

Responsibilities and Procedures for Improvement and Maintenance of Drains, Ditches, and Watercourses in Stark County

Under Ohio law, the responsibility for the maintenance and improvement of off-road drainage, ditches, and watercourses, whether established county ditches or not, rests entirely upon the landowners affected and/or benefitted. It is not the obligation of the County to maintain or improve the storm drainage facilities across any individual's property for either agricultural purposes or the development of residential or commercial sites. Land ownership has many potential and real benefits, but it also comes with certain liabilities. Storm drainage and drainage of a property in general falls under the liability category of property ownership.

Existing storm drainage facilities, including pipes, drains, and swales, cannot be closed, obstructed, or altered in a way which would reduce the capacity for conveying the storm water across or onto private property. A property owner may be liable for damage to the upstream or downstream property owners for failure to responsibly manage storm drainage facilities on or across his/her property. You should consult your attorney for advice and information in these cases.

Some property owners believe the County has the financial responsibility for the maintenance and improvement of legally established county ditches. However, such belief is directly contrary to Ohio law. A petition to establish a watercourse as a county ditch (or to improve or maintain that ditch) may be initiated by property owners who will be affected and/or benefitted. Ohio drainage laws related to ditches provide a very specific procedure in such cases and the Board of County Commissioners is designated as the body to make the necessary decisions based, in part, upon the engineering recommendations of the County Engineer's Office. The Board acts as the administrator of the petition procedure and renders an opinion on the requested project after consideration of an engineering report and participation and comments by affected landowners. Even though the Board administers the ditch petition procedure, the County will not participate in the cost of the proposed improvement and maintenance unless county-owned property or right-of-way is involved and then only to an amount proportionate to the County's benefit. **If the petition is granted, the entire cost of the project, including engineering, administration, notifications, hearing, construction, compensation for damages (if any), and maintenance is paid for by assessing the property owners within the watershed according to benefits received.**

Sometimes there is also confusion regarding dedicated public drainage easements. The existence of a recorded drainage easement is not synonymous with the establishment of a county ditch facility. Easements document a legal relationship between a property owner and property user and can be different in every circumstance. It is best to consult your attorney for advice regarding your particular situation.

There has been considerable development outside the incorporated areas of the County over the years. Subdivisions as well as individual homes may have been constructed in areas

without due consideration to adequate storm drainage facilities or those facilities may have been built adequately but are now at the end of their service life. Following a significant rainfall, many of the property owners appeal to the County for correction of, or assistance with, their storm water problems. Property owners should recognize that any property is unique in its characteristics and the County cannot guarantee or ensure any particular level of drainage.

Sanitary and basement drainage systems, in particular, are facilities that the property owner must provide and maintain at their own expense. The outflow from these facilities cannot be drained 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 material into an open ditch or watercourse without proper treatment is contrary to the County Health Department regulations and places the owner so doing at risk of liability for legal penalties and resultant property damage to downstream or adjacent property owners.

Ditch Petition ([Ohio Revised Code 6131](#))

The ditch petition process provides a mechanism for landowners to cooperate with The County Engineer and County Commissioners to solve drainage problems. The landowners in a watershed then pay for the construction and continued maintenance based on their proportion of benefit derived from the drainage improvement. Any benefited property owner may file a County Ditch Petition to begin the legal steps required to finance, construct, and maintain a County Ditch Improvement. The petition together with a \$1,500.00 bond (plus \$5.00 for each parcel of land that exceeds 200 parcels) must be filed with the Clerk of the Board of County Commissioners. The Board of County Commissioners will follow the statutory process to establish dates for a site viewing and a first public hearing on the proposed improvement and notifying benefiting property owners within the watershed of such hearing dates to provide everyone an opportunity to participate and comment on the benefits or detriments of the proposed project. A preliminary engineering report is presented by the County Engineer at this first hearing. This preliminary engineering report includes cost estimates, feasibility comments, and a cost-benefit analysis. The Board of Commissioners will then consider all evidence and information and determine to proceed or not with the petitioned projects. If the decision is made to proceed, the Board will direct the County Engineer or his agent to proceed with surveys, engineering plans, and a final estimated project cost. The County Engineer will also estimate the potential benefits to each parcel of land within the watershed on which the assessment will be based. The completed plans, cost estimates, and estimated assessments are filed with the Commissioners who will subsequently set a final hearing date and send notification to all affected property owners. At the final hearing, the petition will be reaffirmed or dismissed. If the petition is reaffirmed, the Board will direct the County Engineer to proceed with a construction contract for the completion of the work.

When the improvement has been completed, the actual costs of constructing the project and also future maintenance costs are sent to the County Auditor for placement on the real estate tax bills of the benefited property owners for collection.