

# RESOLUTION OF THE CITY COUNCIL

No. 6

*Approved* January 8, 2002

IT IS HEREBY RESOLVED, That His Honor, the Mayor, is authorized to grant a non-exclusive sub-surface easement below Elm Street in the City of Providence to Cox Com, Inc., d/b/a Cox Communications (Cox). Said easement shall be granted specifically upon the following provisions:

1. Said easement shall be utilized only for the installation and maintenance of fiber optic conduit. Said easement shall not exceed the area of thirty-four feet by two feet by three feet and indicated by the cross-hatched area on the accompanying maps marked as Exhibit A.

2. Said easement shall be deemed to run with the land and shall operate against any successors in title and the easement or a memorandum of same shall be recorded in the Office of Land Records for the City of Providence.

3. Said easement shall be subject to a right of reverter/right of reversion in the event that the situs of the easement is no longer utilized for the aforesaid purposes. Additionally, it shall be for a term of not more than twenty (20) years.

4. Cox shall tender the sum of Nine Hundred Dollars (\$900.00) in legal tender of the United States of America.

5. Any breakout necessary for installation and/or repair or replacement shall be resurfaced/rehabilitated to the approval of the Director of the Department of Public Works.

6. Any installation of utilities or utility lines shall be underground so as to preserve the public right-of-way.

7. Any installation of electrical mechanism shall be to the approval of the Director of the Department of Inspections & Standards.

8. Petitioner shall ascertain that construction results in no adverse impact on any existing utility company and shall ensure the continued integrity of those existing structures.

9. Cox shall execute an indemnification and hold-harmless agreement with the City of Providence. Said agreement shall be approved by the Department of Law of the City of Providence.

IN CITY COUNCIL

NOV

1 2001

FIRST READING

REFERRED TO COMMITTEE ON  
PUBLIC WORKS

*Michael B. Clements* CLERK

THE COMMITTEE ON  
PUBLIC WORKS

Approves Passage of  
The Within Resolution

*Claire Busteed*  
4 Dec 11, 2001 CLERK

10. Cox shall supply the City of Providence with an insurance policy naming said City of Providence, its agents, officers, servants and employees as additional-named insureds in a sum not less than one hundred thousand dollars (\$100,000.00) which policy shall be approved by the Department of Law of the City of Providence.

11. Grantee shall not lay, construct or affix to the realty any temporary or permanent structure other than that described earlier herein.

12. Cox recognizes the applicability of Sections 23-107, 23-108 and 23-190 of the Code of Ordinances which read as follows:

**23-107. Indemnity of city against claims arising out of electrical installations.** No right of any person to maintain, use or operate any poles, wires, cables, conduits, ducts, pipes, manholes, handholes, or other appliances or appurtenances in any street or other traveled way in the city, shall be in preference or hindrance of public work in the city, and should any of the same in any way interfere with the construction, alteration or repair of any public work in, under, or over any such street or way, whether done by the city directly or by any contractor for the city, such person shall at his own expense protect, alter or move any of the same so interfering to some other location, or discontinue the use and operation thereof for the time being, as directed by the director of public works, without the city being liable for any damages suffered by such person thereby. The City shall notify such person not fewer than ninety (90) days prior to such public work, which will interfere with any of the same or the use or operation thereof. In case such person shall fail to comply with any such direction of said director, the city may protect, alter or move the same, and recover the cost thereof from such person.

**23-108. Precedence of wires, apparatus of city signal service.** The wires, poles, posts, structures and supports of the telephone, fire alarm and police signal service maintained by the city shall at all times take precedence and right-of-way as to all other wires, poles, posts, structures and supports maintained or erected in the city; and no lineman or other person, either in erecting wires, poles, posts, structures or supports in any way whatsoever shall interfere with, or disturb, disarrange or change any wires maintained by the city, or any appurtenance thereof; and in every instance of removal of any of said wires, poles, posts, structures or supports for the accommodation of any other corporation or party, or to place the same beyond danger from the electric current of any other corporation or party, the expense incident to said removal shall be paid immediately by such other corporation or party.

