

Drainage Law and the Responsibility of the Design Engineer/Local Government

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2025



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

Drainage Law in Tennessee

Drainage law in
Tennessee is governed
by the natural flow rule.



Drainage Law in Tennessee



The *natural flow rule* says water has a natural easement along its natural paths, and the upper and lower landowners must accept water that naturally flows, or that would have naturally flowed, onto the property in question. (as opposed to the “common enemy” doctrine.)

Drainage Law in Tennessee



Dixon v. Nashville, 301 S.W.2d 178 (1976);

Miller v. City of Brentwood, 548 S.W.2d 878 (1977);

Butts v. City of South Fulton, 565 S.W.2d 879 (Tenn. App. 1978);

Yates v. Metropolitan Government Nashville & Davidson County, 451 S.W.2d 437 (1969).



Drainage Law in Tennessee

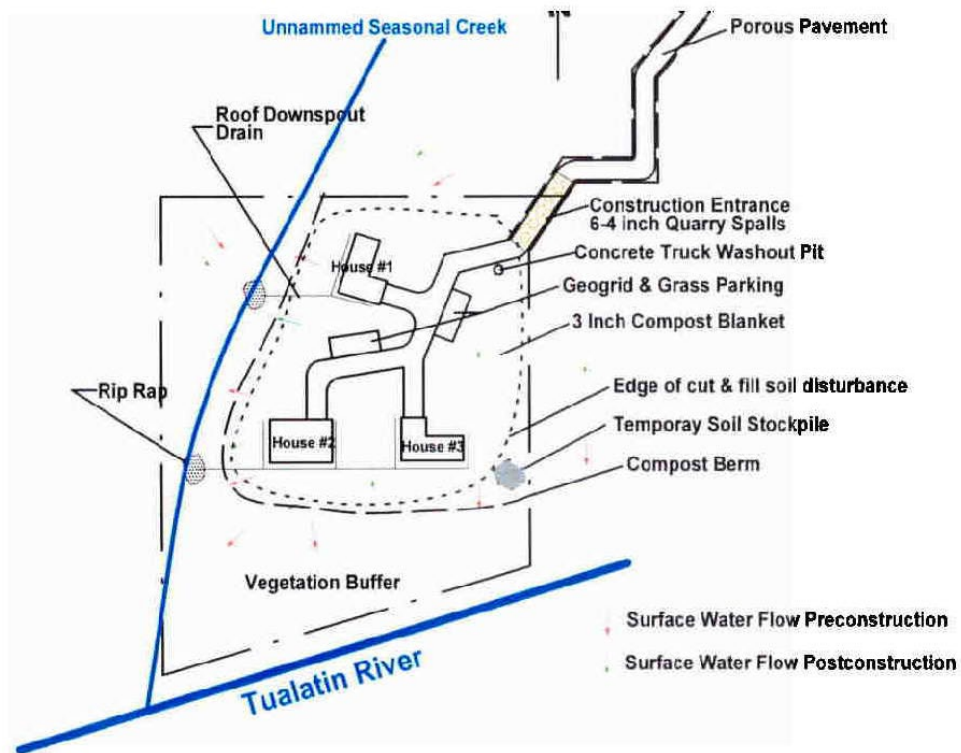
That rule is easier to state than to apply in some cases, but generally a landowner cannot:

