

Understanding Storm Water Runoff from Off-Site Development: An Overview for Homeowners Associations

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The rapid development of residential subdivisions and commercial strip malls throughout Georgia has created storm water runoff problems for some community associations. Association lakes and ponds sometimes become silted out, or even filled in, by improper, illegal erosion and sediment controls. The water features that once attracted interested home buyers can quickly turn into a financial liability for the association and its members. Since many associations are obligated to maintain existing lakes and water features as part of their covenants, Boards should consider the impacts associated with managing storm water runoff from off-site developments.

With few exceptions, there are no natural lakes in Georgia. What are often referred to as lakes or ponds are in reality “impoundments” created when a stream or river is dammed. Lakes act as natural deposits for sediment and run-off through a process of erosion and sedimentation. These processes can be significantly accelerated when vegetation and topsoil are stripped during land disturbing activities. This results in unsightly silting of ponds and lakes that can diminish property values as much as eight to eleven percent of the Fair Market Value. Moreover, sediment is considered a “pollutant” and can greatly alter ecosystems, resulting in objectionable odors, degraded water quality and fish kills.

Georgia law requires that developments obtain a “Notice of Intent to Discharge Storm Water under the National Pollution Discharge Elimination System” (“NPDES”) prior to commencing land disturbance activities. NPDES permits are issued by the Georgia Department of Natural Resources Environmental Protection Division, and are enforced locally through city or county ordinances. The State of Georgia and Georgia Soil and Water Conservation Commission also maintain enforcement powers. Developers are required to submit detailed Erosion and Sedimentation Pollution Control Plans, and to certify that they understand the law and regulations. The developer must insure that excessive amounts of sediment-laden storm water are not discharged from the site. Georgia law also prohibits a developer from increasing the volume or concentrating the flow of storm water onto adjoining downstream properties.

A common source of erosion and sedimentation is the failure to employ “Best Management Practices” (“BMPs”). Common BMPs include silt fencing, hay bales, and establishing suitable ground cover. Because development activities result in increased volume of storm water runoff, due to the creation of impervious surfaces, detention ponds are commonly required. The failure to install and maintain detention ponds can greatly contribute to the damage caused by excessive erosion and sedimentation.

First, associations should be diligent in managing water features on their property. Periodic inspections should be recorded. A digital camera with date pack is invaluable for this purpose. Inspections should be conducted after periods of moderate to heavy rainfall, as this is typically when storm water runoff rates are highest.

Second, if a probable source of storm water runoff is identified, such as a proximate upstream development, the City/County Community Development Agency should be contacted regarding a request for inspection. The agency may issue a verbal warning, a Notice of Violation, or a Stop Work Order to the developer. Although limited in their effectiveness, such enforcement actions create an important “paper trail” to demonstrate that the developer had notice of the problem.

Third, if the problem persists, contact an attorney who specializes in environmental claims. Georgia law in the area of nuisance and trespass, along with traditional theories of negligence and violations of statutory laws and regulations, is very favorable to HOAs and other property owners who have suffered damages from storm water runoff. Attorneys’ fees, costs of litigation and punitive damages may be recovered.

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