**23-109. Indemnity of city against claims arising out of electrical installation.**

Every person erecting, maintaining or using electric wires or poles, fixture or structures, for the support or conducting of the same shall indemnify and save harmless the city, its officers, agents and servants, from and against all lawful claims and demands for injuries to persons or property occasioned by the existence of such poles, wires, fixtures or structures or the transmission of electric current by means thereof or by the digging up, opening or keeping open of any street, highway, traveled way, public place or part thereof, which shall be or has been opened for the purpose of installing, constructing or repairing any underground conduit, duct, structure, appliance or

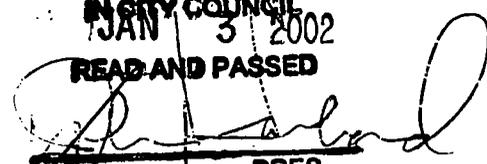
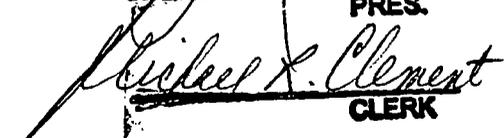
appurtenance by or for such person, or by any failure of such person to restore and keep in sound and safe condition for the required time any ground opened or dug up in the prosecution of any of its work in any street, way or place. The city, city council, or the officers, agents or servants of the city, exercising the rights, powers or permission, and subject to the restrictions, respectively given and reserved herein shall not be held liable by such person or corporation on account thereof, or by reason of any injury or damage caused thereby.

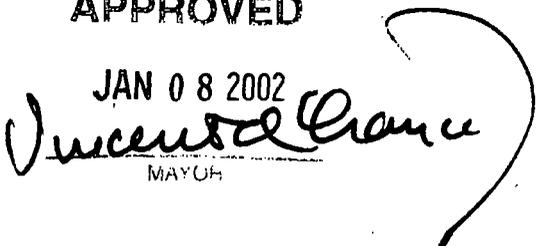
and Cox, for itself and its successors, agrees to comply with the same.

13. Cox shall repave all excavated roadways in accordance with relevant ordinances, industry standards and to the reasonable satisfaction of the Director of Public Works and Cox, its successors and assigns, shall guarantee the fitness of said repairing and shall make, at its own cost, all necessary modifications, alterations and repairs to said repaving for a period of not fewer than five (5) years.

14. In addition to Paragraph 12 above, in the event that the City of Providence or its designee shall, for any public purpose, require the extinguishment of the easement granted herein and upon the ninety (90) days notice hereinbefore mentioned, Cox shall, at its own expense, and without claim against the City, its officers, servants or employees, for any damages whatsoever, remove said improvements to the easement area.

15. Such other terms and conditions as may be reflected in the record and minutes of the City Council Committee on Public Property and/or as may be deemed appropriate by the Mayor or the Department of Law.

**IN CITY COUNCIL**  
**JAN 3 2002**  
**READ AND PASSED**  
  
**PRES.**  
  
**CLERK**

**APPROVED**  
**JAN 08 2002**  
  
**MAYOR**

FERDINAND C. IHENACHO, P.E., PTOE.

Director



VINCENT A. CIANCI, JR.

Mayor

Department of Public Works

"Building Pride In Providence"

November 14th , 2001

Hon. Robert M. Clarkin  
Chairman of the Public Works Committee  
Providence City Council -- City Hall  
Providence, R.I. 02903

Dear Councilman Clarkin:

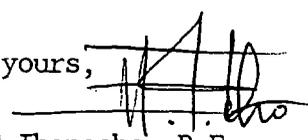
Re: Petition of Barry Fountain, Capital Support & Utilities  
Manager, Cox Communications, New England, Requesting Per-  
mission to Excavate & Place Conduit From an Existing  
Vault on the North Side of Elm Street, Crossing the  
Street to Service #70 Elm Street .

This Department has no objection to the above-referenced easement request for Cox Comm.  
as shown in conjunction with the accompanying plan entitled " Providence, R.I., P.W. Dept.,  
Engineering Office, Street Line Section, Plan No. 064685, Date: Nov.14th 2001. Location is  
on Elm Street Bet. Lots 120 & 417, North of Chestnut St.

