

Rights-of-Way and Private Property Entry Issues

GCSA Employee Training

Tulsa Mohawk Education Auditorium

April 13, 2016

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Rights of Way vs. Easements

- **Rights of Way:**

- Grants right to cross over a property.
- Does not grant right to use property.
- Common municipal use is for streets and sidewalks.

- **Easements:**

- Grants right to use property by non-owner.
- Common municipal use is utility corridors.
- Many types of utility corridors (easements).

Types of Municipal Utility Easements

- Water
- Sewer
- Stormwater Drainage
- Gas
- Electric
- Telephone / cable
- Generic “Utility”
- City cannot use a water or sewer or gas easement for stormwater purposes.

Easement Patchwork & Records

- Many easements were established decades ago.
- Easement records are often hard to locate.
- Most can be found in plats and construction plans.
- Many defined by blocks, inconsistent with final buildout.
- May jump from “Utility” to “Sewer” across the street.
- Good idea to have a master map of all easements that grant right-of-entry for stormwater program.

Landowner Negotiation w/o Easement

- Without clear “Utility” or “Stormwater” or “Drainage” Easement, best to negotiate permission with landowner.
- Helps to have local codes / ordinances that grant city staff permission to enter private property.
- Without local code authority, city must request and obtain permission of landowner.
- Even with code authority and/or cooperation, the situation can deteriorate.
- Safety of city investigators and citizens is paramount!
- Back off, and find another way to resolve.

Guns, Dogs, Fists – What Do You Do?

- Don't argue or force your presence.
- Back off immediately.
- Contact local police for assistance.
- Allow police to negotiate with landowner and secure your right of access.
- Have copy of your local code / ordinance for landowner.
- Before needing the police, already have them educated about your future police needs.

Presentable, Personable, Professional

- Be clean, courteous and professional.
- Logo shirt, uniform, etc.
- Vehicle with city logo.
- Credentials readily available for presenting.
- Friendly, positive attitude.
- Direct, down to business – clearly state purpose and goal.
- Don't gossip or get involved in unsavory conversations.
- Respond to requests for documents, maps, etc.

Special Districts and Rights of Entry

- Rarely, a city may be part of a Special District, such as the Lake Thunderbird Conservation District.
- Most Special Districts involve different parties, including residential property owners, municipal properties, local businesses, etc.
- Each Special District in Oklahoma has its own rules, obligations, sets of rights and responsibilities, limitations and conditions.
- Check to see if there are any water quality-related Special Districts in your city limits, and if so, what are your rights and obligations.

Waters of the State & Trespass

- All Waters of the State that are “Navigable in Fact” can be navigated by the public, even if the water is on private property.
- However, the water “user” cannot touch the stream channel or lake bottom; he/she must remain in the water.
- In touching the land, he/she is no longer navigating, but trespassing on private land. (May require more court action)
- *Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water...* Justice Field in The Daniel Ball, 77 U.S. 557 (1870)

Civil vs. Criminal Investigations

- Most local stormwater ordinance violations are under civil codes, not criminal codes.
- Civil violations are simpler:
 - Investigators do not need CLEET training, badges, guns.
 - Rules of evidence are less stringent.
 - Can go through local municipal courts; don't need District Attorneys, etc.
 - More difficult criminal investigations can be turned over to ODEQ or other State and Federal agencies.

Limitations on Investigations

- Can you enter private property if you observe a likely civil violation of a local code?
- Can you peer over fences or through windows or doors to try to observe likely civil violations?
- Can you send in “undercover” inspectors under stealth cover story to look for violations of civil codes?
- Can you enter private property to collect samples or make measurements for civil violations?
- Do you have the authority under local code to review business or personal records and files?

Limitations on Investigations – cont.

- Can you enter private property to take pictures in your investigation of civil violations?
- Can you interview workers and others on private property and record their statements as evidence?
- Do you have local code authority to immediately shut off water supplies to a property to stop a civil violation?
- Are you clear on what constitutes a criminal violation and a civil code violation?
- What kinds of credentials, training, experience and documentation must you have to be an investigator?

Thank you.

Any Questions ?



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