1. Impede the natural flow of water.
2. Increase the natural volume of water.
3. Increase the natural velocity of water.



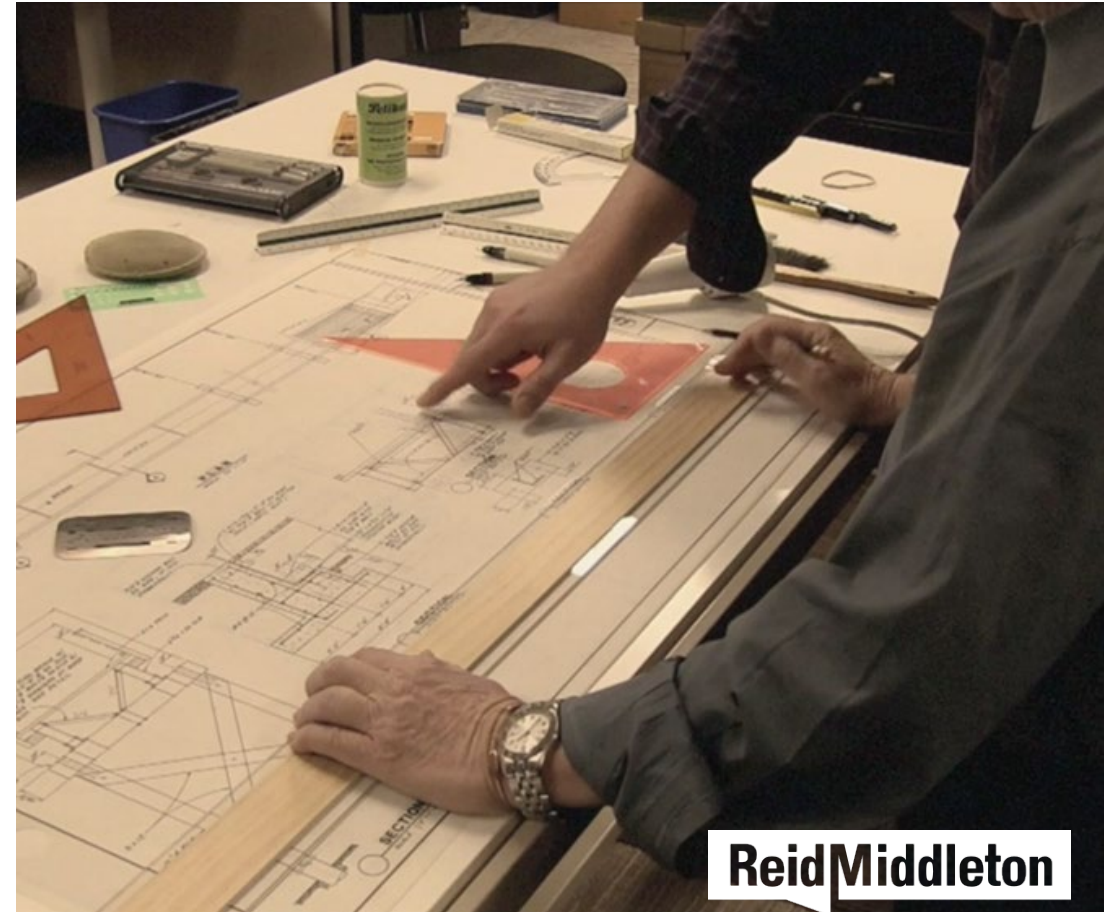
Drainage Law and the Responsibility of the Design Engineer

The design engineer should also do his part to ensure that drainage, erosion, and sediment control problems are avoided during the construction of the project



Drainage Law and the Responsibility of the Design Engineer

Approval or Acceptance of a drainage design by the local government does not relieve the design engineer of either professional liability or ethical responsibility. ...



Drainage Law and the Responsibility of the Design Engineer

... Designs are normally reviewed for compliance with required design standards and codes, with the government reviewer taking no responsibility for the outcome of the project as designed. ...

**CITY
OF
MURFREESBORO**
MURFREESBORO, TENNESSEE

**STREET DESIGN
SPECIFICATIONS**

AS ADOPTED BY
MURFREESBORO PLANNING
COMMISSION
December 1, 2021

STREET DESIGN SPECIFICATIONS
MURFREESBORO PLANNING COMMISSION
(Effective date January 1, 2022)



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Drainage Law and the Responsibility of the Design Engineer



... The ultimate responsibility (and/or liability) rests on the design engineer who seals the plans.

Further...

Drainage Law in Tennessee

Tennessee Code Annotated 29-20-204 states that all government entities are guaranteed: (a) Immunity from suit ...for injury...caused by the dangerous or defective condition of any public ...structure, dam, reservoir or other public improvement...

(Removal of immunity for injury from dangerous structures - Exception - Notice required)



Drainage Law in Tennessee

Tennessee Code Annotated 29-20-205 states that all government entities are guaranteed “-Immunity from suit ...for injury...caused by negligent act or omission of any employee within the scope of his employment...if the injury arises out of:



Drainage Law in Tennessee

(3) the issuance, denial, suspension, or revocation of, or by failure to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;



Further...