Area of the easement to be utilized is noted as "Heavy Black Line"(34'), on the ac-  
companying plan, (Pet. Lots 120 & 417 on plan.) There is NO SEWER EASEMENT required in con-  
junction with this proposed easement. Total Square Footage is 68.00 + Sq.Ft. Note  
that Lot Numbers for this plan were taken from City of Providence Assessor's Plat: 21.

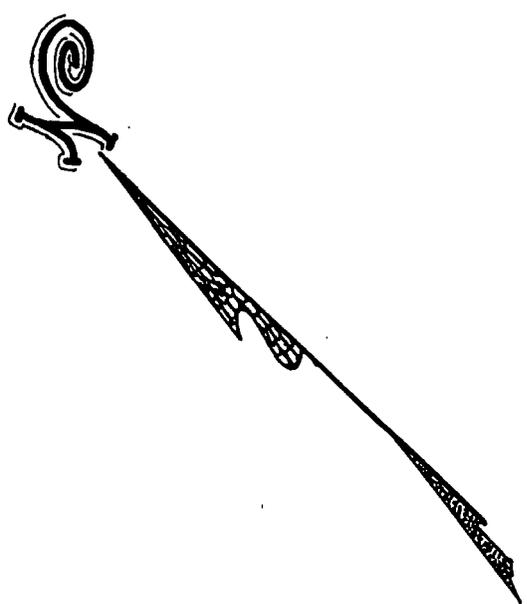
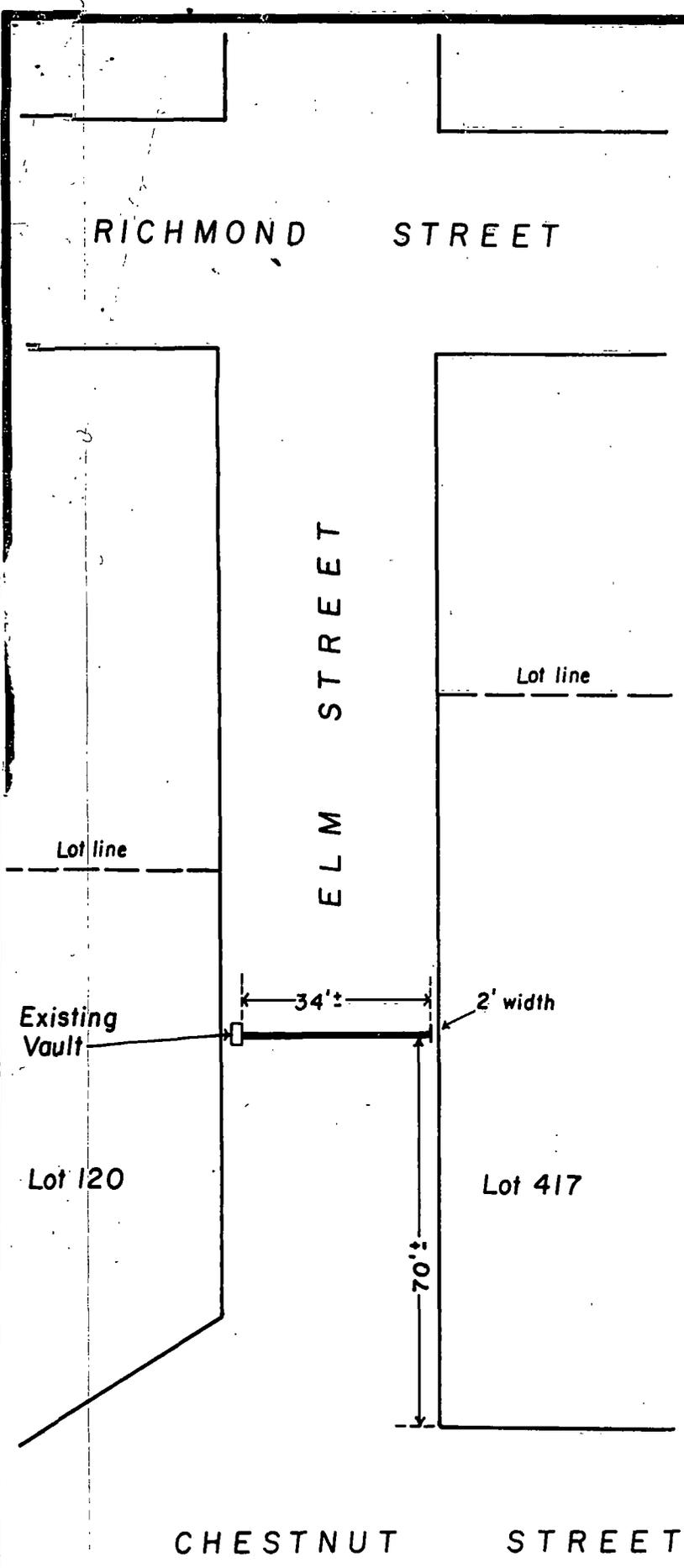
Easement area is 34 ft. long X 2 ft wide, for installation of Cox Comm. underground  
conduit. If we can further assist in this regard, please advise.

