

Entered - 10/26/98 - sb
CL98L0695 - DIANNE C. MITCHELL

CLAIM OF: **CAROL M. BELL**,
through her attorney,
Shea E. Roberts
1409 Peachtree Street, NE
Atlanta, Georgia 30309

00-*R*-1819

For damages alleged to have been sustained as a result of property damage due to the installation of an underground equipment vault by Bellsouth Telecommunications, Inc. on June 15, 1998 at 251 Elmira Place.

THIS ADVERSED REPORT IS APPROVED

BY: *Rosalind Rubens Newell*
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY

COUNCIL AGENDA

ATLANTA CITY COUNCIL NOV 20 2000

ADVERSED REPORT
Public Safety
11/14/00
Cleta Wray
Marjorie Good
Shirley D. [unclear]

CERTIFIED
NOV 20 2000
ATLANTA CITY COUNCIL PRESIDENT
Richard A. [unclear]

CERTIFIED
NOV 20 2000
Rhonda Dandrea Johnson
MUNICIPAL CLERK



OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON, CMC
MUNICIPAL CLERK

55 TRINITY AVENUE, S.W.
SECOND FLOOR, EAST
SUITE 2700
ATLANTA, GEORGIA 30335
(404) 330-6033
FAX (404) 658-6103

November 28, 2000

Shea E. Roberts
Attorney at Law
1409 Peachtree St., NE
Atlanta, GA 30309

00-R-1819

RE: Carol M. Bell

Dear Attorney Roberts:

I sincerely regret that your client has been adversely affected by the circumstances raised in his/her claim for damages against the City of Atlanta. Your time and patience in this matter has been greatly appreciated.

However, I must notify you that the Atlanta City Council Adopted an Adverse Report on your client's claim at its regular meeting on November 20, 2000. In consultation with the City's Law Department, who conducted an investigation of the situation, the Council has determined that the City cannot accept responsibility for this matter and therefore cannot pay this claim.

If you desire any further information, please contact the **City Attorney's Office/Claims Division at (404) 330-6400.**

Yours very truly,

Rhonda Dauphin Johnson, CMC
Municipal Clerk

cc: **Claims Division/Law Department**

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 98L0695

Date: October 27, 2000

Claimant /Victim CAROL M. BELL
BY: (Atty) Shea E. Roberts
Address: 1409 Peachtree Street, NE, Atlanta, Georgia 30309
Subrogation: Claim for Property damage \$ not stated Bodily Injury \$
Date of Notice: 10/07/98 Method: Written, proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 06/15/98 Place: 255 Elmira Place
Department Planning Development and Neighborhood Conservation Division: Buildings
Employee involved Disciplinary Action:

NATURE OF CLAIM: The claimant alleges her property has been damaged due to the installation of an underground equipment vault by Bellsouth Telecommunications, Inc. in violation of the City's building codes. The claimant has withdrawn her claim.

INVESTIGATION:

Statements: City employee X Claimant Others Written Oral X
Pictures Diagrams Reports: Police Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned X

Respectfully submitted,

[Signature]
INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01
Claims Manager: [Signature] Concur/date 10-27-00
Committee Action: Council Action

LAW OFFICES
MCCULLOUGH SHERRILL, LLP

ENTERED - 10-26-98 - SB
98L0695 - DIANNE MITCHELL

*Rec'd 10-2-98
copy to D Mitchell
cc Simy
re*
*Mitchell
10/16/98
JSM*

Writer's Direct Number
(404) 881-3812
Direct Facsimile: (404) 892-6766
E-mail Address: sroberts@mslegal.com

October 2, 1998

VIA U.S. MAIL

The Honorable William Campbell
Mayor, City of Atlanta
55 Trinity Avenue, S.W.
Atlanta, GA 30303

VIA U.S. MAIL

Susan P. Langford, Esq.
Acting City Attorney, City of Atlanta
68 Mitchell Street, S.W.
Atlanta, Georgia 30335

VIA FACSIMILE AND U.S. MAIL

Norman A. Koplon, P.E.
Director, Bureau of Buildings
68 Mitchell Street, S.W.
Suite 3900
Atlanta, Georgia 30335-0309

VIA FACSIMILE AND U.S. MAIL

Rhona E. F. Reynolds, Esq.
BellSouth Telecommunications, Inc.
125 Perimeter Center West
Atlanta, Georgia 30346

VIA U.S. MAIL

Mr. Jeff Schrantz
G&K Services, Inc.
1770 Corporate Drive, N.W.
Norcross, Georgia 30093-2928

**Re: Commercial Equipment Installation at 255 Elmira Place, Atlanta, DeKalb
County, Georgia**

Dear Madame and Messieurs:

This firm represents Ms. Carol M. Bell, the owner of a residence located at 251 Elmira Place, Atlanta, DeKalb County, Georgia. Previous counsel attempted to obtain satisfactory resolution to a situation involving the June 15, 1998 installation of an underground equipment vault by BellSouth Telecommunications, Inc. ("BellSouth") on property owned by G&K Services, Inc. ("G&K") immediately adjacent to Ms. Bell's property.

In addition to being a commercial installation located in the middle of a residential (R-5) neighborhood, the above-ground access hatch to the equipment fails to comply with the Atlanta Land Use Development Code requiring maintenance of a front yard having a depth of not less than 30 feet and two side yards each having a width of not less than seven (7) feet. Additionally, the access hatch

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extends to a height well in excess of 30 inches above the general ground level of the graded lot, in further violation of the building code regulations.