Drainage Law in Tennessee

Tennessee Code Annotated 29-20-205 states that all government entities are guaranteed “-Immunity from suit ...for injury...caused by negligent act or omission of any employee within the scope of his employment...if the injury arises out of:



Drainage Law in Tennessee



(4) a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property;

Drainage Law in Tennessee

A city generally has no responsibility for drainage problems among private landowners, unless the city has itself violated the natural flow rule.



[See Miller v. Brentwood, Yates v. Metro. Gov. Nashville & Davidson County.]

Drainage Law in Tennessee

Likewise, in the absence of such a violation by the city, the city generally has no obligation to maintain the integrity of the drainage, and no right to go onto the properties in question.



Drainage Easement Maintenance



Permanent Stormwater Solutions



A Guide to Drainage Easement Maintenance





Town of Farragut Engineering Department:
Stormwater Program

11408 Municipal Center Drive
Farragut, TN 37934
865-966-7057

EMAIL
lsal@townoffarragut.org

WEB
townoffarragut.org/stormwatermatters

FACEBOOK
facebook.com/farragutstormwater



Unlike pollution from industry or sewage treatment facilities, which is caused by a discrete number of sources, stormwater pollution is caused by the daily activities of people everywhere. As rainwater and snowmelt run over streets, lawns, farms and construction sites, pollutants such as fertilizers, soil, pesticides, oil, grease, and pathogens are picked up and carried by the stormwater. Permanent stormwater solutions are structures that are designed into the landscape to catch this runoff, slow the flow of stormwater runoff, and reduce the amount of pollution entering the aquatic ecosystem in order to maintain the integrity of our streams.



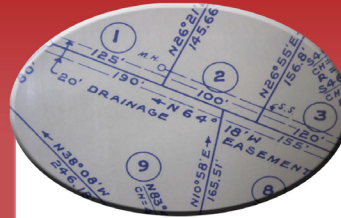
Drainage Easements Maintenance- townoffarragut.org/drainagepolicy

What is a Drainage Easement?

- A drainage easement is an area on a property legally designated to carry stormwater.
- Drainage easements are not restricted to the overland flow of water via grassed swales (channels). Drainage easements also include the underground conveyance of water through pipes.
- Stormwater from rain events flows across all property in some way. The property plat should show if a property has a designated drainage easement and where it is located.

Why is the Drainage Easement Important?

- Impervious surfaces, such as roof tops, driveways and patios, increase the volume and velocity of stormwater runoff.
- Pipes and swales in drainage easements channel stormwater to control the flow of water and ensure proper drainage to prevent unnecessary flooding and damage to personal property.



Who is Responsible for Drainage Easement Maintenance?

- Maintaining a drainage easement located on private property is the responsibility of the landowner, not the Town.
- Drainage easements should be maintained as a part of your property.
- If the easement is split across multiple properties, then work with your neighbor to ensure the entire easement is well-maintained.

For More Information

View the Stormwater Drainage System Maintenance Policy at:
townoffarragut.org/drainagepolicy

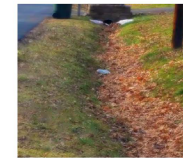
Remember:
**Only Rain Down
the Storm Drain!**

How do I Maintain my Drainage Easement?



- Maintain your easement as needed by mowing and removing any yard debris or other objects that may impede the flow of or pollute stormwater. Regularly inspect pipes for signs of failure and keep inlets and outlets clear of debris.
- Pick up pet waste as this will prevent the spread of pathogens when it rains.
- Protect the easement from sediment pollution if you are disturbing soil near a drainage easement.

What Practices Should I Avoid?



- DO NOT install structures such as fences, sheds, or swing sets in a grassed swale.
- DO NOT allow grassed swales or pipes to be blocked by debris or altered in any way. Planting trees and landscaping in a easement should be avoided.
- DO NOT allow pollutants, such as oils, grease, pet waste, paint, fertilizer, pesticides or excess debris, to enter the drainage easement and ultimately the Town's storm sewer system or streams. A property owner could be fined for violation of the Town's stormwater ordinance.



