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From: Ron vonLembke
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To: Property Owners, Developers, Realtors

Subj: The Riparian "Reasonable Use" of Water – How Much Water Can I Drain Onto My Neighbor's Property? How Much Water Can I Use From My Well?

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The ability of a private property owner in North Carolina to use or dispose of water flowing over or under his land is largely controlled by the "reasonable use" doctrine. Under this doctrine, the owner has the legal right to make reasonable use of his property, even if his development alters the flow of water and causes some harm to other downstream owners. The upstream owner incurs liability only when his interference with the flow of water is unreasonable and causes substantial damage.[1]

The big question, of course, is: "what is considered a reasonable use?" The answer – like many legal issues – is: "it depends." North Carolina's appellate courts have offered some guidance, but all water rights controversies eventually boil down to a comparison of the facts of each case and the rights and injuries suffered by each party. Judges and juries will normally look at the intended use (or disposal) of the water, the nature and size of the stream, the importance of the use to competing property owners, and the extent of the injury suffered by one party in comparison to another.[2]

So what does this mean to you or your client? Well, if you are a developer, you need to be aware of the amount of water your project is going to push onto the adjoining property in its before and after condition. While a small increase in the amount of water drained may not be actionable, a significant increase could give rise to a violation of the reasonable use rule. Indeed, even if your project does not increase the total volume of water being drained, you could be in violation of the rule if your project concentrates the flow of water into a narrow point or you change the physical location of the drainage onto the adjoining property.

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[1] *Lakeview Condominium Ass'n v. Village of Pinehurst*, 2007 WL 2244549 (N.C.App. 2007) .
[2] *J.W. Pendergast v. Aiken*, 236 S.E.2d 787 (1977).

Although we are currently blessed in Eastern North Carolina with an apparent abundance of water, we will at some time in the future reach a point where the right to consume scarce water flowing on or under land will be of primary importance. Indeed, we are starting to see this happening in Western and Central North Carolina with regard to the effect of large-scale water users such as mining operations and public wells. Further, we can anticipate additional regulations in our section of the state concerning the use of underground acquifers for public and private use.

The firm of vonLembke-Faleris maintains a concentration in the area of water and drainage law. In addition, the firm can help you or your client navigate the often tricky shoals of state regulations concerning flood zones, storm water, and the implementation of the Coastal Area Management Act (CAMA).

We encourage you to call our offices to schedule a no-cost consultation at which we can discuss water law and its relationship to your right to put your property to reasonable use.

Please give us a call at 910-577-7771 to schedule an appointment. We look forward to working with you.