

Maryland Underground Facilities Damage Prevention Authority

MINUTES OF MEETING OF AUTHORITY Wednesday, June 4, 2014

The meeting was called to order by Kevin Woolbright at 9:00 am in the Miss Utility One Call Center, 7223 Parkway Drive, Hanover, MD 21076. In attendance were Authority members Kevin Woolbright, Tom Hastings, Tom Baldwin, Bernard Cochran, Veronica Davilla Steele, Art Bell, Walter Gainer, Bernard Cochran, and Marcia Collins. Laura Olander, Jim Barron and Bruce Bereano were also present. Guests included Scott Brown with Washington Gas, Vince Healy and Mark Hamrick with Verizon, Thurman Smith with Utilquest, Matt Ruddo with OCC, Dora Parks with Miss Utility, Mark Sweet, David Erwin, and Eric Raymond with Sunshine 811, David Moreno, Bruce Lerman, Jose Argueta, and Mia White. Elizabeth McPherson, a Spanish interpreter was also present. Authority member Tom Hoff was absent.

There is a quorum.

The Minutes from May 7 were approved.

Report of Authority Treasurer. Financials were handed out and Jim Barron gave an overview. Motion made to approve. All in favor.

NPV #1199 -Washington Gas vs. General Landscaping - Jim Barron turned on recorder. Kevin Woolbright introduced members from Washington Gas and General Landscaping and they all came to table. Jose Argueta from General Landscaping spelled his name and Chairman Kevin Woolbright administered the oath to him as well as to the interpreter, Ms. Elizabeth McPherson. Kevin then administered the oath to Scott Brown representing Washington Gas. Jim Barron also took the oath.

Jim Barron handed copies of Plaintiffs evidence to Laura Olander for entry. Evidence admitted is #1 - #15 listed on Evidence Log. Authority member Art Bell asked if there was a time recorded on the damage. Jim Barron said Washington Gas dispatched at 11:24 am on September 9th and this was an emergency ticket. The actual damage occurred at 9005 Garland Avenue but the ticket was called in for 9003 Garland Avenue. Evidence #7 is the second ticket in detail called in by the homeowner. This is a standard ticket for removing fence posts. Evidence #8 is the Damage Report submitted by Washington Gas. They are naming Bruce Lerman, the owner of the property and Jose Argetta, the Supervisor of the job. They were in the process of removing fence. Next, Evidence #10 shows a picture of the property. Evidence #11 is another picture of 9005 Garland Avenue showing where excavation occurred. Art bell asked who submitted picture. The answer was Washington Gas. Exhibit #12 is a close up picture of the damaged area. #13 is a picture of the gas meter for 9005 Garland Avenue. Exhibit #14 is a picture of the General Landscaping service truck with Jose Argueta's name on it at the location. #15 is a letter that Jose Argueta sent to Jim Barron on April 30th, explaining what happened at the site that day. He indicates he was not digging but using a lever device (picture attached to letter on Exhibit #15). The question is was there an actual excavation or demolition that took place which requires a ticket? Kevin Woolbright asked to see one of the pictures again (Exhibit #12). Kevin pointed out that the damage appears to be in a different spot than where Jose Argueta was working. Exhibit #16 is letter to Jim Barron from the property owner in support of Jose Argueta who hired General Landscaping to do work on his property.

Tom Baldwin asked to see the close up picture of the damage again (Exhibit #12). It is noted that the pipe appears to still be firmly in concrete.

