THE WATER BUREAU
SPECIAL MEETING
555 Main Street, Hartford
Telephonic Only Meeting
Tuesday, April 28, 2020

Present: Commissioners Andrew Adil, Peter Gardow, Denise Hall, Georgiana Holloway, Gary LeBeau, Jacqueline Mandyck, Dominic Pane, Pasquale J. Salemi, Raymond Sweezy, Alvin Taylor and District Chairman William A. DiBella (11)

Absent: Commissioners Avery Buell, Daniel Camilliere, David Ionno and Special Representative Michael Carrier (4)

Also Present: Commissioner Donald Currey
Commissioner Allen Hoffman
Commissioner Bhupen Patel
Scott W. Jellison, Chief Executive Officer
Christopher Stone, District Counsel
Carl Nasto, Assistant District Counsel
John S. Mirtle, District Clerk
Christopher Levesque, Chief Operating Officer
Susan Negrelli, Director of Engineering
Robert Schwarm, Director of Information Technology
Michael Curley, Manager of Technical Services
Allen King, Real Estate Administrator
Carrie Blardo, Assistant to the Chief Operating Officer
Victoria S. Escoriza, Executive Assistant
Julie Price, Professional Level Trainee
David Silverstone, Consumer Advocate

CALL TO ORDER

Chairman Sweezy called the meeting to order at 12:04 PM

In accordance with Governor Lamont's Executive Order #7B, this meeting was telephonic only.

PUBLIC COMMENTS RELATIVE TO AGENDA ITEMS

Attorney Elizabeth Smith spoke regarding agenda item #4, the Rescission of Encroachment Approval for 594 Albany Turnpike in Canton, CT and provided the following written letter.

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March 25, 2020

VIA E-MAIL TO: JMIRTLE@THEMDC.COM

John S. Mirtle, Esq.
Assistant District Counsel/District Clerk
The Metropolitan District Commission
555 Main Street
P.O. Box 800
Hartford, CT 06147

Re: Proposed March 25, 2020 Water Bureau Resolution, 894 Albany Turnpike, Canton, CT

Dear Mr. Mirtle:

This is to acknowledge receipt of your letter dated March 20, 2020, addressed to me as counsel for David and Jacqueline Mott (the "Property Owners") in the above-referenced matter. Before responding to your letter, please note that the contact information you have for me is incorrect. As of August 2019, I have been working at the firm of Ford Harrison LLP. My correct contact information is contained in this letterhead, and in the email transmitting this letter. Please also ensure that you copy my co-counsel, Joseph M. Mott, on all correspondence related to this matter.

We would also ask that you provide a copy of this letter and attachment to the Water Bureau for its consideration prior to any vote on the proposed resolution. As set forth more fully below, the Property Owners submit that the Water Bureau's proposed "rescission" of its prior authorization for the Property Owners to install underground utilities across the MDC's easement at 894 Albany Turnpike, Canton CT (the "Property") is improper and invalid for at least three reasons.

First, the resolution is the subject of pending court proceedings captioned *MDC v. David B. Mott, et al.*, Docket No. HHD-CV17-6074833-S (the "Action"). The principal issue in the Action is precisely the subject of the proposed resolution you sent, i.e., the right of the MDC to unilaterally force a written modification of the applicable easement agreement upon the Property Owners through the MDC's use of the self-styled "Encroachment Agreement." As such, any attempt to usurp an issue that is presently pending before the Superior Court exceeds the scope of the Water Bureau's and the MDC's authority and has no legal effect. The issue can only be resolved either by Court ruling or by a settlement agreement by the parties.

