

Section VIII: Appendix

Part N.

LEGAL OPINION REGARDING NEED FOR EASEMENTS DOWNSTREAM OF DRAINAGE DISTRICT OUTLETS

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Ms. Janis A. Bobrin
Washtenaw County Drain Commissioner
Courthouse Annex Bldg.
P.O. Box 8645
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Dear Ms. Bobrin:

You have asked our opinion as to what a Drainage District should require under a 433 Agreement to protect the Drainage District from liability due to sheet flow from a development's drainage district.

As a general rule an upland owner has the right to natural drainage flow over and across the adjacent lower properties. Any instance where the natural surface-flow of water is increased or concentrated, and a neighboring property receives more surface water resulting from the change, the increase in flow constitutes a trespass. If there is an increase in water on neighboring lands, the Drainage District could be liable for damages under the cause of action of trespass- nuisance. Therefore, to protect the Drainage District from future liability, flooding easements should be required for adjacent properties of a development when the development's drainage "sheet flows" onto neighboring properties.

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HUBBARD LAW FIRM

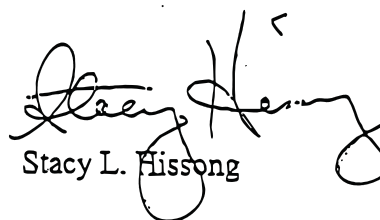
Ms. Janis A. Bobrin
May 27, 1999
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Please note that Section 433 of the Drain Code envisions the requirement of securing an adequate outlet. Subsection (7) of Section 433 states that a registered engineer must certify that the outlet for the existing drain is the only reasonable available outlet for the drain and that there is sufficient capacity in the existing outlet for the proposed drain to serve as an adequate outlet without detriment or diminution of the drainage service which the outlet presently provides.

Should you have any questions relative to these issues, please do not hesitate to contact Geoff Seidlein or myself.

Sincerely,

HUBBARD, FOX, THOMAS,
WHITE & BENGTSOHN, P.C.


Stacy L. Hissong