Kevin Woolbright moved forward with Mr. Argueta and asked him to present any evidence he may have, or whether or not he has any questions. Mr. Argueta, through the translator, said the evidence presented is the exact opposite of what he is about to tell the Authority. Mr. Argueta further went on to state that when he was hired by the property owner, there was a large pile that he had to cut back in the bushes in order to make a garden. What happened next was something he tried to explain in his letter to Jim Barron. He said there was confusion - he was not digging or excavating - the problem was already there and he called 911 so they could come inspect what was already there. When Washington Gas got to the site, they took a picture of his truck and then they left. Neither he, nor the homeowner, are responsible for any damage. All they did was make a phone call letting people know what was already happening there. Mr. Argueta went on to say that he is surprised he is accused of causing any damage because he is aware of the law and has worked for many years in the business and in many regions, and he is the first person to call 811 if necessary. Kevin Woolbright asked if Mr. Argueta had further comments. Mr. Argueta said no. Kevin Woolbright asked Jim Barron to go back to the picture showing Exhibit #12 again. Kevin reiterated that Mr. Argueta stated he did not dig this hole and that it was already there as seen in the picture. Mr. Argueta further stated that was exactly how it looked when he arrived and they dug nothing. He said all they did was notify the authorities by calling 911. He also said when he put the chain around the post, they heard the hissing of gas, stopped, and called 911. Kevin asked who arrived next and whether or not it was Washington Gas. Mr. Argueta said the ambulances arrived next and they wouldn't allow him to stay in the area any longer. They called Washington Gas's technician and the technician had a trowel that is seen in the picture in Exhibit #12. Mr. Argueta said the damage is not near the pipe where he would have been working but closer to the pipe. Tom Baldwin asked if this excavation was already like this when he arrived. Mr. Argueta said yes - it looked just like the picture in Exhibit #12 except the pipe was covered up a little more. Mr. Argueta said he was just trying to clean up the garden. Authority member Art Bell said he was confused about who did the digging there and if Mr. Argueta didn't do this digging, then who did? Mr. Argueta said that as soon as he saw the problem, he didn't try to take out the post. Marcia Collins asked Mr. Argueta if he was going there to do clean up work and remove posts? Mr. Argueta replied yes. Marcia further asked if he had an opportunity to talk to the property owner and ask who did this digging before he arrived. Mr. Argueta said yes but the homeowner is confused and asked to let him talk and give his version since he is here. Marcia asked if someone was living at this address and Mr. Argueta said he had no idea. Art Bell then asked if Mr. Argueta removed any fence posts on this site at any time. Mr. Argueta said under the authority that was present on site, he went ahead and removed fence posts around the corner and along the property line with the tool and no digging was done. Art Bell asked when this happened and when he removed all the other posts? Mr. Argueta replied this happened that very same day and that he wasn't going to touch anything further but was also encouraged to go ahead with the job. Jim Barron asked more questions about who moved fence posts that were missing when he arrived. Mr. Argueta said he didn't know. Jim Barron then read from the letter Mr. Argueta sent to him where he said he was removing a fence using a hand pull post tool that allows him to use his hands and not have to dig into the ground to remove fence posts. In the letter, he also stated that on September 9th he was pulling and he felt soil become loose and create a mini sink hole, then he stopped using the hand pull post because he smelled gas and called Washington Gas immediately. Jim Barron asked if this statement was correct. Mr. Argueta said the letter was partly misinterpreted - the people who helped him interpret the letter didn't interpret the way he wanted. Kevin

Woolbright asked what in particular needed corrected. Mr. Argueta replied that what he meant to say was that he did not dig and the problem was already there. Kevin then asked if he stopped trying to remove the fence post when the tool he was using caused him to feel the soil move? Kevin Woolbright added that it doesn't make sense that this hand tool Mr. Argueta was using could possibly dig up this much and take out a fence post this deep. Art Bell read the portion of the Miss Utility law where it defines what excavating is. Kevin gave Mr. Argueta the excavation guide and noted it was on page 26. Art Bell asked if he agreed that in removing these posts, he moved earth or rock, etc. and Mr. Argueta replied that no earth or rock was moved. Kevin said the owner of the property, Mr. Bruce Lerman, should provide more testimony in support of his case. Kevin asked Mr. Bruce Lerman to take the oath. Bruce Lerman stated he lives at 8905 Garland Avenue in Silver Spring. Oath was taken. Kevin Woolbright asked him to provide supporting testimony. Bruce Lerman said there is confusion in translation. He wasn't on the scene that day so he doesn't know what Mr. Argueta did or didn't do, but one of the pictures - the one with the clamp - is from the repair work (Exhibit #12). He said the trowel was used by Washington Gas and the hole was not there like this until repair work was done. Mr. Lerman then went into the definition of excavation and that Mr. Argueta had no intent to do anything negligent or break the law. This has been a learning experience and he is aware of the potential penalties. Mr. Lerman also said that as soon as the gas was smelled, this was an issue that was already there. Bruce Lerman asked for some leniency for just a little bit of earth being moved as this would be a tremendous hardship. Kevin Woolbright asked Mr. Lerman what day he was visiting the property. Mr. Lerman replied that it is down the street from where he lives. He is unsure how the earth on the sidewalk in question happened. He said he asked Mr. Argueta to clean it up as this is a distressed property. Kevin asked when specifically had Mr. Lerman been to the property and Mr. Lerman replied it was the day before. Kevin asked if there was dirt piled up the day before and Mr. Lerman said there was dirt everywhere and he had no yes or no answer to his question. Tom Baldwin asked if the area looked like the Exhibit with the dirt on the sidewalk and Mr. Lerman said he just didn't know. Marcia Collins pointed out that in the Exhibit picture, the chain link had been removed, so who would be putting dirt on the sidewalk? Bruce Lerman said Jose Argueta may have moved it. Marcia Collins pointed out that there really is no reason soil would be all over the sidewalk other than for excavation. Bruce Lerman believes Washington Gas moved all this dirt to the sidewalk. Authority member Bernie Cochran said this portion of Bruce Lerman's testimony should not be admitted because it is all here-say and speculation. Jim Barron pulled up the ticket called in by the homeowner, Jim Levings. Bruce Lerman said this is probably the next door neighbor but wondered why the neighbor listed Jose Argueta as an alternate contact? Tom Baldwin pointed out that tickets were called in after the fact. Bruce Lerman again asked for leniency and again apologized. Mr. Lerman was asked to step back and Kevin Woolbright called Washington Gas to the table. Scott Brown came to table as the representative for Washington Gas. Everyone is under oath. Kevin asked Scott Brown if he had any more evidence or anything to say in rebuttal of prior testimony given. Scott discussed the damage report he submitted and stated the damage report is factual. All this work was done without a Miss Utility ticket. The post was hit with a lawnmower. Scott said people who come forward with honesty and are forthright will get more leniency. Art Bell asked if Washington Gas sent a bill to Mr. Artega and Scott replied yes, they have sent a bill, and it has not been paid. Kevin Woolbright asked Jim Barron to go back to Exhibit #12. Kevin asked Scott who took this picture and Scott replied that his repair crew took the picture. Other questions were asked of Scott Brown. Jose Argueta asked if this was the type of case the Authority often sees because there should have been markings. Tom Baldwin brought up the fact that none of this matters because there wasn't a ticket.