Second, the proposed rescission by the Water Bureau would constitute a breach of the Interim Settlement Agreement entered into between parties to the Action on February 16, 2017 (the "Agreement") (copy enclosed). Specifically, Paragraph 2 of the Agreement specified that "[t]he Mott Defendants and other Defendants may resume construction-related activities concerning the [Property] immediately, ***including excavation and the installation of the utility***

lines/conduits and a paved driveway ..." (Emphasis added.) The authorization to proceed with the installation was contingent upon certain criteria required by the MDC and outlined in subparagraphs 2(a)-2(c), all of which the Property Owners satisfied.[1] Further, the Agreement provided in Paragraph 3 that "[n]o Encroachment Agreement will be signed or required at this time and no recording will be made in the land records regarding any of the improvements/utilities located in the right-of-way at this time, but the *Plaintiff reserves its right to seek that relief in the future*." (Emphasis added.) Accordingly, the plain language of the Agreement indicates that any relief the Water Bureau/MDC should wish to pursue regarding the signing of an Encroachment Agreement must be done within the pending Action. The Water Bureau and the MDC are not at liberty to disregard the Court proceedings or the obligations agreed to under in the Agreement. Additionally, it should be noted that the Agreement was entered as an Order of the Court, Berger, J. (Dkt. Entry 106.00), and any attempt by the Water Bureau/MDC to act contrary to that Order by retroactively "rescinding" their authorization of the installation of utilities would constitute contempt of that Order.

Third, the proposed rescission would be improper because the asserted basis for the resolution is not factually or legally correct, i.e., a purported "encroachment" on the MDC's "right-of-way."[2] The Court filings and the land records demonstrate that the MDC has mischaracterized the area as a "right-of-way," when in fact the MDC only has an easement across the Property. An easement is far different than a right-of-way under Connecticut property law and does not grant the MDC an ownership interest in the Property. Because the MDC has no ownership interest in the subject strip of land it has no legal authority to restrict or interfere with the underlying right of the Property Owners to use their land in accordance with the rights enjoyed by all similarly situated residential property owners, provided that the use does not unreasonably interfere with the rights of the MDC under the easement grant.

The MDC's continued efforts to interfere with the Property Owners' rights to enjoy their property is a violation of the limited use privilege it enjoys under the terms of the easement grant. In addition, providing a false and misleading narrative of the alleged "facts" as set forth in the draft resolution constitutes bad faith. Two notable examples of misrepresentations relied upon to support the Water Bureau's adoption of the draft resolution you provided are that (1) the Property Owners allegedly proceeded "with construction of the single-family house on the Property in complete disregard of the safety and integrity of the Main" and (2) the Property Owners allegedly failed to work with MDC in good faith to relocate the propane tank to a mutually acceptable location on the Property where it will not pose any threat or danger to the safety or integrity of the [water main]." Neither statement is supported by the facts.

The "complete disregard" comment in the draft resolution is refuted by several salient facts. First, when Property Owners advised the MDC that they were constructing their home and voluntarily provided information to the Water Bureau, the Water Bureau's staff concluded that: "Staff has reviewed the proposed construction plans and determined that *there will be no negative impact on District property or infrastructure*." See Minutes of the Water Bureau

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1 Indeed, MDC officials were present on the Property when the excavation for the propane tank occurred.

2 The resolution also inaccurately states that the MDC is pursuing a "quiet title" action against the Property Owners. The MDC has no such claim pending; in fact, it is the Property Owners who have asserted a quiet title action in their counterclaim against the MDC.

Special Meeting of March 7, 2016 (emphasis added). Second, the Property Owners subsequently fully complied with the requirements in Paragraph 2 of the Agreement, including having MDC inspectors on site at all relevant times, at the Property Owners' sole cost and expense. The Water Bureau's own minutes and the Court record also directly contradict the draft resolution language referencing that the utility was "a one-time encroachment;" and "topsoil excavation." In particular, the topsoil excavation was an express part of the Interim Settlement Agreement and its removal occurred at the end of the construction, as the parties agreed.

With regard to the relocation of the underground propane tank, the MDC has failed to cite to any legal authority that would allow the MDC to object to its location, which is outside of the area of the easement. In addition, it should be noted that the Agreement does not require that the propane tank be relocated. Instead, it merely required that the parties "discuss, in good faith, ***the potential relocation of the propane tank*** ... which is currently located outside of the [MDC's] right of way." Agreement, ¶ 5. Given that the propane tank is outside of the MDC's easement, any demand by the MDC that it be relocated would involve a taking of property, for which the MDC would need to provide just compensation under Connecticut eminent domain law.[3] See, e.g., *Westchester v. Greenwich*, 227 Conn. 495, 503 (1993) (any "direct and immediate interference with the enjoyment and use of the land" of a property owner entitles the property owner to seek such compensation).

