

Flooding/Road Improvements: Massachusetts Appellate Court Addresses Private Nuisance Issue



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A Massachusetts appellate court addressed in an August 10th Opinion an issue arising out of the flooding of property allegedly caused by adjacent road improvements. See *Gillis v. Town of Uxbridge*, No. 22-P-641, 2023 WL 5111539 (Mass. App. Ct. Aug. 10, 2023).

The question considered was whether expert testimony was required to establish that the actions involved in constructing the road improvements were unreasonable in the context of a private nuisance action.

Plaintiffs Richard and Gayle Gillis purchased a home in 2016. They stated there were no issues with flooding at that time.

The Town of Uxbridge in 2018 made improvements to the plaintiffs' street by removing a berm at the top of their driveway and by elevating the street. The plaintiffs' property began to flood during significant rain or snow melting events following the road improvements.

The Plaintiffs filed a private nuisance action in the Superior Court. They submitted video evidence depicting water pooling around a storm drain across the street. It would then travel from the top of their driveway onto their property.

Plaintiffs claimed Uxbridge's failure to control the flow of water onto their property was unreasonable and constituted a nuisance.

Uxbridge moved for summary judgment on the grounds that expert testimony is required to establish that the activities undertaken by the Town causing the flooding were unreasonable. The town cited *Triangle Ctr., Inc. v. Department of Pub. Works*, 386 Mass. 858, 863-865 (1982).

The Superior Court granted Uxbridge's motion and the plaintiffs appealed.

The Appeals Court recognized that expert testimony aids decision-making:

... in areas where scientific, technical, or other specialized knowledge would be helpful. *Gillis*, 2023 WL 511139, at *3, quoting *Commonwealth v. Pytou Heang*, 458 Mass. 827, 844 (2011).

Expert testimony however was noted to not be required when lay-knowledge is sufficient to guide a jury to the relevant facts. *Gillis*, 2023 WL 511139, at *3, quoting *Glottone v. Ford Motor Co.*, 95 Mass. App. Ct. 704, 708 (2019).

The Appeals Court concluded that a lay-jury would understand that the flooding on the plaintiffs' property only occurred after the town redeveloped the street. Further, the video provided enough evidence for a juror to observe the flooding. They could recognize that the berm the city removed would have diverted water away from the plaintiffs' property. No expert testimony would be necessary to present these facts or for a jury to conclude that the town of Uxbridge caused the flooding to occur.

A copy of the Opinion can be downloaded [here](#).