

Mr. Leon Small, Water Engineer (cont'd)

"uses, which include gas and water pipes, sewers, etc. Lights, water and drainage are so essential to the comfort, health, protection and convenience of the people of a city or town that the original owner is conclusively presumed to have known, and to have consented, that such uses could be made of a street laid out over land formerly owned by him, however, it be acquired by the municipality, and those claiming under him have no more rights in the streets than he had. \* \* \* But the great weight of authority is to the effect that there is a distinction between the use of streets in cities and towns for gas and water pipes, and the use of country or rural highways."

And as it is stated in the synopsis of the case cited:

"The condemnation or dedication of land for use as a street or highway in a city or town or in close proximity thereto, carries with it the right to use the highway for the laying of water pipes since that is one of the purposes for which such highways are used, and is within the scope of the easement."

It may be said that a servitude in a rural or suburban road may not only be augmented but transferred by the demand of public welfare. In this connection I wish to call your attention to the duties which the Legislature of Maryland imposed upon the Mayor and City Council of Baltimore in furnishing and supplying water in the counties under the Act of 1922, and of the year 1931, and particularly to the Metropolitan District Act. The duty to supply water necessarily gives the City the incidental power to lay the needed pipe lines in public roads, and as the County Commissioners for Baltimore County have full charge and control of all the county roads, streets, alleys and highways, and all matters pertaining thereto, they should be advised that the City desires to lay water pipes in certain roads.

Mr. Carter, however, is right in demanding that his property should not be used as a dumping place for the excavated material or for storage purposes, and he should get this assurance or, if necessary, that a part of his land be used for that purpose, then you should obtain his written consent to do so.

In conclusion I might add that you may proceed in using the county roads as heretofore, if requested to supply water to the abutting property owners on said road.

Very truly yours,

(signed) ALFONSO von WYSZECKI

Assistant City Solicitor

AvN/R

Copy to Mr. Bernard L. Grosier, Chief Engineer