

Pitt County Drainage Issues

Water Drainage Issues

Drainage issues affect private property owners as well as developers throughout Pitt County. Many questions are posed to local government representatives concerning this issue. Below are examples of some of those issues and questions. Many of the issues arise due to the fact that the flow of surface water has been altered.

For a long time North Carolina held to the Civil Law Rule with regard to surface water drainage. This rule obligates the owners of lower land to receive the natural flow of surface water from higher lands. It subjects a landowner to liability whenever he interferes with the natural flow of surface waters to the detriment of another in the use and enjoyment of his land. Almost any use of land involves some change in drainage and water flow whether a big commercial development, building a house or subdivision, agricultural activity or logging operation. This makes strict application of the Civil Law Rule impracticable.

Three propositions arise from Civil Law Rule:

1. The easement of the uphill owner has the right to accelerate and increase the natural flow but that right doesn't include the diverting of water.
2. Natural flow of water means that no alterations can be made to the flow by the upper landowner which diverts water to the lower owner in a different way. Also, the water can not be diverted to a different location from which the natural flow would take it.
3. The downhill owner can not obstruct the natural flow from above in any way.

The North Carolina Supreme Court formally adopted the Rule of Reasonable Use with respect to surface water drainage in the case of Pendergrast vs. Aiken in August 1977. The adopted Reasonable Use Rule allows each landowner to make reasonable use of his land even though by doing so, he alters in some way the flow of surface water thereby harming other landowners. Liability is incurred when and only when this harmful interference is found to be unreasonable and causes substantial damage. "Reasonable" and "Substantial Damage" is still up for interpretation on a case by case basis. But the Reasonable Use rule is in line with realities of a modern developing society.

Typical Drainage Scenarios Reported to Local Government Representatives

1. **Subdivision lots have recorded drainage easements to control surface drainage. A lot owner fills in an easement to facilitate mowing which causes flooding in the adjacent property owner's carport or basement. Water has the right to pass**

across property through open channels or enclosed pipes. A drainage easement grants this. If change occurs which prohibits or restricts flow then it would be a violation of the local government's ordinances. Any plan that will alter drainageways has to be reviewed by the local government planners before construction. But, if a landowner alters the drainageway prior to review, the landowner can be forced to restore the drainage back to the original condition or submit plans for the proposed drainage construction. Damage that may have been caused to adjacent landowners is a private matter between the parties affected.

2. Property owners are concerned that fallen and leaning trees and logs are blocking a stream. They ask representatives of the local government to clear this to prevent flooding and clean the area up. In some cases the petitioners do not own the property along the stream. At the current time, no governmental programs fund debris removal from streams. Logs and limbs in streams are considered normal for a healthy stream. Removal of debris to prevent drainage issues is the responsibility of the owner where the stream is located. If an adjacent landowner to the stream causes flood damage to another landowner's property, it is a private civil matter between the parties affected.
3. There has been severe bank erosion at the bend of a stream, putting a home or other structure in danger of being destroyed. It is the owner's responsibility to correct the problem if the stream is located on that owner's property. Contact an engineer to assess the condition of the building that is in jeopardy. If there has been an increase in flow from an adjacent property owner it is a civil matter between affected parties.
4. There is a swampy area located at the rear of a home owners property (could be classified as a wetland). The owner wants to fill the area to eliminated wetness, mosquitoes, etc. A permit must be obtained from Pitt County if the area to be disturbed is an acre or greater. Contacting the U.S. Army Corps of Engineers and the State Division of Water Quality regarding possible "404" and "401" program permitting requirements for work in wetlands should be done as well. If no permit is required, the owner can proceed at their own risk.
5. A property owner wants to pipe a ditch on their property. Altering a drainage way requires a plan prepared by a registered engineer or land surveyor and must be reviewed by local government representatives prior to construction. If the ditch is located within the North Carolina Department's right-of-way, the plans to install piping must be reviewed by the NCDOT Regional Office. The property owner or designer needs to verify that the site is not located in a Water Supply Watershed Critical Area, where piped drainage is not allowed.

What Local Governments Can Not Do

1. Tax payer funds cannot be used to solve individual or private disputes between property owners by the local government.
2. Drainage ways on private property are not maintained by the local government. Pipe and open channel maintenance on individual lots are the responsibility of the property owner.
3. The local government has authority for sediment and erosion control, water quality protection and zoning. If drainage measures are found to be insufficient by the local government planner, the subdivision plan can be denied and the developer will not receive the grading permit until a corrective plan is submitted and approved.
4. The local government can require a developer to have drainage easements along natural swales while seeking approval of a subdivision plan. The local representatives can only recommend diversions and property line swales to prevent surface runoff from one lot to another. Plan approval can be withheld if a developer proposes a deep cut adjacent to another property and the local government representatives believe it will not function properly. However the local representatives have no authority to take action after the plan has been approved, the site graded, seeded and stabilized, and at a later time erosion occurs. The developer and owner should follow the responsibilities under the common law after approval of the plan. Most of the examples above are private actions and can only be resolved as civil court matters between the affected property owners.

What Pitt County Can Do Under Exceptional Circumstances

1. If a situation is causing erosion and sedimentation on neighboring land and streets, this is a violation of the Erosion and Sedimentation Control Ordinance of Pitt County and enforcement action can be taken.
2. If actions have been taken to reduce the effectiveness of recorded drainage easements which are part of a water quality protection system, this is a violation of County regulations. As an example, a series of diversions and swales are planned, approved and built which diverts water to a water quality pond. Any filling which makes those diversions or swales ineffective is a violation, and action can be taken.

Summary

Many of the drainage complaints brought before the local government are outside its authority because the disputes involve private property rights. There are only limited situations where the local government can take action.