

## Off-Roadway Drainage Easement Responsibility

Additionally, confusion may have resulted from there being certain drainage easements found in our public records. Many older County Ditches are within established easements and many other drainage easements are found in deeds and on recorded subdivision plats. These easements provide documentation of an encumbrance upon the property for the stormwater ditch or pipe that exists there, meaning that the ditch or pipe cannot be altered from its course without the approval of the County or other plat approval agency and/or holder of the easement rights. The existence of the easement does not, however, relieve the owners of the property upon which the easement exits of their responsibility for maintaining the flow of the stormwater as required by the Ohio Drainage Laws.

This issue can be confusing since the roadside ditches and/or drains are often connected to ditches and/or drains that leave the right-of-way and traverse private property. Additionally, many of these private property drains may have been constructed as a part of the original road improvement (a cost that is permitted to be paid with road funds if necessary to drain the road surface), however the fact is that maintenance of drainage upon private property, natural or improved, falls back to be the responsibility of the property owner after the road improvement is completed, unless there is an agreement otherwise such as a homeowners association agreement for its maintenance or an assessment for County maintenance established through the Ohio Revised Code petitioned ditch process. The street right-of-way line is the magic line for street maintenance of stormwater with highway funds, otherwise where might the roadway responsibility stop, the river or possibly the lake? Agreements for off-roadway drainage including those established by the ditch petition process have specific terminus limits. Without an agreement, the responsibility for roadway maintenance could be boundless.

Currently, within the townships of Summit County, the only off-roadway drainage easements that are eligible for public maintenance are those located in subdivisions where the property owners of the subdivision are being assessed a fee by the County for the maintenance of the stormwater facilities. Some off-roadway stormwater facilities may be maintained by a condominium association or homeowner association, however the maintenance of nearly all of the off-roadway drainage systems in Summit County Townships is the responsibility of the owners of the property through which the stormwaters cross.

Similar to the restrictions upon townships, the County Engineer's authority to implement off-roadway stormwater improvements is also limited in that the County Engineer's funding is primarily roadway tax based and cannot be used for off-roadway stormwater improvements except to the extent the improvement is necessary to relieve roadway flooding. The Ohio Revised Code does provide the County Engineer specific duties related to non-roadway related stormwater improvements through the County Ditch Petition improvement process.

The County Ditch improvement process provides that the County may assume the responsibility of individual property owners for improving and maintaining drainage through private property when a petition has been filed with the County for property owners to be assessed for the cost of a specific improvement. An assessment petition can be submitted by an individual property owner, a group of property owners or by a township where there is a benefit to the township. Upon such filing and approval of the County Council, the County Engineer will study the situation, prepare plans, specifications and cost estimates, administer the project, inspect the work and upon completion perpetually maintain the improvement. Property owners benefiting from the improvement pay the cost of improvement and perpetual maintenance through an assessment levied upon their properties by the County. This process does not relieve private property owners from their obligation for the drainage that crosses their property but it does provide for County management of such obligations and it provides a fair and equitable method for distribution of the costs to the property owners.