storm sewer. Where storm sewer or other storm drainage outlet is not available, downspouts may discharge onto splash blocks or other devices, provided that no excess water will flow onto adjoining property or over sidewalks. Connection of any pipe carrying roof water or yard drainage to a sanitary sewer is prohibited.

(Ord. 27-1982. Passed 4-22-82.)

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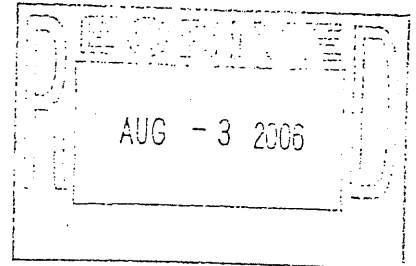
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August 1, 2006

Mr. James Crevar, Director of Service  
City of Macedonia  
9691 Valley View Rd  
Macedonia OH 44056



Re: Surface water drainage

Dear Mr. Crevar:

At your request I accompanied you and your assistant as well as Mayor Kuchta during an inspection of certain problem areas throughout the City which have been negatively impacted by reason of the large storms and increase in surface water during the past month. The Mayor has asked me for a detailed legal analysis of the surface water problem, and what alternatives are available to the City to assist its taxpayers. That detailed analysis is set forth in a lengthy opinion dated this same date, August 1, 2006. It will remain on file at the City Hall for any of our citizens who would like a more detailed explanation.

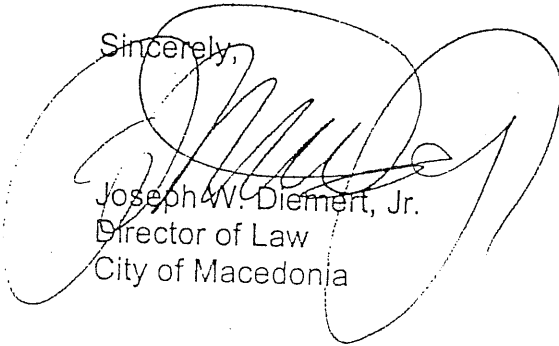
The bottom line, however, is that all ditches, culverts and drainage areas on private property are the responsibility of the property owner. In addition, roadside ditches and culverts adjacent to private property are also the responsibility of the private property owner. Their responsibility is to keep these ditches and culverts, and all swales and drainage courses, free from all obstructions and debris so as to allow the smooth and consistent drainage of water. Failure of the property owners to do so enables the City to go upon the property, to clean the ditches and free them of all debris, and charge back the property owner the entire cost of doing so. These costs can be attached to real estate taxes.

Although Macedonia has made it a practice in years past to perform this service at no cost to property owners, it is not obligated to do so. Since funds are no longer available for this benefit, your department is unable to accomplish what it has been able to do in the past. This is a financial issue, and only the City Council can appropriate the necessary funds for these services.

In those situations where there is an immediate need to free up a drainage course, which may become a threat to adjacent roadways, bridges, or private property, your department is permitted to go upon private property to address the situation. However, I would recommend that you have the property owner sign a "temporary work easement", the form for which I have attached hereto.

Naturally, should you have any additional questions, please feel free to contact me.

Sincerely,



Joseph W. Diemert, Jr.  
Director of Law  
City of Macedonia

JWD/gz  
encl.

cc: Mayor Don Kuchta (w/encl.)

**TEMPORARY WORK EASEMENT**

**KNOWN ALL MEN BY THESE PRESENTS:** That the Grantor or Grantors hereby verify that they are the owners of the subject property, and do hereby give, grant, bargain, release, and convey to the City of Macedonia (Grantee), County of Summit, State of Ohio, a Temporary Work Easement for the area described hereunder for the purpose of cleaning, widening, or draining, such ditches, creek, or culvert on or adjacent to said property so as to alleviate flooding and to facilitate the free and unobstructed flow of surface water.

It is understood by the Grantor or Grantors that the required activity may and will in all likelihood cause surface damage to existing grass, brush, and/or landscaping. Grass and/or landscaping will be the sole responsibility of the Grantor(s) to restore.

Except as herein granted, Grantor or Grantors shall continue to have full use and enjoyment of the property.

The performance of this work by the City Grantee will not and does not eliminate the Grantor(s) liability for the future cleaning of the subject areas, and maintaining same free and clear of all obstructions.

Said Temporary Work Easement will continue only for such period of time as necessary, and will thereupon be null and void.