We obtained and reviewed a copy of the plans submitted to the City of Atlanta by Bell South to obtain a building permit after Ms. Bell's initial inquiries regarding the legality of the installation resulted in the issuance of a "stop work" order by the City of Atlanta. We believe the documents provided by BellSouth to the City of Atlanta, which ultimately led to the retroactive issuance of a building permit by the City, intentionally misrepresent the dimensions of the equipment that was installed -- in particular, the height of the access hatch above grade. Moreover, the documents provided by BellSouth to the City of Atlanta fail to address the control box installed in the right-of-way, which is also a violation of City of Atlanta building code regulations.

Ms. Bell continues to be victimized by the negative impact that this installation has on the value of her property. Placing a commercial unit such as this on land zoned residential and surrounded by residential uses, makes that unit a nuisance which deprives Ms. Bell of the full enjoyment of the value of her land. Immediate removal of the unit or reimbursement for loss of property value are the only remedies which would adequately compensate my client. Every day that Ms. Bell is deprived of enjoyment of the value of her land, a new cause of action for nuisance is created.

Be advised that Georgia law, both judicial and legislative, recognizes a nuisance where an activity is otherwise lawful and proper. Bell South's maintenance of an underground telecommunications equipment vault, even if otherwise legal, can create a recoverable nuisance. Furthermore, Bell South secured its building permit retroactively by submitting false and misleading building plans, thereby constituting a nuisance *per se*.

Please be advised that unless we are notified within 10 days from the date of this letter of specific plans for the removal of the equipment vault, the access hatch, and the accompanying control panel, we shall commence action immediately thereafter against the City of Atlanta, BellSouth and G&K Services to pursue all legal and equitable remedies that are available to us.

The Candler Park Neighborhood Association has been apprised of this situation and are very much opposed to this encroachment upon their neighborhood. The Association fully supports my client's efforts to resolve this matter, and plans to bring the full weight of public accountability to bear on this issue.

This letter shall also serve as notice to the City of Atlanta of Ms. Bell's claim against the City as required by O.C.G.A. § 36-33-5.

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October 2, 1998
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Sincerely,

McCULLOUGH SHERRILL, LLP



Shea E. Roberts

cc: Ms. Carol Bell
Ms. Dempsey Heriahy, President
Candler Park Neighborhood Association
Mr. John Rick, Zoning Director
Candler Park Neighborhood Association

00- *R* -1819

Council President Pro Tem Starnes
Presided

RCS# 2401
11/20/00
2:00 PM

Atlanta City Council

Regular Session

CONSENT

Pages: 1-18

00-R-1849
(Morris Voted NAY)

ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

SEE ATTACHED LISTING OF
ITEMS ADOPTED/ADVERSED
ON CONSENT AGENDA

Y McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
NV Bond	Y Morris	Y Maddox	NV Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM
CONSENT AGENDA
00-O-1111
00-R-1693
00-R-1694
00-R-1695
00-R-1696
00-R-1697
00-R-1804
00-R-1835

CONSENT

11/20/00 Council Meeting		
ITEMS ADOPTED ON CONSENT AGENDA	ITEMS ADOPTED ON CONSENT AGENDA	ITEMS ADVERSED ON CONSENT AGENDA
1. 00-O-1690 2. 00-O-1691 3. 00-O-1692 4. 00-O-1845 5. 00-O-1864 6. 00-O-0728 7. 00-R-1702 8. 00-R-1703 9. 00-R-1705 10. 00-R-1707 11. 00-R-1850 12. 00-R-1865 13. 00-R-1851 14. 00-R-1873 15. 00-R-1622 16. 00-R-1623 17. 00-R-1699 18. 00-R-1775* 19. 00-R-1776* 20. 00-R-1777* 21. 00-R-1782 22. 00-R-1687 23. 00-R-1668 24. 00-R-1786 25. 00-R-1789 26. 00-R-1799 27. 00-R-1800 28. 00-R-1813 29. 00-R-1814	30. 00-R-1815 31. 00-R-1849# 32. 00-R-1858 33. 00-R-1862 34. 00-R-1787* 35. 00-R-1790 36. 00-R-1791 37. 00-R-1794 38. 00-R-1798 39. 00-R-1861 40. 00-R-1686 41. 00-R-1843 42. 00-R-1869 43. 00-R-1870 44. 00-R-0973 45. 00-R-0816 46. 00-R-1803 47. 00-R-1805 48. 00-R-1806 49. 00-R-1807 50. 00-R-1808 51. 00-R-1809 52. 00-R-1810 53. 00-R-1811 54. 00-R-1812	55. 00-R-1816 56. 00-R-1817 57. 00-R-1818 58. 00-R-1819 59. 00-R-1820 60. 00-R-1821 61. 00-R-1822 62. 00-R-1823 63. 00-R-1824 64. 00-R-1825 65. 00-R-1826 66. 00-R-1827 67. 00-R-1828 68. 00-R-1829 69. 00-R-1830 70. 00-R-1831 71. 00-R-1832 72. 00-R-1833 73. 00-R-1834 74. 00-R-1836 75. 00-R-1837 76. 00-R-1838 77. 00-R-1839 78. 00-R-1840 79. 00-R-1841 80. 00-R-1842 * President Pitts recused himself. # Lee Morris not voting.