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Drainage Law- Local Drainage Policy



Stormwater Drainage System Maintenance Policy

ADOPTED by FARRAGUT BOARD of MAYOR and ALDERMEN on October 27th, 2011

The purpose of this policy is to define the maintenance responsibilities for Stormwater and Drainage features within the Town of Farragut.¹

Town of Farragut's Responsibilities

The Town of Farragut Department of Engineering and Department of Public Works have the following responsibilities:

- Administration and enforcement of Stormwater and Drainage management regulations and associated inspections.
- Maintenance of the Stormwater and Drainage system located in public rights-of-way along public streets and on other public lands. Within right-of-way areas the Town of Farragut's level of service may include periodic inspection, cleaning and emergency response.
- Administration and enforcement of floodplain management regulations and associated inspections, in accordance with the requirements of the National Flood Insurance Program (NFIP) and in order to secure the Town of Farragut's participation in the Community Rating System (CRS) program.

The Town of Farragut is not responsible for the maintenance of Stormwater and Drainage features located on private property nor within easements on private property.

Private Property Owner's Responsibilities

The property owner is solely responsible for:

- the maintenance and upkeep of Stormwater and Drainage features located on their property (including easements, platted and implied) in accordance with the adopted Property Maintenance Code (*International Code Council, International Property Maintenance Code, 2006, Fourth Printing*) and Stormwater ordinance (*Farragut Codes and Ordinances, Title 14 - Land use Controls, Chapter 5 – Stormwater Ordinance*).

Said Stormwater and Drainage features include (nonexclusively): a good surface cover such as grass to minimize erosion, drainage easements, pipes, open grass swales, detention/retention/sediment basins,

oil/water separators, rainwater harvesting systems, pervious paving systems, rain gardens, proprietary water treatment devices etc.

THE TOWN OF FARRAGUT RESERVES THE RIGHT TO DEVIATE FROM THIS POLICY
FOR THE HEALTH, WELFARE, AND SAFETY OF THE COMMUNITY

¹ The law of easements in the State of Tennessee is governed primarily by the common law. For statutory provisions concerning special types of easements, see T.C.A. §§ 66-9-101 et seq. (preservation restrictions); T.C.A. §§ 66-9-201 et seq. (solar easements); and T.C.A. §§ 66-9-301 et seq. (conservation easements).

Miller v. City of Brentwood, 548 S.W.2d 878 (Tenn. Ct. App. Midd. Tenn. 1977)

Yates v. Metropolitan Government of Nashville, 60 Tenn. App. 719 (Tenn. Ct. App. 1969)

Drainage Law in Tennessee

A city generally has no responsibility for drainage problems among private landowners, unless the city has itself violated the natural flow rule.



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Drainage Law in Tennessee



An exception to this would occur in a case where the landowner has created the drainage problem by violating subdivision regulations, stormwater ordinances, or other ordinances or laws. In such a case the city could deal with the problem as a compliance issue.

Drainage Law in Tennessee

Other than this exception, not only does the city have no responsibility in the case of drainage problems between private landowners, but the city also has no legal standing in court in such a case.



Who is Who? *Example 1*

RE: Right of City to Excavate Ditch Adjacent to City Street

- The City has the following question: Does the city have the right to excavate a ditch adjacent to the Road?
- The answer is yes, provided that the facts provided to me, and the assumptions I have made, are accurate.



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Who is Who? *Example 1*



As I understand those facts, the property owner filled in the ditch on the north side of the Road “several years ago.” The property owner’s filling of the ditch causes flooding on the south side of the Road.

Who is Who? *Example 1*

The property owner contends that the city has no right to excavate the ditch, that the ditch is a part of his property. I have assumed that the Road is properly a city street. I have also assumed that the ditch in question is immediately adjacent to the Road, and that it drained the Road.

Who is Who? *Example 1*

It is difficult to determine the width of many city streets. Some of them are created by an express grant in a deed that does not specify the width. A large number of them are created informally by implied dedication and acceptance, by “user,” or by prescription. ...



Who is Who? *Example 1*

... It is sufficient for the purposes of the city's question to say that streets created by those methods involve the treatment of the property by the public and by the city as streets, and that those methods usually involve no documents. How wide such streets are beyond their actual regularly traveled surfaces is a frequent question.

Who is Who? *Example 1*

It is said in 10A McQuillin, Municipal Corporations, ' 30.03, that “Street in a legal sense, usually includes all parts of the way--the roadway, the gutters and the sidewalks.”