Very truly yours,

  
Ferdinand C. Ihenacho, P.E.  
Director

CC: M. Clement - City Clerk  
J.D'Amico, Esq.-City Atty.  
G. Florio  
JLC  
SZ

PROVIDENCE, R. I.  
 PUBLIC WORKS DEPT. - ENGINEERING OFFICE  
 STREET LINE SECTION  
 Plan No. 064685  
 Date, Nov. 14, 2001



NOTES: Plan showing proposed easement for underground conduit for Cox Cable.  
 Total square footage = 68'±

Lot numbers taken from A.P. 21.

CITY OF PROVIDENCE, R. I.  
 Public Works Dept. - Engineering Office  
 Showing Proposed easement on Elm St.  
 for underground conduit.  
 Drawn by A. Zisiades Checked by JLC  
 Scale 1" = 30' Date 11-14-2001  
 Corrected James A. Morris Associate Engr.  
 Approved [Signature] CHIEF ENGINEER

HENRY E. KATIS  
*Chairman*

LESLIE A. GARDNER  
*Vice Chairman*

ROBERT H. MONTECALVO  
JOSE V. MONTEIRO  
MICHAEL A. SOLOMON  
*Members*

RONALD W. ALLEN  
LUIS A. APONTE  
*Councilmen*

JOHN F. PALMERI  
*Executive Director*

SAMUEL J. SHAMMOON  
*Secretary*



VINCENT A. CIANCI, JR.  
*Mayor*

## PROVIDENCE REDEVELOPMENT AGENCY

*"Building Pride in Providence"*

### MEMORANDUM

**DATE:** December 20, 2001

**TO :** Michael Clement, City Clerk

**FROM:** William G. Floriani, Assistant Director  
Project Management and Construction

**RE :** VALUE OF EASEMENT  
ELM STREET

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Pursuant to your request I have visited the site referenced above. The purpose was to determine the Fair Market Value of an easement to place conduit in the street. The property is in the Jewelry District and is valued as follows:

The value of the property is as follows:  
68 s.f. @ \$12.75 per ft = \$900.00



**NECTA**

***New England Cable and Telecommunications Association, Inc.***

100 Grandview Road  
Suite 310  
Braintree, MA 02184  
Tel: (781) 843-3418  
Fax: (781) 849-6267

Capitol Place  
21 Oak Street, Suite 307  
Hartford, CT 06106  
Tel: (860) 524-5820  
Fax: (860) 728-1302

February 5, 2002

Michael R. Clement, City Clerk  
City of Providence  
City Hall  
25 Dorrance Street  
Providence, RI 02903

**Re: Easement Granted to Cox Communications for 70 Elm Street**

Dear Mr. Clement:

Please note that under separate cover a check in the amount of \$900.00 is forthcoming, payable to the City of Providence ("City") from Cox Communications, to cover the cost of a 20-year easement for underground access to the 70 Elm Street, Providence. Via this letter, however, Cox wishes to notify the City of Providence that it is paying for this easement "under protest."

