

## Ohio Drainage Law

The City of Massillon receives frequent calls from property owners about drainage issues. The Ohio Laws that govern water rights and drainage can be very complex and be found in statutory and common law. Please note that the City of Massillon cannot give you any legal advice about your particular rights and would recommend that you seek private counsel to fully advise you thereto. If there is a dispute where the parties cannot work together to solve the problem, the Court of Common Pleas would have the jurisdiction over the issues. These cases can be difficult and expensive. Typically, both parties end up ahead by working together to solve the problem.

### General Considerations with Ohio Drainage Disputes

The Ohio Drainage Laws generally address drainage rights and runoff issues. The “*reasonable use doctrine*” frequently applied by the Ohio Supreme Court permits broad latitude in the interpretation of individual rights as they pertain to drainage. It states “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/her 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 flow of the surface water is unreasonable.

The laws are not easily summarized. However, most people who work in the area of drainage or water management would agree to the following:

- Landowners are entitled to reasonable use of the water that flows across their land as long as it is returned to its natural water course. This includes ponding water behind a dam for personal use or making drainage improvements to protect structures.
- Landowners are generally required to accept the water that flows onto their property in a natural water course, so long as no additional water from another watershed has been added to such flow; subsurface drainage that has been installed for more than 21 years is considered a natural water course.
- Landowners are generally obligated to outlet a natural water course onto their downstream neighbor at the same point the water left the property prior to any development on the site. Changing the flow of water (i.e. volume, direction, or velocity) in a matter that causes damage to an upstream neighbor may result in legal liabilities for damages.

The City of Massillon is not a party to water rights or drainage problems between neighbors and cannot mediate disputes.

# Frequently Asked Drainage Questions

## ***Is my neighbor permitted to drain water from his property onto mine?***

Generally, this is allowable as long as the water continues to follow its natural established course of flow and the reasonable use rule applies. This is explained in detail in the Ohio Drainage Laws, found in the Ohio Revised Code, Sections §6131, §6133, §6135 and §6137.

## ***Can I block the natural flow of water from an adjacent property onto my property?***

No. According to Ohio Drainage Laws it is illegal to impede the natural flow of water. However, a property owner can divert or alter its path in a reasonable manner.

## ***Can stormwater from my roof gutter be directed to anywhere on my property?***

Yes. It is your responsibility, however, to make sure the changes do not cause substantial damage to the property rights of others.

## ***Water is flowing off of my neighbor's property and creating problems on my property. What can I do?***

Since most drainage complaints involve private property, they are managed as a civil matter. The City does not have the authority to maintain and/or improve the flow of stormwater across private property. Further, the City cannot enter a landowner's property and order them to halt activity or force them to drain surface water off their land without their permission.

If a landowner, either upstream or downstream, requests our technical assistance with solving drainage problems on their own property, we are happy to make suggestions and provide as much information as our expertise allows. However, the landowner must initiate the action to resolve the drainage dispute or make the drainage improvement.

## ***There is new construction behind my lot and I'm having drainage problems due to the construction. Is there anything the City can do to make the developer drain the development away from me?***

There is a misconception that new development is not allowed to drain onto existing development. If the area drained onto the adjacent property prior to development, it may continue to do so after development. New development may not unreasonably worsen existing structural flooding as reported to the City. If problems are being created during construction, please contact the City Code Enforcement Department at 330-809-0235 or Engineering at 330-830-1722 and we will investigate to determine whether the development is being properly constructed.