Date: \_\_\_\_\_

Grantor(s) Signature: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_

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August 1, 2006

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The Honorable Don Kuchta  
Mayor, City of Macedonia  
9691 Valley View Dr  
Macedonia OH 44056

RE: Surface Water Drainage

Dear Mayor Kuchta:

You have asked me, the City Engineer and the Service Director to research the law and give you direction on alleviating the numerous cases of drainage problems occurring around the City. You have urged all department heads to participate in finding solutions to these problems. However, we must all follow the law before we can act, so I thought it best to first outline what the law is.

In rain rich areas such as Ohio, Cities and homeowners need to be concerned with the disposal of excess or run-off water. This has especially been true these past couple of months, where the problems with excess water have become readily apparent. This year, Ohio has endured one of the wettest springs in 14 years. During the year 1990, Ohio had the wettest year in 108 years of record keeping when it had more than 51 inches of precipitation. We are on track to break that record this year. For private land and homeowners, excess water can lead to damage to the landscape, mudslides, basement and property flooding and major damage to or loss of the driveways or even their dwelling. Cities risk road, berm, and utility damages. Due to these problems, nearly all urban areas need some type of storm water management.

Every new construction, be it residential or commercial development, impacts on the manner in which current excess water drains and runs off. Since the beginning of history, lower riparian landowners' (those living downstream) have clashed with the interests of upper riparian landowners (those living upstream). The main conflicts have

always centered on whether a landowner can be held liable for damage caused by his increasing or decreasing the flow of water onto another's property. Due to these continuous conflicts, the government and the courts have become involved in establishing various rules and laws concerning the drainage of water.

In general, three rules of law have been applied over the years to determine the legal rights and responsibilities of landowners to dispose of excess water; the common enemy doctrine, the civil law doctrine, and the reasonable use doctrine. The common enemy doctrine basically gave an individual landowner the unqualified right to dispose of water as he saw fit, the theory being that excess water was a common enemy to man and should be fought off as each saw fit. Following this theory, excess water could be disposed of regardless of the consequences to adjoining and lower landowners. This doctrine is no longer followed, as it unfairly burdened lower landowners and provoked property line feuds.

The next rule of law to develop was the civil law doctrine. Simply stated, this rule required that the lower landowner accept the natural water flow from upper landowners. At the same time, this rule prohibited the upper landowner from changing the natural drainage so as to increase the excess water running onto the property of the lower landowner. The civil law doctrine was based on the premise that lower lands are subservient to upper lands with respect to receiving the flow of diffused surface water, which is water derived from rain and melting snow which is spread over the ground surface until it reaches a well-defined channel, stream or other waterway. This doctrine has also lost popularity in recent years as it too discriminated against the lower landowners and allowed unbridled upstream development.

The reasonable use doctrine is now the rule of law followed in Ohio, since it provides flexibility and practicality in the application of the drainage laws. This rule generally provides that an acceleration or an obstruction of surface water flow should be examined to determine whether or not the change is "reasonable" in the particular case. Thus, each case turns upon its own individual facts. In applying this rule, the Supreme Court of Ohio has defined the rights of landowners as follows:

A possessor of land is not unqualifiedly privileged to deal with surface water as he pleases, nor is he absolutely prohibited from interfering with the natural flow of surface waters to the detriment of others. Each possessor is legally privileged to make a reasonable use of his land, even though the flow of surface waters is altered thereby and causes some harm to others. He incurs liability only when his harmful interference with the flow of surface water is unreasonable.

Essentially, then, the issue becomes whether the conduct of the property owner, in view of all the circumstances, was reasonable. Some factors that the courts consider are foreseeability of damages, the gravity of the harm, and the practicality of providing for adequate drainage prior to clearing and/or grading.

What does all this have to do with helping our citizens? First, this information will help make them aware of their rights in regard to Ohio's drainage law. That is, they may have a legal right to prevent another from increasing or obstructing the water flow onto their property or seek damages for destruction caused to their property from such excess water flow. Second, they should be aware that they, as a landowner, have certain duties under the drainage laws. For instance, they must check with an engineer as to the water drainage effects that a home addition, swimming pool, or any change in landscaping or grading may have on neighboring properties. Almost every development and home in Macedonia has been approved and built with clearly defined drainage requirements for their yards and adjacent roadway ditches. Each property owner has a legal duty to keep all drainage courses open and free of debris or obstructions so as to allow the normal flow of water through their ditches, swales, culverts and pipes located on and adjacent to their property. We frequently have found that landscaping desires, driveway culverts, etc., have conflicted with required drainage areas.

