

RESPONSIBILITY and PROCEDURE for IMPROVEMENT and MAINTENANCE of DRAINS, DITCHES and WATERCOURSES

FOREWORD

The Offices of the County Commissioners and County Engineer of Shelby County are frequently besieged with requests for the maintenance and improvement of storm drainage facilities affecting agricultural lands and suburban home sites throughout the county. To investigate each complaint and explain to the property owner the responsibility in such matters, and the limits of authority vested in the County Commissioners and County Engineer by Ohio statutes involves considerable time and expense. Hence the development of this brochure from the materials contained in current Ohio drainage laws.

It should be recognized by property owners that storm drainage improvements on private property will not be performed by county personnel. The county does not maintain or improve storm drainage facilities, other than roadway related, without assessment.

One question for consideration by any property owners prior to making a request for a needed storm drainage improvement: will the improvement benefit the general public or only an individual property owner?

The County Engineer has one principal duty, which is the construction, rehabilitation and maintenance of the roads and bridges in his county. This is accomplished through the judicious use of vehicle license fees and gasoline taxes that currently cannot, by law, be expended on other activities. For instance, the cost of operating the Tax Map Department which is also the responsibility of the County Engineer, is paid for out of general county funds.

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 benefited. It is not the obligation of the County Engineer to maintain or improve the storm drainage facilities across any individual's property for either agricultural purposes or development of suburban 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 facilities fall under the liability category of property ownership.

These storm drainage facilities cannot be closed, obstructed or altered in any way which would reduce the capacity for conveying storm water across private property. Any owner is liable for upstream property damage for failure to properly maintain storm drainage facilities across his own property.

Some property owners are of the opinion that the county has the financial responsibility for the maintenance and improvement of established county ditches. Such an opinion is directly contrary to the Ohio Revised Code. The establishment of a watercourse as a county ditch may be initiated by property owners, who will be affected and benefited 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 politic 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 an 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 is involved. The entire cost of the improvement, including engineering, administration, construction, compensation for damages (if any) and maintenance, is paid for by assessing the property owners within the watershed in accordance with benefits received. The minimum construction assessment is ten dollars and the minimum maintenance assessment is two dollars.

During the past several years, there has been considerable development outside the incorporated areas of Shelby County. Subdivisions and individual homes have been constructed in areas without adequate storm drainage facilities. Following an intense rainfall, many of these property owners appeal to the Commissioners and Engineer for correction of, or assistance with, their storm water problems. A prospective home or home site purchaser should recognize that variation in the cost of seemingly comparable property, particularly in dry weather, may very well be related to the lack of adequate storm drainage and other utilities as well. Before purchasing a suburban or rural home site an excellent rule of thumb is to investigate before investing.

Sanitary and basement drainage systems are facilities that the property owner must provide at this own expense. The effluent from these cannot be outletted 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 is contrary to Shelby County Health Department regulations and places the owner so doing at risk and liable for damages downstream.

PROCEDURE

To understand how and why county ditches are established and funds for the permanent maintenance of each ditch improvement are provided under the provisions of the drainage laws, the following hypothetical 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 benefiting 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, plus two dollars for each parcel of land that exceeds two hundred parcels within the watershed, is filed with the Clerk of the Board of County Commissioners. The County Commissioners then establish dates for the view and first hearing on the proposed improvement and cause the property owners within the watershed to be notified of those dates so that they are afforded the opportunity to offer their comments on the proposed project. Following the view, the first hearing is

conducted by the County Commissioners. At the first hearing, the County Engineer 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 benefited 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 proposal improvement. The County Engineer will also estimate the potential" benefits accruing 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 former 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. 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 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/benefited property owners within a watershed.

The County Commissioners and County Engineer wish to assure each property owner of their sincere interest in all storm drainage problems and complaints. Both entities realize that adequate storm drainage facilities are very important to both farm owners and suburban 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 and or maintenance, also soil types and their permeability may be directed to:

Shelby Soil and Water Conservation Dist.
822 Fair Road
Sidney, Ohio 45365

This pamphlet outlines some of the Ohio drainage laws. Direct reference should be made to the Ohio Revised Code Chapter 6131, 6133 and 6137. In some cases the help of a qualified attorney may be necessary.