

luis presuel <jlpresuel@gmail.com>

3/19/2021 10:49 AM

Re: Cobb County Storm Water Management Division Contact

To Bob Kern <bob.kern@cooksvalleyhoa.com> Copy Eli Sbaity <eli.sbaity@cooksvalleyhoa.com>

Good morning Bob and Eli,

Once again we need your help regarding the storm water run-off. When we last met, our plan was to meet with various people and continue educating ourselves as to the drainage issues in our backyard.

I met with David from Cobb Storm Water and he told me that I will have to get the Yangs and Andy Price to agree on any changes for us to reroute the storm water run off. If they do not agree with the changes and we do it anyway, it is called trespassing according to GA state law. Also he mentioned to me that if the Yangs change the grading of their lot to trap the water in ours it is also trespassing. I did some investigation and found that according to GA state law and in some dispute cases **"In surface water run-off disputes, the owner of a lower tract of property owes a servitude to the owner of an adjoining higher tract and is required to receive surface waters which normally flow from the higher lot."**

The Yangs were willing to remove the material from directly touching our fence, however the new vegetable garden they installed adjacent to our fence effectively raises the grade several inches and prevents surface storm water from flowing off of our property. I am not saying that the Yangs should be responsible for all the water that accumulates in their lot, but they cannot stop the normal flow of the run-off stormwater and damage other people's property without talking to them. As we mentioned to you, a section of our new fence is damaged, water collects and pools after each rainfall. This is putting our basement at risk of flooding if they do not undo the blockages.

We have always found Penny and her family to be nice and friendly, but unfortunately we have not been able to reach her recently. We usually communicate via text, but our texts will not go through anymore. We left them a note in their mailbox requesting that they reach back out to us to talk about the situation, but we have not received a response.

We are asking you to please help facilitate contact with the Yangs so that we can continue to pursue a good resolution to this problem. We are happy to include a representative of the HOA in our discussion with the Yangs. We hope that they feel respected and heard throughout the process. We do not want the situation to escalate to legal disputes because as you said in "lawsuits only the lawyers win".

By the way, I had a good conversation with Andy Price last Sunday. He said that he is willing to cooperate towards finding a solution, but he was clear that he wants a solution that can last for a long time, not a simple patch or a bandaid to the problem. I definitely agree with that idea, but what that could look like remains to be seen.

Kind Regards,

Luis Presuel

On Mon, Mar 8, 2021 at 1:37 PM luis presuel <jlpresuel@gmail.com> wrote:

Thank you Bob. I called him and left a message. I am hoping he returns my call today to talk about our problems with the storm water.

Regards,
Jose Luis Presuel

On Mon, Mar 8, 2021, 1:29 PM Bob Kern <bob.kern@cooksvalleyhoa.com> wrote:

Jose,

I alerted David earlier this morning that either you or Brian may be giving him a call, so your call will not be

a surprise.

Regards,

Bob

On 03/08/2021 10:36 AM luis presuel <jlpresuel@gmail.com> wrote:

Hi Bob,

Thank you and Eli for your time on Saturday.

We will contact David at the Cobb County Stormwater Management Department to see when he has time to take a look at our situation.

Brian thinks that if a Dry Creek bed is built behind the last two properties along the back of the two lots the whole problem would be resolved. Since we are not in the position of telling them what they need to do to find a solution for their problem, we can make suggestions for possible solutions. At this point, we can only help them to redirect the runoff stormwater running through our property from the upper lots. I will let you know if we need more assistance or help from the HOA.

Best regards,

Jose Luis and Julia Presuel

On Sat, Mar 6, 2021, 12:56 PM Bob Kern <bob.kern@cooksvalleyhoa.com> wrote:

Jose',

The following is the contact information for

David Breaden
Manager, Cobb County Storm water Management Department
Phone: 770-419-6454
email: david.breaden@cobbcounty.org;

David should be able to assist you in arriving at a solution for your run-off drainage problems. As discussed, we will review your situation with the other members of the ACC for any additional input they may have.

Regards,

Bob Kern

Chairman, Architectural Control Committee

Cook's Valley HOA

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STORMWATER RUNOFF MANAGEMENT LAWS

<https://www.cobbcounty.org/search?search-term=runoff>

Key results from above link: Georgia has adopted the Eastern Rule of Common Law doctrine which establishes the general water quality rather than its quantity has been the governing consideration in fixing the rights of individual users of water.

- “A Georgia statute provides that the right to throw water on the land of another is an incorporeal right which may be granted by prescription, (O.C.G.A. § 44-5-175 (GCA § 85-409), and it has been stated that, in all cases, special rights to the use of watercourse or to flow water onto the land of another may be acquired by prescription (Watkins v. Pepperton Cotton Mills, 162 Ga. 371 S.E. 69 (1926))”.- page 32.
- A prescriptive right to throw water upon the land of another may arise through 20 years uninterrupted use (pg 64).
- “Georgia does not impose strict liability on any party for damage caused by surface water runoff. Liability must be based on intentional or negligent conduct which proximately causes water damage.” (Uniroyal v. Hood)
- “The diversion of a stream so as to injure adjacent land constitutes a tort for which damages may be recovered (pg 49).
- “County cannot be liable for nuisance which does not rise to the level of taking of property...” (pg 53).
- A downstream property owner is obligated to receive the water that flows down upon his property by gravity from the upgradient property(s). However, “...it is now well established in Georgia that one land proprietor has no right to concentrate and collect surface water so that it is discharged upon the lower tract in greater quantities at a particular locality, or in a manner different from that in which the water would be received by the lower estate if it simply ran down upon it from the upper by the law of gravitation.” (Cox v Martin, 207 Ga 442, 62 S.E. 2d 164(1950); Weimer v. Cauble, 214 Ga 634, 106 S.E. 2d 781 (1959); McMillen Development Corp. v. Bull, 228 Ga 826, 188 S.E. 2d 491 (1972).
- “Conversely, the lower proprietor may not, by raising his lot, or by any other means, throw the surface water back upon the upper lands of another” (Farkas v. Towns, 103 Ga. 150, 29 S.E. 700 (1897); Mallard v. Pye, 216 Ga 645, 112 S.E. 2d 620 (1960); Edgar v. Walker, 106 Ga. 454, 32 S.E. 582 (1898)...pages 59-60.

“...It has been said in general terms that a landowner could take such reasonable precautions for his own protections as might be necessary to control such water on his own premises, and to this end might build a wall on his own land, provided it does not back up the water above or stop its natural flow below.” (Hendrix v. McEachern, 164 Ga 457, 139 S.E. 9 (1927). “ He cannot build gutters, sewers, ditches, or drains which concentrate water so as to throw it against his neighbor’s buildings in larger volume than would naturally flow. (Goldsmith v. Elsas, 53 Ga. 187 (1874). “It may, therefore, be necessary to negotiate with the adjoining owners for easements.” (O.C.G.A. § 44-5-175 (GCA §85-409) – pg 61.

MAGISTRATE COURTS

<https://georgiamagistratecouncil.com/>