

Flood Control/Adjacent Landowner: Minnesota Appellate Court Addresses Legality of Berm



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05/28/2024

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The Court of Appeals of Minnesota (“Court”) addressed in a May 20th Opinion, issues arising out of a landowner’s actions to address water flow onto her property. See *Plymouth v. Kristensen* No. 27-CV-21-8038.

The question considered was whether the landowner’s berm system violated sections 425.01, 21105.04, and 400.15 of the Plymouth Code of Ordinances (“PCO”).

Hildania Kristensen (“HK”) constructed a berm to address storm or rainwater moving onto her property. She claimed that her neighbor’s landscaping caused flooding in her yard.

The nine-inch berm she constructed failed to discharge the water to the city’s storm water drainage system. This in turn caused flooding.

PCO section 21105.04 states that no land shall be developed, and no use shall be permitted that results in water runoff causing flooding, erosion, or deposit of sediment on adjacent properties which is inconsistent with the grading and erosion of control plan provisions of section 425 of the City code. Further, PCO section 425.01 states before a grading or building permit is issued for construction, a satisfactory grading and erosion control plan must be approved by the city engineer.

The Court upheld the lower court’s holding that HK violated these PCO provisions. It noted that section 21105.04 does not include language relating to construction or permits. HK violated the PCO when her actions (i.e., construction of the berm) caused flooding on an adjacent property inconsistent with the grading and erosion control plan.

The fact that she had a permit, or the berm constituted construction was deemed irrelevant to whether there was a violation of section 21105.04 with reference to section 425.01.

PCO section 400.15 “requires that systems or devices designed to collected water ‘be constructed ... to discharge the water to the Storm Water Drainage System.’”

HK’s berm system collected water without discharging water to the storm water drainage system. PCO does not define construction. It was therefore interpreted in accordance with the common and accepted usage.

This was accomplished by referencing the dictionary definition. Construction is defined as the act or process of constructing. HK's berm was held to constitute construction. Consequently, HK's berm violated PCO section 400.15.

The Court also addressed HK's easement argument despite the fact it had not been raised in the lower court. It held that the natural flow of water from an owner's upper land across a neighbor's lower land is a natural right. In other words, it is not an easement. Therefore, the Court dismissed this argument.

The Court ordered that HK grade and fill the property and restore its original grading consistent with the approved grading and erosion control plan. HK must also ensure that the water flows through the property and into the storm water drainage system.

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