The same authority, ' 30.22, further says that:

Who is Who? *Example 1*

It has been held that the width of a prescriptive easement is not limited to that portion of the road actually traveled, and it may include the shoulders *and the ditches that are needed and have actually been used to support and maintain the traveled portion*. [Emphasis is mine.]



Who is Who? *Example 1*

29 American Jurisprudence 2d Highways and Streets, ' 52, says that “*Ditches along the side of a highway acquired by prescription or user are generally regarded as within the boundaries of a highway.*” [Emphasis is mine.]

Who is Who? *Example 1*

...The above cases make it clear that a street is wider than the paved portion, and that it includes the shoulders, ditches, gutters, and waterways. Common sense also supports those cases. A ditch that drains a street is logically a part of the street.

Who is Who? *Example 1*



Municipalities have police power over their streets regardless of how those streets were created.

Collier v. Baker, 27 S.W.2d 1085 (1030);

Brimer v. Municipality of Jefferson City, 216 S.W.2d 1(1948);

Paris v. Paris-Henry County Utility District, 340 S.W.2d 885 (1960).

Who is Who? *Example 1*



The police power cannot be contracted away or surrendered. In addition, in Tennessee (as in other states) municipalities have an affirmative obligation to prevent the obstruction of their streets.

Who is Who? *Example 1*

City of Nashville v. Hager, 5 Tenn. Civ. App. (Higgins) 192 (1914);

State v. Stroud, 52 S.W. 697 (Chan. App. Tenn. 1898);

Stewart v. Illinois Central Railroad Co., 143 Tenn. 146 (Tenn. 1920).



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Who is Who? *Example 1*



Where the street includes a ditch adjacent to and draining the surface of the street, that police power and that affirmative obligation, extends to the ditch.

Who is Who? *Example 1*

If the property owner in question refuses to accede to the exercise of the city's authority over the ditch in question, the city may consider obtaining a declaratory judgment that the ditch is a part of the city street or take whatever other appropriate legal action the city attorney thinks best.

(finis-j.c.)

The City's Role? *Example 2*

Dear Mayor _____,

Yesterday you asked me ...
(about)...a citizen drainage
complaint. The cul de sac on
Devonne was constructed by a
private developer some 30 years
ago so as to drain across some
undeveloped property and thence
down the common property line of
two lots on Gay Street to the gutter
on Gay Street. ...



The City's Role? *Example 2*

... The citizen was complaining about the drainage from the cul de sac crossing the undeveloped piece of property. *This is not the doing or the responsibility of the City.*



The City's Role? *Example 2*

... The citizen has requested that the drainage from the cul de sac crossing the undeveloped piece of property be “piped” across said property in a storm sewer...



The City's Role? *Example 2*

REMEMBER: "... Storm water drainage in Tennessee is governed by the natural flow rule. Under the natural flow rule, the lower property owner is required to accept the water that would naturally flow from the upper landowner; he is not liable for any damages that arises from that natural flow."



The City's Role? *Example 2*



Slatten v. Mitchell, 124 S.W.2d 310 (1938);

Dixon v. Nashville, 203 S.W.2d 178 (1976);

Miller v. City of Brentwood, 548 S.W.2d 878 (1977);

Butts v. City of South Fulton, 565 S.W.2d 879 (Tenn. App. 1978);

Yates v. Metropolitan Gov., Nashville & Davidson County, 451 S.W.2d 437 (1969).

The City's Role? *Example 2*

What is the Public Purpose Doctrine?

“... It is my understanding that the city did not cause the problems that are proposed to be addressed and that the general public will derive little or no benefit from the city doing the work. In my opinion this would be a questionable use of public resources.”

The City's Role? *Example 2*

Article II, § 29, of the Tennessee Constitution provides that “The General Assembly shall have power to authorize the several counties and incorporated towns in this State, to impose taxes for County and Corporation purposes, respectively....”

From this language has grown the Public Purpose Doctrine, which dictates that public funds can be used only for public purposes.



The City's Role? *Example 2*

Courts have reasoned that, since taxes can be levied for only corporation or public purposes, expenditures can legally be made for only those same purposes. A public purpose is generally anything that promotes the public health, safety, welfare, morals, security, prosperity, or contentment of the residents of the municipality.

Shelby Co. v. The Exposition Company, 96 Tenn. 653, 36 S.W. 696(1896).

