# Surface Water Flow/Adjacent Property Owner: Drew County, Arkansas Circuit Court Action Filed Alleging Nuisance/Trespass/Negligence

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BKB, LLC ("BKB") filed on December 15th a Complaint for Damages and Injunctive Relief ("Complaint") against JMG Investments, Inc. ("JMG") alleging certain causes of action related to movement of surface water between the adjacent properties. See Case No. Cv-25-292.

The adjacent properties are described as follows in the Complaint:

- The BKB Property is improved with a commercial building commonly known as the Mazzio's restaurant and an associated paved parking lot ("BKB Property").
- The JMG Property is a vacant commercial parcel adjoining the BKB Property along their mutual-boundary ("JMG Property").

BKB alleges that surface water for decades resulting from ordinary rainfall has drained according to the natural lay and grain of the land across and between the BKB and JMG parcels without artificial impediment or re-engineering by BKB. It further alleges that BKB has not altered the topography in any manner that has increased, concentrated, or diverted surface water toward the JMG Property.

JMG is stated to have demanded that BKB fund or substantially contribute to a new engineered drainage system on or adjacent to the BKB Property to divert ordinary surface water that historically has flowed across the properties. The proposed system is described as including:

- Retaining walls.
- Diversion box.
- Subsurface piping.
- Concrete low-water crossing, would have required a substantial payment by BKB.

BKB is stated to have declined to pay for the proposed system, asserting that:

… Arkansas law does not impose a duty on an upper or neighboring landowner to re-engineer its property or install new drainage systems to benefit an adjacent landowner in the absence of alteration or concentration of surface water flow.

JMG is stated to have begun constructing a wall or barrier directly along the boundary between the BKB and JMG parcels which is described as approximately two feet in height. It is alleged that JMG intends to continue and/or erase or extend this barrier.

The Complaint alleges that the wall has already blocked the historic and natural path of surface water, which now pools and accumulates on the BKB Property. Such pooling is alleged to be damaging BKB's paved parking lot, undermining subgrade and asphalt integrity. It also alleged to threaten imminent flooding of the commercial building during moderate to heavy rainfall events.

The Complaint alleges that the barrier unlawfully obstructs the natural and historical flow of surface water and will continue to cause property damage to BKB. It is further alleged to pose a substantial risk of irreparable harm which includes loss of use of the premises, structural and pavement failures, business interruption, and safety hazards if not promptly enjoined.

The Complaint requests declaratory and injunctive relief and alleges the following causes of action:

- Private Nuisance
- Trespass
- Negligence

A temporary restraining order, a preliminary and permanent injunction are requested to:

- Prohibiting JMG from constructing, maintaining, or elevating any wall, berm, or barrier that obstructs the historical and natural flow of surface water from or across the BKB Property;
- Requiring JMG to remove, notch, open, or otherwise modify the existing barrier as necessary to restore historic drainage patterns and prevent impoundment on the BKB Property; and
- Enjoining JMG from undertaking any future drainage measures that unnecessarily damage BKB's property.

Damages are also requested.

A copy of the Complaint can be found here.