

# BROOKEDALE WEST HOMEOWNERS ASSOCIATION

**Mission Statement:** To foster the sense of community among residents, to maintain and care for common property and to enhance the value of homeowner's property.

[www.brookdalewest.com](http://www.brookdalewest.com)

## **Backyard water issues, June 12, 2018 by Gordon Duda**

Results of a meeting June 12 with Tim Pollizzi, City of Rochester Hills Water Resources Coordinator, James Reynolds, newly elected President of Brookedale West Homeowners Association, Gordon Duda, past President and several homeowners, during a review of properties that had reported backyard water concerns.

First, thanks to everyone that responded to our Facebook request to learn about residents with water concerns in their yards. We had nearly two dozen replies.

I will explain the responsibilities of the City of Rochester Hills, the Brookedale West Homeowners Association and individual homeowners. I will also summarize the general findings of the City Engineer. James Reynolds can address specific details discussed as the group walked through backyards throughout our subdivision.

The City maintains the storm sewer drains that we see along the side of our roads. The ones with metal grates on the edges of the road. If they are not draining water, please call the City office. They feed into a network of concrete drains along the road and throughout our backyards.

The Homeowners Association is responsible for maintaining those underground concrete storm sewer drains that run throughout our properties. Periodically they surface with round metal grates in a backyard or driveway. Your association is responsible for repairs if they crack, fill with debris or collapse. That is a responsibility that several Homeowners Assn's just learned about a few years ago, including ours. We are nearing the expected lifetime of those drains and have been raising annual dues to build an appropriate reserve fund.

No faults were found with any of these drains during today's review.

Why then, are our sump pumps running more than normal and why is there wet ground or standing water in many backyards for increasing number of weeks?

Tim Pollizzi said that the higher than normal rain for the last two years has contributed to this condition throughout the city.

The root cause is not rain, but changes, over time, in the drain route of water through our yards, leading towards those concrete, metal grated storm sewers.

When the subdivision was new, contractors followed the city approved drainage plan. The land between each house was sloped into a slight 'V' shape to encourage water to flow away from the foundation of each house. Rain followed that 'V' according to the elevation of each property. Typically, water in the front of the house flowed down towards the road. In the back of the house water followed the 'V' depression down towards the back of each property and made a 90 degree turn into a larger 'V' shaped

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depression running between the backyards of all our homes from the highest elevation down towards the lowest elevation, then into a round metal grated storm drain.

After 40 years, things changed. Land settled, people added flower gardens, berms and trees. Water no longer had that smooth route to the drains and gathered in the lower, now settled land as wet spots or it settled in pools caused by berms from flower gardens. Our current 'rainy season' magnifies the condition.

Let's discuss sump pump drains. If sump pump water exits your house where the land is sloping towards the front, then white or black 4-inch drain pipe was installed, a few inches below the surface, by contractors or homeowners, toward the street. No direct sump or roof drain discharge is permitted to the street. There shall be no pipes brought to the curb to discharge such waters as this causes icing hazards as well as degrades the roadway. Per City Ordinance, all storm sewer discharge shall be far enough away from any property line to not cause a nuisance to an adjoining property. The traveled roadway is considered an adjoining property. However, you may have other options. If there is a storm structure on the property frontage, relatively rare in our subdivision, that would be the first choice, if you wish to connect your sump pump drain. All new roads in the last few years have an edge drain placed under the curb line, the second choice, if you want to connect your sump pump drain line. Check with James Reynolds and the City for permits and proper connection methods if you consider these options.

If that sump exits your house where your land slopes towards the back, the city regulations require that any piping run towards the backyard. Sometimes piping ends near the end of the homeowner's property; sometimes it also turns 90 degrees and runs under the surface, from property to property, until it enters a concrete storm drain. When that pipe fails or plugs up, the additional sump pump water flows on top of the ground to the storm drain. This exacerbates the wet condition of the ground.

Remember that the draining of sump pump water to the front or back of your yards is regulated by the city and was part of the original overall drainage plan for the subdivision.

Who is responsible for regrading the land, maintaining sump pump drain piping, and removing any berms or impediments to water flow?

Each homeowner is responsible for the grading of his/her land. Sump pump drain lines shall be maintained by the benefiting properties of that line. Stated differently, it is NOT the responsibility of the Homeowners Association or the City of Rochester Hills to regrade property and/or maintain sump pump drain lines.

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Another question concerns water flowing downhill from higher elevation yards to lower elevation yards. Can the lower yard's owner claim compensation from owners of the higher yards due to 'their water' collecting in the low spots on the lower yard? The answer is no. The solution is to regrade the lower yard to allow water to continue to flow to the storm drain, as was the case when the subdivision was new.

Further to this point, and as described in several sources, Michigan Courts follow a "Natural Flow Doctrine" as it relates to natural drainage rights (see at least - Hissong, Weeks, and Reed. "Legal Considerations for Drain Management." *The Nature Conservancy*, June 16-17, 2016, pg. 5.).

## *Michigan (Natural Flow Doctrine)*

The Natural Flow doctrine creates an upper (dominant) and lower (servient) estate, where the natural flow of surface water creates a "natural servitude" that encumbers the lower, servient estate. *Wiggins v. Burton*, 291 Mich. App. 532, 563, 805 N.W.2d 517, 563 (2011). **"The owner of the lower, servient estate must bear this natural servitude, and is bound by law to accept the natural flow from the upper, dominant estate."** *Id.* The owner of the lower estate cannot raise an artificial obstruction, such as a wall or a berm, to stop the flow of water onto his or her property. *Boyd v. Conklin*, 54 Mich. 583, 20 N.W. 595, 598 (1884). (emphasis added)

The purpose of the walk around today, with the water resources coordinator, was to identify the corrections needed and learn the most cost-effective approaches that homeowners can use to eliminate backyard water problems. Often, this will require several adjacent homeowners to work together. Please contact James Reynolds, [js9reyn@gmail.com](mailto:js9reyn@gmail.com), 248-416-0742 to get information that may help you solve your issue.

Did any value come out of today's walk around with the city engineer? Certainly.

One group of four neighbors joined us, listened to recommendations and now plan to repair plugged sump pump drain lines in their adjacent properties. Their land also requires some regrading but fixing the sump pump drain issues may reduce the wet spots to a tolerable level. They will take one step at a time.

A second group of homeowners received confirmation that their expensive plan for regrading was the only way to eliminate wet spots and standing water. Not good news, but confirmation that the measure was required.

As our subdivision ages, we will learn together about more challenges. Please consider joining your all volunteer Homeowners Association to learn and to help each other. Gordon Duda