The City's Role? *Example 2*

Incidental benefit to an individual or individuals will not invalidate an expenditure, but its primary purpose must be to benefit the public.

City of Chattanooga v. Harris, 223 Tenn. 51, 442 S.W.2d 602 (1969).

The City's Role? *Example 2*

From information that has been provided to me, it appears the primary purpose of the expenditure of public resources in the case at hand would be for the private benefit of the property owners and not for the general public. Any benefit to the general public would be remote at best. Therefore, it is my opinion that *this expenditure would be held invalid if challenged.* ...”

The City's Role? *Example 2 – But the City allowed the subdivision to be built...*

In Miller, landowners in a subdivision argued that the city was liable for flooding problems in the subdivision, principally on the grounds that the city issued the permit for the subdivision. The Court rejected that ..., declaring ..., “The mere fact that a nuisance exists and has occasioned an injury to a third person, does not render the corporation liable therefore, provided the nuisance was not created or maintained by the corporation itself.” [At 880.]...”

The City's Role? *Example 2*

...The point of Miller's with respect to the property owners in Oakland is that simply because a private landowner suffers damage from drainage that violates the natural flow rule, the city is not liable for damage for which it was not the cause. ...”

The City's Role?

Example 3

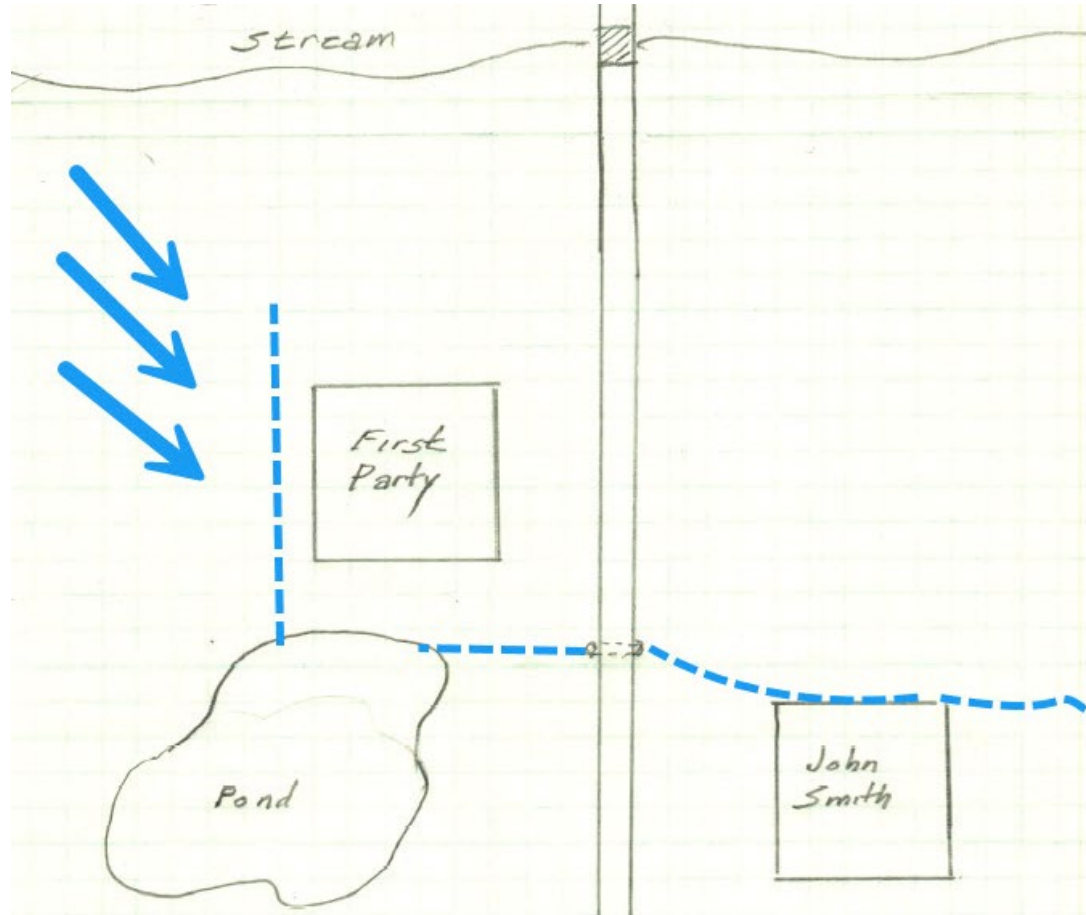


Drainage from the First Party's Property onto John Smith's Property:



The city is not liable for any water that drains from the first party's property onto John Smith's property for the same reason it has no liability for stormwater drainage from the County landfill: Nothing it has done has caused the problem. ...