Moreover, the issue regarding the propane tank is controlled by the pending Court proceeding, and the Court's existing jurisdiction over this subject matter preempts the Water Bureau's proposed action to rescind the prior authorization. This is particularly so given that the basis for the proposed revocation action is premised upon the MDC's claim that the Property Owners allegedly breached the Agreement that was entered as an Order in the pending case. The MDC has no evidence to substantiate the assertion, and no such finding has been made by the Court.

Based on the foregoing, we would reiterate that any action by the Water Bureau/MDC to proceed with the proposed rescission as set forth in the draft resolution would be improper and a legal nullity. Proceeding further with the proposed action as outlined in the draft resolution would also constitute a breach of the Agreement and an act of bad faith by the Water Bureau and the MDC.

As always, the Property Owners remain open to discussions in an attempt to resolve these issues, but they should be addressed in the context of the pending lawsuit.

Finally, please be advised that I and the Motts intend to participate in the 4:00 p.m. telephonic meeting of the Water Bureau. Please ensure that the Bureau is provided with a copy of this correspondence prior to that meeting.

Please feel free to contact me if you would like to discuss the matter any further.

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[3] It also should be noted that the MDC has failed to produce any evidence to support its assertion that that the current location of the propane tank "pose[s] a threat or danger to the safety or integrity of the Main."

Very truly yours,

Elizabeth M. Smith

Elizabeth M. Smith

Enc.

Cc: Joseph M. Mott, Esq.
Carl R. Nasto, Esq.
Tony E. Jorgensen, Esq.

DOCKET NO. HHD-CV17–6074833-S	:	SUPERIOR COURT
THE METROPOLITAN DISTRICT	:	J.D. OF HARTFORD
PLAINTIFF		
VS.	:	AT HARTFORD
DAVID B. MOTT, *ET AL.*	:	FEBRUARY 16, 2017
DEFENDANTS	:	

AGREEMENT

The above matter is before the Court on the Application for a Preliminary Injunction (the "Application") by the Plaintiff, The Metropolitan District (the "Plaintiff"), and the Objection to the Application by the Defendants, David B. Mott and Jacqueline L. Mott (together, the "Mott Defendants"). The Plaintiff and the Mott Defendants (collectively, the "Parties") have reached an agreement to resolve the pending Application on the terms and conditions set forth below.

1. The Plaintiff will withdraw its Application, without prejudice.

2. The Mott Defendants and the other Defendants may resume construction- related activities concerning the Mott Defendants' home at 594 Albany Turnpike, Canton, Connecticut immediately, including excavation, and the installation of the utility lines/conduits and a paved driveway subject to:

a. The Mott Defendants' adherence to the construction conditions specified by the Plaintiff as set forth in the resolution of March 7, 2016 during the installation/construction period except that the only insurance coverage required shall be for General Liability with coverage limits of #1million per occurence and #2million aggregate; Environmental Pollution Liability with a limit of #1million per occurence; and Umbrella Coverage with coverage limits of #5million per occurence by the Mott Defendants' excavation contractor during the period of the utility and driveway installation; and naming the MDC as an additional insured; and

b. The Mott Defendants agree to indemnify the Plaintiff for any damage to the water main that occurs which may result during the installation of the utilities and construction of the driveway caused by the Mott Defendants or their contractors, agents, or employees for costs of any kind.

c. The MDC inspector on site shall have the authority to temporarily halt work if in his/her discretion the integrity of the pipeline is threatened.

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3. No Encroachment Agreement will be signed or required at this time and no recording will be made in the land records regarding any of the improvements/utilities located in the right-of-way, but the Plaintiff reserves its right to seek that relief in the future.

4. The mound of topsoil located on the easement area was placed in that location to limit vehicular traffic over the water main during construction and will be removed by the Mott Defendants and the easement area returned to grade upon completion of construction. restored per the terms of the original easement grant

5. The Mott Defendants agree to discuss, in good faith, the potential relocation of the propane tank at the Plaintiff's sole cost and expense which is currently located outside of the Plaintiff's right-of-way but in close proximity to the pipeline. However, the relocation of the propane tank is subject to agreement of the Parties and approval by the local permitting authorities including, but not limited to, the Town of Canton and the Farmington Valley Health District and manufacturer recommendations regarding appropriate installation standards.