Recommendations from the Authority were stated by Jim Barron for the record. Recommendation is \$2,000 fine for no locate request. Also training. Kevin Woolbright then read from the excavation guide, page 32, 12-113a. Kevin also let Jose Argueta know a decision would be mailed to him. Further, Chairman Woolbright made sure Mr. Argueta was aware of the entire process of the Authority.

Conclusion of NPV #1199 at 10:39 am.

NPV #1449 - Washington Gas vs. David Home Improvements. David Moreno from David Home Improvements is present. Oath administered to all. Interpreter used.

Jim Barron presented Exhibits for evidence to Laura Olander for documenting.

Chairman Kevin Woolbright reiterated there is a quorum. David Moreno was given an opportunity to speak and he began with an apology. He said he asked owner at the site if they needed permission to dig the patio and the answer was no because it was small and level with the ground. Also, the fence had already been done. Mr. Moreno's crew made their hole right next to the fence post and only dug 2 feet when they came across the gas line. He said he usually works inside homes and this won't happen again. That is all he had to say. Art Bell asked if Mr. Moreno was aware of Miss Utility law. He said he was aware but since the fence was already done right in the same area, he felt confident about digging. Marcia Collins said Mr. Moreno needs to understand, for his own protection as well as the community, he must call Miss Utility for any type of digging and since he was the one who did the digging, and not the homeowner, he must follow the law.

Next, Scott Brown from Washington Gas came to the table. He was reminded he is still under oath. Scott said the gas pipe was 2 1/2 feet deep and hit with a hand tool. No more questions for Scott Brown. Mr. Moreno was asked if he had anything else to add. He replied that he had nothing further to add and no questions. He did state that he knows that if he ever does work outside again, he will call Miss Utility. Mia White, the homeowner where the damage occurred, came to the table next and was given the oath. Ms. White stated that she had been at this property for 27 years and had put in a fence to enclose the yard, but the homeowners association contracted the work out. She had reached out to the Homeowner Associations's President to see if she needed any permits. David Moreno from David's Home Improvement has worked for her before but only on the inside of her house. She is asking leniency because they just didn't know to call Miss Utility. Even when her fence was put in they didn't mark for this either. Veronica Davila-Steele pointed out that the HOA should know to call before you dig and they need to know this going forward.

Chairman Woolbright read from the excavation guide as well as portions of the Miss Utility law. David Moreno was told he can appeal the Authority's decision if he chooses.

The proposed recommended fine for these violations - a no locate request and knowledge of existing facilities - is a \$2,000 fine and training.

This hearing officially closed at 11:28 am.

The following NPV's were discussed after the hearings were over and the following decided:

NPV #1199 - \$1,500 plus training is the penalty. If General Landscaping does not come to training, then they will be fined \$2,000. Dora Parks from Miss Utility asked who would be included in this training so they can be contacted. It was decided that if they need an interpreter at training, they have to bring one with them.

NPV #1449 - David Home Improvements - Agreed to reduce fine to \$500 and require training.

Jim Barron then introduced those in attendance from Sunshine 811 and invited Authority members to join them all for lunch following meeting.

Motion to allow partial staggered payments to those who claim hardship. Still in debate.

Royale Construction requested to not take training. Motion made to talk to them about coming to Safety Day and talk to them. \$2,000 and training are recommended fines.

NPV #1870, #1872 and #1873 are all no call tickets discussed today. It was voted to send letters to each company along with appropriate penalties.

The Authority's revenue stream is still being reviewed. Kevin Woolbright added that some of those on the Damage Prevention Committee attend the next Authority meeting.

The question was raised whether or not a complaintant be reimbursed if they win a case? Authority needs to discuss. Bruce Bereano said a statutory change would have to be made because it's like awarding attorney fees. The filing fee is non-refundable.

Letters regarding expiring terms will be going out soon.

There being no further discussion or business of the Authority, the meeting was adjourned at 12:49 pm.

The next Authority meeting is scheduled for Wednesday, July 2, 2014.