In the event that a property owner fails to properly maintain the ditches on their property or the roadside ditches and culverts adjacent to them, the City may go upon the property, cause the cleaning of the ditches, and charge the owner of the property the cost of doing the same. Failure to pay can result in the cost being attached to their real estate taxes. Macedonia has made it a practice to perform this service on roadside ditches at no cost to property owners. Likewise, we have permitted the enclosure of ditches and culverts, and even constructed them in certain circumstances. This practice must now be re-evaluated in light of the financial situation facing this City as well as most others, and new EPA regulations.

The Ohio Environmental Protection Agency has established new administrative rules that now implicate this issue. All new development must be done in compliance with these rules, because the water of the state is constantly threatened by many different sources and types of pollution. Under the Federal Clean Water Act, every state must adopt water quality standards to protect, maintain and improve the quality of the nation's surface waters. These standards represent a level of water quality that will support the goal of "swimmable/fishable" waters. These standards establish total maximum daily loads or wasteload allocations that regulate the discharge of pollutants into surface waters under the National Pollutant Discharge Elimination System (NPDES) permit program. These regulations are a factor in the analysis of the reasonableness of the landowners' actions. Our engineering and building departments are cognizant of these regulations and are aware of the preference for unenclosed ditches and culverts. Open ditches enjoy a filtering process by way of vegetation and earth that culvert pipe does not provide, this "cleaning" out harmful pesticides, fertilizers and chemicals, including road salt.

It should be remembered that all construction projects have an effect on the drainage of water, erosion and siltation. Extensive planning and precautions must go into each project in order to minimize the effects of the increased flow or obstruction of surface water. Progress and private ownership of land bring about inevitable development, which in turn alters surface water patterns on adjacent and downstream property owners. Unfiltered insecticide or chemical run off into storm pipes ends up in ponds and lakes. The law simply requires reasonableness and common sense in dealing with these changes, and vigilance by our Planning Commission, City Engineer, and Building Department.

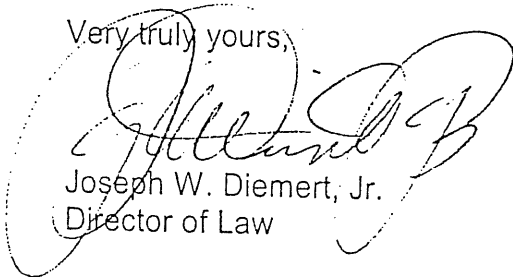
Based on the above, I would recommend the following:

- A. All property owners be reminded of their obligations to maintain required swales and ditches in their yards, and remove all obstructions or accumulated silt or growth in their roadside ditches to enhance the normal flow of water.
- B. The Service and Building Departments should discourage the enclosure of ditches with piping. When a property owner is insistent, the Engineer should be consulted to make sure the materials and method used are appropriate for maintaining the necessary flow. Because of the City's financial dilemma, and the EPA regulations against closed ditches, the City should not be performing the work of such enclosures.

- C. Existing enclosed ditches or driveway culvert pipes that have deteriorated and are obstructive must be removed or repaired by the property owner. If it is one that the City constructed, we should incur the cost of doing the job, but then turn over responsibility to the property owner.
- D. Any new construction, grading or remodeling that has deviated from or impacted required grades and swale requirements should be put on notice to correct the situation or the City will do it at their expense. We can contract it out and assess the cost on real estate taxes
- E. Although the City has in the past had sufficient financial resources to clean ditches on private property, as well as adjacent to the roadways, those resources are no longer available. Therefore, the property owners should be given a copy of this letter to explain their obligations in maintaining ditches adjacent to and on their property. If they pay attention to these requirements, the amount of flooding and surface water damage, can be minimized.
- F. Property owners experiencing ponding on their property that is new, should keep in mind that the ground can only absorb so much water. After saturation, which is likely during recent months, several days of dry weather should pass before concern sets in. If it persists, the property owner should check his own swales and that of his neighbors, with the above information in mind.

Naturally, the Law Department will be available to assist with any specific situational problems or questions.

Very truly yours,

  
Joseph W. Diemert, Jr.  
Director of Law

JWD/jk

Mark Finamore, Vienna Twp (Trumbull Co.)