The City's Role? *Example 3*



- As ...(the)... report states, and my own observations confirm, stormwater draining from the northerly stream flows across the first party's property. Apparently, it periodically flooded the basement of the home sitting on that property. For that reason, they dug a shallow ditch behind the home. The ditch runs south parallel with the west side of the major road and diverts the stormwater away from the home and into a pond adjacent to the west side of the major road.

The City's Role?

Example 3

The pond drains into a culvert that runs under the major road (which was undoubtedly installed by the state, probably when the highway was built many years ago), and onto John Smith's property.

...The first party's ditch may concentrate the flow of stormwater into the pond and through the culvert somewhat,



The City's Role? *Example 3*



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and may slightly increase its volume by ultimately channeling onto John Smith's property stormwater that would otherwise have flowed into the first party's basement, but roughly all the stormwater that John Smith's property is accepting is stormwater that would naturally flow onto that property. John Smith's property is simply the low point in the area.

The City's Role?

Example 3

In any event, none of that is the city's doing; and whatever improper diversion and/or concentration of stormwater there might be, if any, is a legal problem between the first party and John Smith and perhaps other upper landowners.

What is the City's role?

Example 4

John,

Per our discussion yesterday on the phone, we wanted to get some info on an issue with a natural channel going across the property referenced above in the subject line.

The resident has lived at this location forever (it has been in her family for at least two generations and she is in her 90's). Essentially they owned the property well before any of the current surrounding development had taken place, including the airport and any of the subdivisions. Much of the development took place in the 1970's and it was at this time that she claims the City installed the channel. This was not the case in the City's opinion: it would have either already pre-existed or was installed/"improved" by a private developer. Since that time, the channel has incised and started to meander, which has also come close to an adjacent property (4514 Hancock).



What is the City's role?

Example 4

Sometime around 2004-2005, the City performed a “one-time only” repair on this channel. To the best of our knowledge, this repair consisted of sacked concrete, which reinforced a wooden retaining wall made from railroad ties. (Based on photos we have from a separate investigation from 1997 it appears this wall was pre-existing from the development of the subdivision.

The resident of the Airways property has consistently contacted the City stating her claim that this is the City's responsibility, as we permitted all of this development and/or did the improvements on her channel, including referencing the “one-time fix (see attached).

... we were seeking a way to cite either TCA or case law (or both) supporting our position. Note: we did return her call yesterday to inform her of this letter being sent as well as the contents. She still does not accept position but at least this will be in writing and in our records for the future.



What is the City's role?

Example 4



What is the City's role? *Example 4*

Re: 4473 Airways drainage ditch issue/ Drainage Work on private property

Dear [REDACTED],

There is a drainage ditch on private property at 4473 Airways. The property owner is demanding that the City effect repairs to the ditch. The ditch is outside of the City's right of way, and there is no recorded drainage easement for the City. The ditch does not drain City infrastructure. The ditch has not been maintained by the City, with one exception.

What is the City's role? *Example 4*

In either 2004 or 2005, the City agreed to perform a, as you described, “one-time” repair on the channel and these 20-year-old repairs are part of what the property owner wants repaired now. This “one-time” repair by the city was violation of the Tennessee Public Purpose Doctrine. This violation does not give the City an obligation to commit further violations of the Doctrine, which is defined below.



What is the City's role? *Example 4*

It is my understanding that the city did not cause the problems that are proposed to be addressed and that the general public will derive little or no benefit from the city doing the work. In my opinion this would be a questionable use of public resources.

Article II, § 29, of the Tennessee Constitution provides that “The General Assembly shall have power to authorize the several counties and incorporated towns in this State, to impose taxes for County and Corporation purposes, respectively....”