Cox has an excellent working relationship with the City of Providence, and wishes to maintain that relationship in the future. We recognize that the City has a legitimate right to manage its rights-of-way and to receive fair and reasonable compensation to recover costs directly incurred through the use of the public rights-of-way. However, Cox believes that the existing procedure of seeking City Council approval, coupled with the cost of easements, far exceeds allowable limits and constitutes a barrier to entry in violation of Section 253 of the Telecommunications Act of 1996. The two critical areas are cost and time to market.

In September of 2001, Cox first learned of a new process being adopted by the City to require that all companies doing new underground work within the City of Providence secure easements from the City prior to performing such work. Since there was no written policy in place, Cox contacted Senior Assistant City Solicitor, John D'Amico, to clarify the new procedures the City intended to impose.

Mr. D'Amico indicated that the process would apply only to new underground work, and not to simple line extensions. Based on discussions with Mr. D'Amico, Cox's understanding of the new, unwritten policy, and the approximate timelines associated with the process, was as follows:

- Day 1: Company seeking easement submits application and plans for underground work to both the City Clerk's office and the Department of Public Works for parallel processing;
- Day 14-21: Department of Public Works submits its recommendation for approval of the easement, and the Department of Planning submits its recommendation for the cost of the easement, to the City Council's Committee on Public Works;
- Day 28: City Council's Committee on Public Works considers recommendations of Department of Public Works and Department of Planning and makes final recommendation to City Council on approval of easement.
- Day 42-56: City Council grants final approval of easement, subject to signature by the Office of the Mayor.

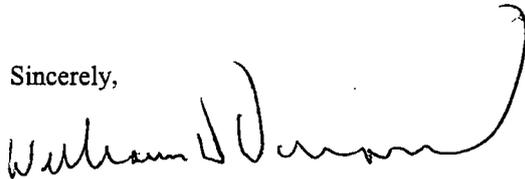
In total, Mr. D'Amico indicated that the new process, start to finish, was likely to take between five and eight weeks, depending on the meeting schedules of the Public Works Committee and the City Council.<sup>1</sup> In September and October of 2001, Cox expressed reservations about the timelines associated with this new process, and about the unpredictability of the easement fees to be charged. Nonetheless, Cox wished to continue to cooperate with the City to try to establish a workable process. Therefore, Cox agreed to submit one application under the new process to determine whether the process, and the easement fees associated therewith, would be workable for Cox.

Pursuant to Mr. D'Amico's instructions, on October 18, 2001, Cox submitted an application for easement, along with prints detailing the precise work to be done, to the office of the City Clerk and to the Department of Public Works so that both entities could review the Cox plans simultaneously in order to expedite consideration and ultimate approval. Cox followed up with several calls to the City throughout the month of November to check on the status of the application. On November 30, 2001, Cox learned that the Department of Public Works had approved the project, and had forwarded the application to the Department of Planning needed to perform a market value appraisal. On December 11, 2001, the City Council's Committee on Public Works approved Cox's application for easement for a price of \$900.00 (\$26.47 per foot for a 34-foot crossing), pending final approval by the full City Council at its next meeting. On January 15, 2002, almost 90 days after initially submitting the application, the City Council granted final approval.

As stated above, Cox believes that the new procedure being followed by the City presents a barrier to competition. In that regard, Cox has held several meetings with Mr. D'Amico in an attempt to collaborate on an alternative process that treats all companies equally, assesses fees that are cost-based, and does not unduly delay the ability of any competitor to provide new telecommunications services. In addition, we have provided Mr. D'Amico with extensive legal authority that demonstrates that any attempts by a municipality to manage its rights-of-way must be competitively neutral, cost based, and must not unduly delay a telecommunications provider's ability to provide new services.

Cox wishes to continue its dialogue with the City with an eye toward a reasonable settlement that ensures the City appropriate protection of its infrastructure, while affording Cox the opportunity to provide Providence residents and businesses the benefits of a competitive telecommunications market. We look forward to continued fruitful discussions on this matter.

