

# **RESPONSIBILITY AND PROCEDURE FOR IMPROVEMENT AND MAINTENANCE OF DRAINS, DITCHES AND WATERCOURSES**

## **FORWARD**

The Offices of the County Engineer and County Commissioners of Greene County are inundated yearly by citizens with requests for the maintenance and improvement of storm drainage facilities affecting agricultural lands and home sites throughout the County after significant rain events. Investigating each complaint and explaining to the property owners the responsibility of the County in such matters, and the limits of authority vested in the County Engineer and County Commissioners by Ohio statutes involves considerable time and expense. Therefore, we have developed this information from the materials contained in current Ohio drainage laws.

It must be understood by property owners that storm drainage improvements on private property **will not** be performed by County personnel or with County funds. The County does not maintain or improve storm drainage facilities without assessment except for improvements within the right-of-way of a road, excluding driveway pipes which are the property owner's responsibility.

The question for any property owner to ask prior to making a request for a needed storm drainage improvement: Will this improvement benefit the general public or only me?

## **RESPONSIBILITY**

The responsibility for the maintenance and improvement of drains, ditches and watercourses, whether established county ditches or not, rests entirely upon the land owners affected and benefitted. It is not the obligation of the County Engineer or County Commissioners to maintain or improve the storm drainage facilities across any individual's property for either agricultural purposes or the development of home sites. When an individual purchases property, the principle of "Caveat Emptor", or "let the buyer beware," is the purchaser's best guideline. Land ownership has many potential and real benefits, but also comes with certain liabilities. Storm drainage and drainage in general of the property falls under the liability category of property ownership.

Greene Soil and Water Conservation District (GSWCD) has a pamphlet which explains various steps one should take prior to home ownership. These pamphlets are available at various County offices and at GSWCD.

Existing storm drainage facilities, including pipes, drains and swales, cannot be closed, obstructed or altered in a way which would reduce the capacity for conveying the storm water across or onto private property. A property owner is liable for damage to the upstream or the downstream property owner for failure to properly maintain storm drainage facilities on or across his property.

Some property owners believe the County has the financial responsibility for the maintenance and improvement of established County ditches. Such belief is directly contrary to Ohio law. The establishment of a watercourse as a county ditch may be initiated by property owners, who will be affected and benefitted by petitioning the Board of County Commissioners to improve and maintain the ditch. Ohio drainage laws provide a definite procedure in such cases and the Board of County Commissioners is designated as the body to make the necessary decisions based, in part, upon the advice of the County Engineer. The Board acts as administrator of the petition procedure and endeavors to render the unbiased opinion after carefully considering the engineering report and comments by affected landowners. Even though the Board administers the procedure, the County will not participate in the cost of the proposed improvement and maintenance unless County owned property or road right-of-way is involved. The entire cost of the project, including engineering, administration, construction, compensation for damages (if any) and maintenance, is paid for by assessing the property owners within the watershed according to benefits received. The minimum construction assessment is ten dollars (\$10.00) and the minimum maintenance assessment is two dollars (\$2.00). There is no limit on the maximum amount one can pay.

There has been considerable development outside the incorporated areas of Greene County over the years. Subdivisions as well as individual homes have been constructed in areas without adequate storm drainage facilities. Following a significant rainfall, many of the property owner's appeal to the Engineer and Commissioners for correction of, or assistance with, their storm water problems. A prospective home or

home site purchaser should recognize that variations in the cost of seemingly comparable properties, particularly in dry weather, may very well be related to the lack of adequate storm drainage and other utilities. Before purchasing a home site an excellent rule of thumb is to investigate before investing.

Further, it should be noted that wooded property in the country is more times than not wet land that cannot be farmed because of the cost to drain it. GSWCD will help any purchaser with a site review and recommendations prior to purchase. However, it is the responsibility of the purchaser to heed their advice.

Sanitary and basement drainage systems are facilities that the property owner must provide at their own expense. The out flow from these facilities cannot be drained directly into a watercourse without treatment, and it is not the County's responsibility to provide drainage systems for these facilities. The discharge of any sanitary, pollutants or hazardous materials into an open ditch or watercourse without proper treatment is contrary to Greene County Health Department regulations and places the owner so doing at risk and liable for damages downstream or to adjacent property owners.