Agreed to this 16th day of February 2017,

Tony E. Jorgenson, Esq.
The Jorgenson Law Firm, LLC
Counsel for Plaintiff, The MDC

Joseph M. Mott, Esq., *Pro Hac Vice*

James R. Byrne, Esq.
Counsel for Defendants
David B. Mott and Jacqueline L. Mott

APPROVAL OF MINUTES

On motion made by Commissioner Pane and duly seconded, the meeting minutes of February 3, 2020 were approved.

594 ALBANY TURNPIKE (ROUTE 44), CANTON, CT
RESCISSION OF ENCROACHMENT APPROVAL

To: Water Bureau for consideration on April 28, 2020

On March 7, 2016, upon approval and recommendation of the Water Bureau, The Metropolitan District Commission (the "Board"), approved a request by David and Jacqueline Mott (collectively, the "Owners"), who own a certain parcel of land known as 594 Albany Turnpike, Canton, Connecticut (the "Property"), to permanently encroach upon the Barkhamsted-Nepaug Pipeline Right-of-Way, containing an existing 48-inch RCP raw water transmission main (the "Main"), located across private lands (including the Property) south of Albany Turnpike in Canton, Connecticut (the "Right-of-Way") for the purpose of installing electric, telephone and cable lines and a new paved driveway to serve a proposed house on the Property (the "Initial Approval"). As part of this Initial Approval, the Board required that "a formal encroachment agreement shall be executed by the [O]wner[s] and [T]he Metropolitan District, consistent with current practice involving similar requests." On or about April 14, 2016, MDC staff prepared the encroachment agreement and sent the same to Owners for review and execution.

Notwithstanding the foregoing Initial Approval, Owners refused to execute the encroachment agreement, and instead proceeded, without any notice to the MDC or its staff, with construction of the single-family house on the Property in complete disregard of the safety and integrity of the Main. Such construction included the installation of a 1,000 gallon underground propane tank in a location abutting the southern edge of the Right-of-Way, which tank and its location were not disclosed by Owners either in their encroachment request to MDC or in the site plan or other documents submitted by or on behalf of Owners in connection with such request. As a result of Owners' above actions, MDC brought an action against Owners in Hartford Superior Court, which included a claim for injunctive relief, and secured a court approved order that permitted a one-time encroachment in the Right-of-Way for the purpose of installing the aforementioned utilities and driveway subject to and in accordance with all the material provisions of the Initial Approval. This order also requires Owners to immediately remove the excavated soils that were stockpiled on the Right-of-Way, and to work with MDC in good faith to relocate the propane tank to a mutually acceptable location on the Property where it will not pose any threat or danger to the safety or integrity of the Main. Please note that this order only resolves the injunctive claim of the action brought by MDC against Owners, and the underlying lawsuit (i.e., a quiet title action) remains intact and is proceeding absent a final settlement. As a result of this order, on April 3, 2017, and upon the approval and recommendation of the Water Bureau, the Board modified its Initial Approval by expressly requiring that the fully executed encroachment agreement be recorded on the Canton Land Records (the "Supplemental Approval," and the Initial Approval together with the Supplemental Approval are hereinafter collectively referred to as the "Approval"). Despite this order and the Approval, Owners have steadfastly refused to relocate the propane tank or to sign the encroachment agreement containing modifications that are consistent with such order.

In light of the foregoing, Staff is recommending that the Board rescind its Approval.

It is therefore RECOMMENDED that it be

VOTED: That the Water Bureau recommends to the District Board passage of the following resolution:

RESOLVED: That the Board hereby rescinds its Approval, effective immediately.

Respectfully submitted,

Scott W. Jellison
Chief Executive Officer

On motion made by District Chairman DiBella and duly seconded, the resolution was adopted by unanimous vote of those present.