Sincerely,



William D. Durand,  
Executive Vice President  
Chief Counsel,  
NECTA

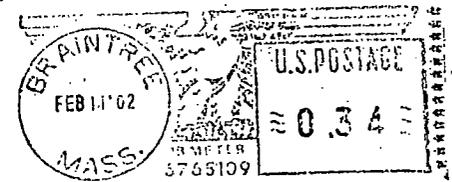
cc: Mr. Robert M. Clarkin, Chairman, Committee on Public Works  
John D'Amico, Senior Assistant City Solicitor

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<sup>1</sup> This schedule is significantly longer than the 30 days within which the City typically granted permit applications for underground work, prior to implementing this new process.



**New England Cable and  
Telecommunications Association, Inc.**  
100 Grandview Road ■ Suite 310 ■ Braintree, MA 02184



Michael R. Clement, City Clerk  
City of Providence  
City Hall  
25 Dorrance Street  
Providence, RI 02903

02903-173A





Rhode Island

Department of City Clerk

MEMORANDUM

DATE: November 2, 2001

TO: Ferdinand Ihenacho, Director of Public Works

SUBJECT: **PÉTITION OF BARRY FONTAINE, CAPITAL SUPPORT AND UTILITIES MANAGER COX COMMUNICATIONS NEW ENGLAND, REQUESTING PERMISSION TO EXCAVATE AND PLACE CONDUIT FROM AN EXISTING VAULT ON THE NORTH SIDE OF ELM STREET CROSSING THE STREET TO SERVICE #70 ELM STREET.**

CONSIDERED BY: Councilman Robert M. Clarkin, Chairman, Committee on Public Works

DISPOSITION: The accompanying petition is referred to you for study, report and recommendation and report back in writing to the above-named committee as soon as practical.

*Is Elm Street Concrete Base ?? NO*

*Claire E. Bessing*

Second Deputy City Clerk

## PETITION TO THE CITY COUNCIL

TO THE HONORABLE CITY COUNCIL OF THE CITY OF PROVIDENCE:

*The undersigned respectfully petitions your honorable body*

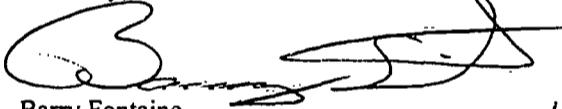
Cox Com Inc. d.b.a. Cox Communications is hereby requesting permission from the City of Providence to excavate and place conduit from an existing vault on the north side of Elm Street crossing the street to service # 70 Elm street. The street crossing will be 23 ft in total. Sidewalks effected will be 4 ft. on the north side where our existing plant is and 7 ft. in front of 70 Elm Street.

Attached are the engineered plans showing the proposed route.

Cox Communications has recently placed over 18,000 feet in the Jewelry District of the city, working very close with the public works department assuring all restoration meets and satisfies city requirements.

Thank you for your time and I will be available to answer any questions that you may have regarding this request.

Sincerely,



Barry Fontaine  
Capital Support and Utilities Manager  
Cox Communications New England

10/12/01

THE CITY OF PROVIDENCE  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

---

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IN CITY COUNCIL  
JAN 3 2002  
READ AND PASSED  
*[Signature]*  
PRES.  
*Michael R. Clement*  
CLERK