# Townships and Drainage Problems



THE ONLY PROPER AUTHORITY  
AND AUTHORITY TO FILE  
BOARD OF TRUSTEES  
CLEANING AND MAINTAINING  
DITCHES  
TO CLEAN AND MAINTAIN  
ROADSIDE DITCHES  
FOR THE PURPOSE OF  
PREVENTING EROSION OF  
THE TOWNSHIP ROAD  
SURFACES.

**A** you may be aware, the Ohio legislature repealed several sections of Ohio law in 1981 that dealt with a township's responsibility with regard to ditch cleaning and maintenance of water drainage courses. This essentially relieved the township of most of the responsibility for this task and assigned it to the county engineer's office. Additionally, the main remedy for addressing private drainage problems in townships is the citizen's right to file a township drain petition with the county commissioners for the construction, improvement, or maintenance of drainage water courses by assessing the cost against the landowners who benefit from such a project.

Under the Ohio Revised Code, Opinions of the Ohio Attorney General and Case Decisions of the Ohio Supreme Court, Township Trustees have **no responsibility or authority** for correcting private drainage problems and are prohibited by law from entering upon private property and expending township funds to clean or maintain existing drainage ditches and natural watercourses or to install or construct new drainage ditches or watercourses for the purpose of alleviating drainage problems on private property.

The only responsibility and authority of the Board of Trustees for cleaning and maintaining drainage ditches is to clean and maintain only **roadside** ditches for the purpose of preventing erosion of the township road surfaces.

Each private property owner in the State of Ohio has the legal responsibility,

at their own cost and expense, of cleaning and maintaining existing drainage ditches and natural watercourses on their property, free and clear of obstructions to prevent drainage problems or excess surface water build up on adjoining property and township roads.

If a property owner fails to clean or maintain existing drainage ditches and natural watercourses or remove obstructions on their own property that cause excessive surface water buildup on township roads, the Township Trustees, upon complaint or their own initiative, are required by law to order said property owner(s) to clean and maintain drainage ditches and watercourses on their property at the owner's expense. If the private property owner fails to comply, the Trustees then have the right to enter upon the private property without interference of the property owner to perform the needed maintenance, the cost of which will be assessed against the property owner as a tax lien to be collected as a property tax and returned to the general fund of the township.

If, because of development in the area, the current drainage ditches and natural watercourses are not sufficient to drain the excess surface water and additional drainage systems are necessary, the law provides that a petition will be filed by one or more landowners for the construction of a new township ditch. The trustees will review the petition and site and determine if an additional drainage ditch is necessary.

If necessary, the county engineer will design and construct the project, and the cost will be apportioned as a special real estate tax assessment among the adjoining property owners benefiting from the improvement.

In summary, the legal responsibility and procedure for addressing excessive surface water and drainage problems on private property and the order in which they must be taken are as follows:

1. Private property owners are responsible at their own expense to clean and maintain all drainage ditches and natural watercourses located on their property to provide for the free flow of excess surface water and drainage across their property.

2. To take legal action against an offending property owner, asking the court to order the property owner to clean and maintain all drainage ditches and natural watercourses located on their property.

3. To petition the County Commissioners to construct a new township ditch to address the drainage problem, with the cost thereof to be apportioned between and paid by all area property owners benefited from the new township ditch.

4. Damage to Township Roads (Flooding & Erosion) - If a property owner is experiencing flooding or excess collection of surface water on their township road caused by the failure of an adjoining property owner to maintain and clean drainage ditches and natural watercourses across their property, upon complaint to the township trustees, the trustees will order the offending property owner to clean said ditches and watercourses or remove any obstructions. If the offending property owner fails to comply within five days, the township can provide for the cleaning and maintenance with the cost to be recovered against the property owner as a lien against their property.

If you are having a flooding or drainage problem on your property, your legal options are:

1. Clean the ditches on your property at your expense;
2. Take legal action against any property

owner who is failing to keep his ditches clean and clear of obstructions; or

3. File a Township Ditch Petition with the County Commissioners for the construction of a township ditch with the construction costs to be assessed as a lien against the property owners who benefit from the ditch.

I hope the above information explains for you the township trustee responsibility and authority for entering on private property to address drainage problems, and the responsibility of you the homeowner for preventing drainage problems on your property and the property of your neighbors. |

## For Sale



**1996 Chevrolet Silverado 3500**  
**\$8000**

70,500 miles

6.5 Turbo Diesel, Good Condition.  
Braun Ambulance Manufacturing Co.

Contact: Gerald Beckman  
Symmes Township Administrator at  
513-683-6644

