

The Basics for Watershed Projects

Easements

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Real Property

Is the land and that which is affixed to it or which is incidental or appurtenant to it.



Conservation Districts

To construct a watershed retention structure, to impound water, or install other works of improvements, a District must either:

1. Own the land, or
2. Have a legal right to use the land (Easement)



Easement

- A right of one person to go onto the land of another and make limited use of that land.
- Example: Water Retention Structures
- In Oklahoma the costs of repair and maintenance are the duty of the easement holder if there is no agreement to the contrary.




Why an Easement

- A useful and well established real property legal tool – used everyday for roads, driveways, utilities...
- Temporary, set length of time, permanent
- Recorded in land records – runs with the land
- Provides notice to subsequent landowners



General Language

District easements, in general:

- allow for the construction of a dam, for permanent storage of water in the sediment basin,
 - for floodwater to be temporary stored after heavy rains in designated flood pool areas, and
 - for District representatives to have access to the dam for operation, maintenance, inspections and repairs.
 - general right of access
 - block or elevation easements
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Conditions

- Impose conditions upon the districts to “operate and maintain, and inspect” the structures
- Issues that may arise is what is the district’s responsibilities as to operation and maintenance



Perpetual

It is common for easements to be of a perpetual nature which means that it stays with the property irrespective of change of ownership.



Landowner Cannot

Under an easement the landowner cannot:

- Deny the district access to operate and maintain a structure,
- Undertake activities that would impair the purpose of the district's structures,
- Undertake activities that damage the structure including its appurtenances (example: the principle or emergency spillways), or
- Allow or convey to others the ability to do any of the above.





Landowner May

Under an easement the landowner may:

- Impose reasonable restrictions on the district's points of access to the structure;
- Utilize the area around the structure in a manner that won't impair the project; and
- Utilize the structure in a reasonable manner and in ways the landowner and district can agree upon.
 - Before a district agrees to a landowner's use, if the use is not specifically provided for in the easement then the district needs to think long-term about who else might want the same benefit and about the ramifications,



Problems



Problems

Development of rural areas in which a floodwater retarding structure is located is creating more problems.

- Access issues

- Outright denial of access
- Limited access

- Use issues

- Objections to maintenance (rehabilitation)
- Constructive or silent agreement to uses by prior landowner (this is where long-term thinking about agreeing to landowner uses comes into play. If the original landowner got to do it, can ALL successors do it?)



Enforcement of Easement

When a district has an easement, it is accepting the responsibility to protect and care for it for a very long time - perpetuity.

There are three key components to easement enforcement.

- 1.) Preventing violations from occurring in the first place.
- 2.) Having the ability to deal with a proposal to change an easement's restrictions.
- 3.) Having the means to enforce the restrictions of the easement when violations occur.



Prevention

Preventing violations from occurring should be your first objective.

- It begins with a carefully thought out easement deed. Look to the future.
- Every easement is different.
- Are there possible points of contention that could crop up?
- Try not to leave anything to chance. A “well-drawn easement” is the beginning of a strong defense. A strong cooperative working relationship with the landowner is important and make sure the district periodically explains the details of the easement and its restrictions to subsequent landowners.
- Also meticulous, consistently and timely monitoring records is your next line of defense.
- Allow for easy access to your organization and information regarding the easement.



Changes and Amendments

- Proposals to change easement restrictions usually come from subsequent property owners.
- The easement holder should be wary of changing restrictions included within their easements.
- There are times when changes are necessary; when mistakes have been made during the drafting process for example
- In some instances the property owner wants to change the amount of area the easement covers
 - beware of these requests because they can have future consequences



Legal Remedies

- If a violation does occur and cannot be dealt with successfully through negotiation and settlement with the landowner or other entities then a district needs to look at civil legal remedies.
- When a violation occurs that must be stopped immediately before irreparable harm can be done, a district may have to seek an injunction.
- “An injunction is a writ granted by a court of equity which requires someone to do or refrain from doing a certain act.”
- If you have to go to court, be prepared. If you have documented the easement history, you have a much better chance of success.
- Going to court should only be done as a last resort. It is an expensive proposition and can ruin the partnership created between the landowner and easement holder (the district) that has taken time to create. Your best enforcement option is to steward your easements properly and remember that your landowner is your greatest asset.



