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DRAINAGE DISPUTES IN HORRY COUNTY

This article describes some of the general legal issues involved in drainage disputes in Horry County, South Carolina. It is not intended as legal advice.

One of the most frequent causes of disputes between neighbors is drainage and flooding. The problems usually start when property damage occurs from too much water flowing onto one's property or from inadequate drainage downstream causing water to back up onto one's property. In the first case, many people assume that the water flowing onto them belongs to their neighbor and the neighbor should be responsible for any damage caused by the water. In the second case, people expect to be able to drain their land, and when ditches or natural streams become clogged, or a neighbor raises their land to construct a building and the flow of water is interrupted, it can cause water to stand or to back-up, possibly resulting in property damage.

It will come as a surprise to most people that actual written laws pertaining to drainage in South Carolina do not exist. There are no state laws that address the issues raised above. These types of disputes are only able to be resolved in a court of law, or through cooperation between the parties. Counties and cities do not have the right to act as "drainage police", they cannot force a private property owner to clean clogged ditches on their property or to not build up their land, even when such things may cause property damage to their neighbors.

The history of drainage law in the United States has evolved in the way the courts in most states address drainage disputes between neighbors. In the past, most courts treated drainage water as the "common enemy" meaning that the water was everyone's enemy and each person could take whatever measures they felt necessary to protect themselves from flood damage even if it harmed their neighbor. The "common enemy" doctrine has lost favor in most jurisdictions and been replaced with the "reasonable use" doctrine. This essentially provides that a person may alter drainage patterns on their property, even to the detriment of their neighbors, as long as the alteration is considered "reasonable". The problem with this theory is that what one person considers "reasonable" may be considered highly objectionable and unreasonable to their neighbor. It is left up to the court to decide who is right.

Often a court will attempt to weigh the relative merits of the drainage alteration against the harm it causes to the neighbor. For example, if it is necessary to place fill on a lot in order to construct a building that will not flood, and the fill causes the neighbors yard to stand in water, a court may decide that fill placement was reasonable. Or, the court may decide that the person filling the lot could have made some design changes that would minimize the negative impact to neighbor, while still accommodating the construction of the building, in which case the court could side with the neighbor.

As you can see, legal disputes over drainage are not easy to resolve and they can be very expensive once attorneys and the courts get involved. Sound advice to anyone who desires to alter the natural flow of surface water on their property is to carefully examine the possible impact of the work on the adjacent properties. If your work causes damage to your neighbors you may find yourself in court trying to justify your actions. It is certainly better if neighbors can work out mutually beneficial compromises to solve drainage problems. The important thing is to discuss the problems calmly and rationally and to work together to develop a solution, rather than letting anger and threats destroy any chance of working together to solve the problem.

Horry County's Stormwater Department will be glad to investigate and assess your drainage problem and provide guidance as to whether the problem is one that we can address or is one that involves only private issues. If the problem is a private one, we may be able to provide some limited technical assistance and possibly make recommendations as to potential solutions.

The County is legally constrained and limited as to what drainage situations it can work on. The County is not permitted to perform work that has no public benefit and when work is performed, the benefits obtained by the public should be substantial enough justify the expenditure. The County is also not responsible for flooding of private property that is not the result of actions or activities of the County. These limitations are for the overall good of the tax paying citizens of Horry County by preventing expenditures of public funds for purely private benefit.