#### **PROCEDURE TO PETITION A DITCH UNDER ORC 6131**

To understand how and why County ditches are established and how funds for the permanent maintenance of each ditch improvement are provided under the provisions of the drainage laws, the following example is offered. Suppose that a single ditch drains the entire land area or watershed owned wholly by two property owners, "A" and "B". "A" owns the upper half of the watershed which includes the origin of the ditch. "B" owns the lower half of the watershed which includes the ditch outlet. During a rainstorm, "A" suffers property damage due primarily to the failure of "B" to properly maintain the ditch across his property. "B" also suffers property damage caused by the storm water, but he considers the damage less costly to him than the cost of properly maintaining the ditch across his property, and does nothing. "A" attempts to convince "B" to improve and maintain his segment of the ditch to reduce the possibility of further storm water damage, but "B" remains opposed to any work on the ditch. "A" obtains a County Ditch Petition to initiate the required legal steps to have the entire length of the ditch improved and permanently maintained.

Any benefitting owner, such as "A", or owners, may file a County Ditch Petition to begin the legal steps required to finance, construct and maintain a ditch improvement. The Petition, together with a bond in the amount of five hundred dollars (\$500.00), plus two dollars (\$2.00) for each parcel of land that exceeds two hundred (200) parcels within the watershed, is filed with the Clerk of the Board of County Commissioners. The County Commissioners then establish dates for the viewing and first hearing on the proposed improvement and cause the property owners within the watershed to be notified of those dates so they are afforded the opportunity to offer their comments on the proposed project. Following the viewing, the first hearing is conducted by the County Commissioners. At the first hearing, the County Engineer, in conjunction with Greene Soil and Water Conservation District, presents a preliminary engineering report that includes a cost estimate, feasibility comments and cost-benefit analysis. The Commissioners will also entertain questions and comments from affected and/or benefitted property owners within the watershed.

After all the evidence concerning the proposed improvement is considered, the Commissioners will decide for or against the project. If decided against, the actual cost of the proceedings to date are deducted from the bond, the remainder (if any) returned to the petitioner, and the petition dismissed. If the decision is for the proposed improvement, the County Engineer is directed to conduct field surveys and prepare the plans and estimate of cost for the proposed improvement. The County Engineer will also estimate the "potential" benefits to each parcel of land within the watershed on which the assessments will be based. The completed plans, estimates and estimated assessments are filed with the Commissioners who will subsequently set the date for the final hearing. At the final hearing, which is conducted in the same manner as the first hearing, the petition will be reaffirmed, or the order set aside and the petition dismissed. If the petition is reaffirmed, the County Engineer is directed to let a construction contract for the improvement and complete the work.

When the improvement has been completed, the actual costs are tabulated and certified to the County Auditor, together with the maintenance cost for one year and placed on the tax duplicates of the affected property owners for collection in semi-annual installments. The maintenance of the improvement thus becomes the responsibility of the County Engineer who currently works with GSWCD. The cost of

any maintenance of the improvement shall be paid from a maintenance fund established by the original assessment. Maintenance assessments will be made from the time to time, as necessary, by the Commissioners to insure the continued upkeep of the improvement. It should now be readily apparent that all of the costs pertaining to the establishment, improvement and perpetual maintenance of a County ditch, outside a roadway right-of-way, will be assessed to the affected/benefitted property owners within a watershed.

There is a similar process under ORC 1515. Both processes are acceptable and there are advantages and disadvantages to either process. The property owner should consult with the GSWCD on this matter and choose the process which works best for their situation.

The Greene County Engineer, Greene County Commissioners, and GSWCD wish to assure each property owner of their sincere interest in all storm drainage problems and complaints. All entities realize that adequate storm drainage facilities are very important to both farm owners and residents alike, and it is their desire to cooperate to the limits of the authority vested in them in the solution of all storm drainage problems.

Inquiries from property owners regarding storm drainage improvements or maintenance, including soil types and their permeability should be directed to:

Greene County Soil and Water Conservation District

1363 Burnett Drive

Xenia, OH 45385

Phone: 937-372-4478

They can also contact the Greene County Highway Department Superintendent at 937-562-7500.

This paper outlines some of the Ohio drainage laws. Direct reference should be made to the Ohio Revised Code Chapters 1515, 6131, 6133 and 6137. In some cases the help of a qualified attorney may be necessary as disputes between property owners in this matter are civil in nature.

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