



## CITY OF CAMBRIDGE

Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139  
Tel. (617) 349-4121  
Fax. (617) 349-4134

*Russell B. Higley*  
City Solicitor

*Donald A. Drisdell*  
Deputy City Solicitor

*Michael C. Costello*  
Assistant City Solicitor

### Legal Counsel

*Birge Albright*  
*Gail S. Gabriel*  
*Arthur J. Goldberg*  
*Linda A. Stamper*  
*Deborah R. Cautela*  
*Nancy E. Glowa*

May 1, 1996

Mr. Robert W. Healy  
City Manager  
City of Cambridge  
City Hall  
795 Massachusetts Avenue  
Cambridge, MA 02139

**Re: Council Order No. 10, dated 4/1/1996**

**Re: City's Responsibility To Property Owners When City  
Water Mains Or Pipes Under Their Property Break**

Dear Mr. Healy:

You have asked us to review the above referenced Council Order, and to advise you as to property owners' rights concerning damage that might occur on or to their property from a break in the City's water mains which are located under their property.

The rights and responsibilities of both the City and the property owner in these circumstances would be governed by applicable laws regarding real property. Generally, where the City has a water main located under someone's private property, the water main was either installed on City owned property which was later conveyed to the private property owner, subject to the City's retention of a sub-surface easement for the water main, or the City obtained a sub-surface easement from the private property owner prior to installing the water main. The private property owner usually has benefitted from this exchange of property rights, because a) the private property owner who purchased the property from the City paid a lower original purchase price because of the property interest retained by the City as to the easement, or b) the private property owner may have been paid for the easement rights obtained by the City in order to install the water main.

Where a sub-surface easement exists as to a particular use under another's real property, the owner of the real property has title to what is known as a "dominant" estate, while the holder of

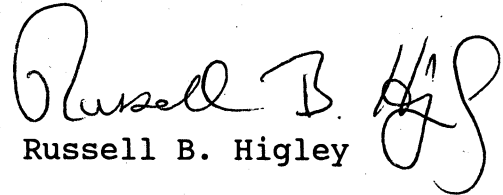
the easement rights has what is known as a "subservient" estate. The owner of the dominant estate has title to the property and may use the property for any and all recognized uses of the property, so long as such use does not interfere with the easement holder's rights as to the property. The owner of the subservient estate has a much narrower property interest, which is to make use of the property consistent with the rights granted under the easement, and for no other purpose. Thus, a sub-surface easement for the installation and maintenance of a water main generally entitles the owner of that easement only to have the water main installed and remain under the property and, in the event that maintenance or repairs are necessary, to enter the property for the purpose of performing such maintenance or repairs. Any such rights exist only if granted by the terms of the original easement, however.

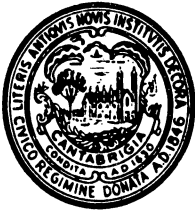
Therefore, while an easement holder is generally permitted to dig under the surface of the property in order to perform such repairs, the easement holder is usually required to return the surface to its prior condition. However, the rights of the easement holder are governed specifically by the terms of the original grant of the easement. Thus, for example, where an original grant from long ago may have indicated that the property was used as farmland, and the easement holder requiring access for sub-surface repairs was to return the surface to a level field suitable for planting the next crop, the owner of that easement today would not be required to rebuild a house later built over the sub-surface easement. On the other hand, if a structure existed on the property prior to the grant of the easement, such easement would typically have been granted subject to the easement holder's obligation to avoid destroying any part of the structure in order to gain access to and repair the water main, or, if that were unavoidable, to return the structure to its prior condition or better condition upon completion of the repairs.

Because each sub-surface easement is subject to the terms of the original grant, it is difficult to generalize what responsibilities the City might have to any property owner under whose property the City holds such an easement. One would have to look at the chain of title in any given case and make a determination as to what property rights were conferred by the grant of the easement, and what conditions the grant was subject to. In the event that a water main located under someone's property breaks or needs maintenance and the City must gain access to the main, the private property owner should consult with his or her attorney to determine what rights and responsibilities the City has under such circumstances, or should examine the title documents which granted the easement rights to make that determination. Or, if requested by the City, the Law Department could provide assistance in making such a determination.

To the extent that the Council Order may be requesting the development of a policy if there is not such a policy already in place, it would make sense to analyze the circumstances and terms of each easement prior to formulating any such policy. It appears that some or most of the City's sub-surface easements were obtained by the City a long time ago, and that each easement may be different and specific to the site of the property and the terms of the easement granted. Accordingly, it would be difficult to generalize as to the City's responsibilities to any one property owner without examining each of the easements individually.

Very truly yours,

  
Russell B. Higley



EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

RICHARD C. ROSSI  
Deputy City Manager

CITY OF CAMBRIDGE  
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300  
FAX. 349-4307

May 6, 1996

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 22, regarding the City's responsibility to property owners who have water lines under their property due to past easements, received from City Solicitor Russell B. Higley.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy", is written over a horizontal line.

Robert W. Healy  
City Manager

RWH/mec  
attachment

Consent Agenda #10

S-250

Relative to Awaiting Report Item  
Number 21, regarding the City's  
responsibility to property owners  
who have water lines under their  
property due to past easements.

In City Council May 6, 1996

*Placed on file.*