WATER SERVICE INSTALLATION PROGRAM

To: Water Bureau for Consideration on April 28, 2020

At the November 18, 2019 Water Bureau meeting, the Bureau approved the Water Service Installation Program to facilitate property owners to repair or install a water service line to their property. The District Board approved the program at its December 16, 2019 meeting. Staff recommends the following modifications to the Water Service Installation program.

IT IS RECOMMENDED THAT IT BE:

VOTED: That the Water Bureau modifies the Water Service Installation Program, and recommends to the District Board approval of the following modified Program:

THE METROPOLITAN DISTRICT'S
WATER SERVICE INSTALLATION PROGRAM

Scenario	Water Service Type – Domestic**	Residential or Commercial Services 2" or less***	
		Public Portion (within ROW)	Private Property Portion
1	Existing Service Renewal	District installs at own cost	Property Owner is responsible for actual cost of contractor. District pays contractor and Property Owner repays District over time.

2	New Service Class 1 Water Main – Pay charges when connect	District installs public portion, cost to owner $150 per foot* with option to roll into connection charges	Property Owner is responsible for actual cost of contractor. District pays contractor, up to a cap, and Property Owner repays District over time.
3	New Layout & Assessment Class 2 (private or community well) – Assessment due upon water main completion	District installs public portion, cost to owner $150 per foot* with option to roll into assessment	Property Owner is responsible for actual cost of contractor. District pays contractor, up to a cap, and Property Owner repays District over time.

* Prevailing rate for a Water Service Installation Charge as established by Water Bureau
**No fire services to be included
*** Exceptions subject to approval by CEO or designee

Criteria of Water Service Installation Program:

- Residential/Commercial properties requiring a water service of 2" or less abutting an MDC water main. Exceptions to the service size or type would be subject to approval of the Chief Executive Officer or his/her designee.
- Renewals shall be installed for the full length of service pipe.
- Water services must be built to MDC standards.
- Limit of $10,000 per property for water service installation/renewal for all work in public right-of-way and private property.
- Amount owed by property owner will be paid to District over fifteen or twenty years with same interest rate as water assessments (6%).
- Credit checks performed at District's discretion.
- Contracts and/or price quotes between the property owners and their contractors must be submitted to Utility Services for review to verify the appropriateness of the cost proposal. The District reserves the right to deny any price proposal. Any increase in price of construction must be approved by District in order for property owner to receive increase of District payment to contractor.
- Owner bound to terms of the written contract with Contractor.
- ~~District will issue a two-party check addressed to the property owner and the contractor. The property owner will be required to endorse the check over to the contractor as acceptance of completed work and to pay for the completed work.~~

- **The property owner will be required to provide written acceptance of the completed work in order for the District to issue payment to the Contractor. Failure by the property owner to provide written acceptance will not alleviate the property owner's responsibility to pay the Contractor for the completed work.**
- ~~A 10% down payment of the cost proposal shall be required from the property.~~ **~~The 10% down payment may be waived at the sole discretion of the Chief Executive Officer or his/her designee.~~**
- **Property owner shall indemnify the District for all claims for damages arising out of the work performed at the property.**
- Property owner will repay the District by monthly payments as a separate line item on the water bill.
- Any deposit required by the contractor will be the sole responsibility of the property owner.
- No pre-payment penalties
- Funding to be established with a revolving fund from the Assessable Water Fund. $250,000 per year for the first 5 years appropriated in fund, plus revenue from principle and interest payments, to establish a self-sustaining fund.

FURTHER VOTED: That the Controller or Chief Administrative Officer be requested to make tentative allocations for this project pending passage by the District Board, and payment for the same is authorized from the Assessable Water Fund.

Respectfully submitted,

Scott W. Jellison
Chief Executive Officer

Chairman DiBella moved to amend the resolution, as shown above in blue text. The amendment was adopted without objection

On motion made by District Chairman DiBella and duly seconded, the report was received and resolution, as amended, adopted by unanimous vote of those present.

COMMISSIONERS COMMENTS AND QUESTIONS

Commissioner Currey thanked the Water Bureau for removing the 10% deposit for the Water Service Installation Program.

ADJOURNMENT

The meeting was adjourned at 12:43 PM

ATTEST:

John S. Mirtle, Esq.
District Clerk

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Date of Approval