Interference

- Interference with an easement is a form of trespass. Therefore if a landowner interferes with the purpose and use of the easement the district, as the easement holder, is entitled to equitable relief. The district can seek a civil remedy against a landowner for unlawful interference with the district's enjoyment of the easement, particularly when the obstruction of an easement is of a permanent character.
- Courts frequently enjoin the obstruction of an easement and order the removal of encroaching structures at the landowner's expense. The fact that such removal may be costly is not ordinarily a consideration; however, a court may balance the relative hardships of the parties when the expense of removing an innocent encroachment would be disproportionate to the injury suffered by the easement holder.
- An easement holder also is entitled to protection from acts of third parties that interfere with the enjoyment and purpose of the easement. Such protection is available against third parties to the same extent that it is available against the landowner. For example, an easement holder may recover damages from or obtain an injunction against third parties who construct a building encroaching on the easement area, use the easement without authorization, or impede travel by parking cars on the easement area.



Limit Future Problems

- Make certain your easements are RECORDED at the courthouse
- Make sure the easement documents have the correct name of the grantor or landowner
- Spell out agreed upon uses in the easement
- Spell out unacceptable uses
- Spell out terms of access (i.e. location, conditions, notice)
- Meet your obligations
- Communications with landowners
 - Keep up with the landowners
 - Inform owners of important issues (i.e. oil and gas issues, pipelines)
 - Inform new owners about the structures and the easements
 - Keep them updated about what the structure is – spillways, berms, flood pool, etc..
- Keep records of what you do and say



Performing O&M

- Check your easement before going to perform O&M work
- Make sure you have an easement and that it has been properly filed in the county clerks office
- Verify that the current land owner knows about the easement
- Know what is in your easement
 - Are there special requirements or restrictions (i.e. access)



Continued

- General Rule on priority in easements – first in time, senior vs junior easements



Basics Review

- Property Law can be complex
- Disputes between landowners and districts may requires legal assistance
- The Districts should avoid giving legal advice to landowners
- Districts should refrain from getting involved in property disputes and issues – i.e. water, fencing...



Development Guidance

- Landowners can use their land so long as it does not interfere with the operation and maintenance of the flood control structure(s) as built and not interfere or impede future modifications and repairs.
- Landowners **should seek the advice and concurrence from the District prior to the construction of any works of improvements, this includes but is not limited to buildings, docks, location of utility lines, fencing around the dam...**
- **All structures and homes need to be located at least 5 feet above top of dam elevation. The District needs easy access to conduct inspections, perform repairs, and room for a staging area when conducting repairs and modifications. Also, the District will need to reserve more expansive areas around the auxiliary spillway and existing dam for rehabilitation to bring the structure up to high hazard standards, when applicable.**



- Any damages, impediments, or problems created by a landowner(s) or the developer will be addressed with the landowner(s) or the developer. The District will seek reimbursement for the cost of repairing the damages from those that created the damage.
- Developer or HOA needs to include information to all landowners in the development that jumping off and swimming near and around the principal spillway tower is dangerous and should be prohibited and discouraged.
- Developer and landowners should not tamper or manipulate the tower in any way. No alterations or additions (ie. diving boards, slides, opening slide gate, or blocking inlet pipe so lake will hold more water).
- The vegetation on the dam and in the auxiliary spillway needs to be maintained. Landowners should not be creating bare areas or trails (ie. ATV) across the dam and spillway and spillway berms. The auxiliary spillway should remain clear with no improvements, holes, poles, fences, gardens, and should not be used as storage area for equipment.



Per Oklahoma Statute 27A Section 3-3-412, the District is not responsible for the water quality of the water stored by the structure(s).

Homeowners Association and/or landowners assume the risks and liabilities of building, living, boating, fishing, and swimming in and around the flood control structure(s).



Any Questions?

THE END