APPROVED  
JAN 08 2002  
*Vincenta Crone*  
MAYOR



A true copy.  
Attest:  
*Michael R. Clement*  
Michael R. Clement  
City Clerk

BK 498 / PG 0235

PROVIDENCE, R. I.  
PUBLIC WORKS DEPT. - ENGINEERING OFFICE  
STREET LINE SECTION  
Plan No. 064685  
Date Nov. 14, 2001

RICHMOND STREET

ELM STREET

Lot line

Lot line

Existing Vault

34'±

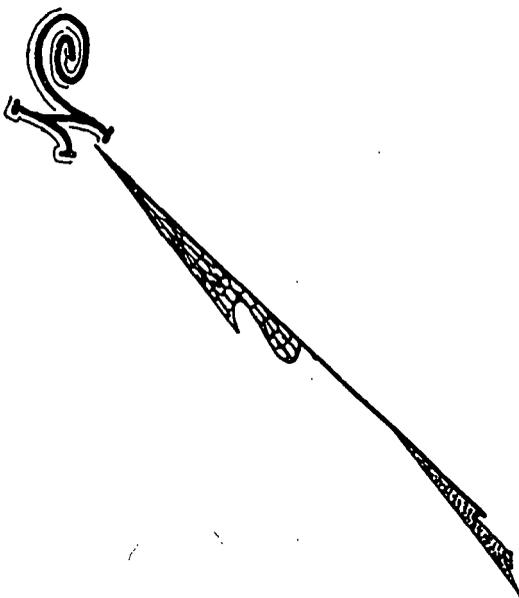
2' width

Lot 120

Lot 417

70'±

CHESTNUT STREET



NOTES: Plan showing proposed easement for underground conduit for Cox Cable.  
Total square footage = 68'±

Lot numbers taken from A.P. 21.

CITY OF PROVIDENCE, R. I.  
Public Works Dept. - Engineering Office  
Showing Proposed easement on Elm St.  
for underground conduit.  
Drawn by A. Zisiades Checked by JLC  
Scale 1" = 30' Date 11-14-2001  
Corrected by James A. Morris Associate Engr.  
Approved [Signature] CHIEF ENGINEER

FERDINAND C. IHENACHO, P.E., PTOE.

Director



4987PG0236

VINCENT A. CIANCI, JR.

Mayor

Department of Public Works

"Building Pride In Providence"

November 14th, 2001

Hon. Robert M. Clarkin  
Chairman of the Public Works Committee  
Providence City Council -- City Hall  
Providence, R.I. 02903

Dear Councilman Clarkin:

Re: Petition of Barry Fountain, Capital Support & Utilities  
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Director

CC: M. Clement - City Clerk  
J.D'Amico, Esq.-City Atty.  
G. Florio  
JLC  
SZ



Rhode Island

## Department of City Clerk

### MEMORANDUM

DATE: November 2, 2001

TO: Ferdinand Ihenacho, Director of Public Works

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Second Deputy City Clerk

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TO THE HONORABLE CITY COUNCIL OF THE CITY OF PROVIDENCE:

*The undersigned respectfully petitions your honorable body*

Cox Com Inc. d.b.a. Cox Communications is hereby requesting permission from the City of Providence to excavate and place conduit from an existing vault on the north side of Elm Street crossing the street to service # 70 Elm street. The street crossing will be 23 ft in total. Sidewalks effected will be 4 ft. on the north side where our existing plant is and 7 ft. in front of 70 Elm Street.

Attached are the engineered plans showing the proposed route.

Cox Communications has recently placed over 18,000 feet in the Jewelry District of the city, working very close with the public works department assuring all restoration meets and satisfies city requirements.

Thank you for your time and I will be available to answer any questions that you may have regarding this request.

Sincerely,



Barry Fontaine  
Capital Support and Utilities Manager  
Cox Communications New England

10/12/01

**RECORDERS NOTE  
POOR ORIGINAL  
FOR DUPLICATING**

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*Mayor*

## PROVIDENCE REDEVELOPMENT AGENCY

*"Building Pride in Providence"*

## MEMORANDUM

**DATE:** December 20, 2001

**TO :** Michael Clement, City Clerk

**FROM:** William G. Floriani, Assistant Director  
Project Management and Construction

**RE :** VALUE OF EASEMENT  
ELM STREET

Pursuant to your request I have visited the site referenced above. The purpose was to determine the Fair Market Value of an easement to place conduit in the street. The property is in the Jewelry District and is valued as follows:

The value of the property is as follows:  
68 s.f. @ \$12.75 per ft = \$900.00

*Barbara A. Ironcy*

BARBARA A. IRONCY  
ACTING RECORDER OF DEEDS

2002 JAN 16 A 8:47

PROVIDENCE, RI  
RECEIVED FOR RECORD

4987/232-239

PROVIDENCE, RI  
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2002 JAN 16 A 8:47  
BARBARA A. TRONCY  
ACTING RECORDER OF DEEDS

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2/4/02