What is the City's role? *Example 4*

From this language has grown the public purpose doctrine, which dictates that public funds can be used only for public purposes. Courts have reasoned that, since taxes can be levied for only corporation or public purposes, expenditures can legally be made for only those same purposes. A public purpose is generally anything that promotes the public health, safety, welfare, morals, security, prosperity, or contentment of the residents of the municipality.

What is the City's role? *Example 4*

Shelby Co. v. The Exposition Company, 96 Tenn. 653, 36 S.W. 696(1896).

Incidental benefit to an individual or individuals will not invalidate an expenditure, but its primary purpose must be to benefit the public.

City of Chattanooga v. Harris, 223 Tenn. 51, 442 S.W.2d 602 (1969).

What is the City's role? *Example 4*

From information that has been provided to me, it appears the primary purpose of the expenditure of public resources in the case at hand would be for the private benefit of the property owners and not for the general public. Any benefit to the general public would be remote at best. Therefore, it is my opinion that this expenditure would be held invalid if challenged.

So, as we previously discussed, I recommend against the city entering onto private property to do drainage work.



What is the City's role?

Example 5



Pursuant to your question about the town doing drainage work on private property, specifically, at 4220 Tracy, first, I am not sure that this should be looked at in context of being on private property. Secondly, sometimes work on “private property” is legitimate. I want to share a legal opinion ... :

The City's Role? *Example 5*



“Article II, § 29, of the Tennessee Constitution provides that “The General Assembly shall have power to authorize the several counties and incorporated towns in this State, to impose taxes for County and Corporation purposes, respectively...” From this language has grown the public purpose doctrine, which dictates that public funds can be used only for public purposes. Courts have reasoned that, since taxes can be levied for only corporation or public purposes, expenditures can legally be made for only those same purposes. A public purpose is generally anything that promotes the public health, safety, welfare, morals, security, prosperity, or contentment of the residents of the municipality.



Shelby Co. v. The Exposition Company, 96 Tenn. 653, 36 S.W. 696 (1896).

The City's Role? *Example 5*



Incidental benefit to an individual or individuals will not invalidate an expenditure, but its primary purpose must be to benefit the public.



City of Chattanooga v. Harris, 223 Tenn. 51, 442 S.W.2d 602 (1969).”



So, the question is, does the drainage work in question at 4220 Tracy meet the primary purpose of benefit to the public test?

The City's Role? *Example 5*

The problem is caused by a drainage culvert that goes under a public street. The culvert was installed by the town and maintained by the town in order to prevent water from an upstream drainage basin from overtopping the road and creating unsafe conditions or damaging the road. Neither the inlet nor the outlet of the culvert have proper headwalls. The banks around them have some rip-rap armoring. The main impact to the property at 4220 Tracy, and the bank on the shoulder of the public road, is that the course of the ditch the culvert discharges into has been turned at an angle to the culvert before it turns back to follow the shoulder of the drive at 4220 Tracy. This turn creates an eddy with accompanying scouring which is causing the erosion that the property owner is concerned about. It is also causing damage to the town's right of way.

The City's Role? *Example 5*

This is a problem associated with the drainage of the town's public streets, within the public right of way, dedicated or prescriptive. 29 Am.Jur.2d Highways and Streets, ' 52, says that, "Ditches along the side of a highway acquired by prescription or user are generally regarded as within the boundaries of a highway." [Emphasis is mine.] Therefore, this problem actually could be in the public right of way, but it does not have to be to meet the requirements of the public purpose doctrine.

The City's Role? *Example 5*



Therefore, ... it appears the primary purpose of the expenditure of public resources in the case at hand would be for the benefit of the general public but would also benefit the property owners at 4220 Tracy. Any benefit to the property owner would be secondary to the benefit to the general public.

The City's Role? *Example 5*



Remember, the opinion says: “Incidental benefit to an individual or individuals will not invalidate an expenditure, but its primary purpose must be to benefit the public.”



In cases where City right-of-way is involved, or the general public, rather than a specific property owner, is involved, the City has a defensible reason to do work.

The City's Role? *Example 5*

I reviewed this letter with MTAS attorney Melissa Ashburn, and she further recommends that the town require the property owner to dedicate a drainage easement to the town before beginning the work in order to clean this up for future purposes, although it is not strictly necessary.



Drainage Law and the Responsibility of the Design Engineer/Local Government



Wrap-up

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