

July 1, 2004

## Owner of Subservient Estate May Change Location of Easement Without the Consent of the Easement Holder

On June 15, 2004, the Massachusetts Supreme Judicial Court, in the case of *M.P.M. Builders, LLC v. Dwyer*, ruled that the owner of a estate burdened by an easement may relocate the easement without the consent of the holder of the easement. In adopting criteria for such relocation, the Court provided protection for the holder of the easement and struck what the Court deemed an “appropriate balance” between the parties.

Previously, common law in Massachusetts was mixed. One line of cases provided that, once the location of an easement had been fixed, it could not be changed except by mutual agreement between the holder of the easement and the owner of the burdened estate. Other cases permitted the relocation of an easement by the burdened property owner so long as there would be no material increase in the cost of or inconvenience to the easement holder’s use. The Court, adopting the rule proposed by the American Law Institute in the Restatement (Third) of Property (Servitudes) Section 4.8(3) (2000), concluded that, in compliance with “everyday realities”, in the absence of language in the easement expressly denying relocation, M.P.M. could relocate the easement at its expense, provided that such relocation does not lessen the utility of the easement, increase the burdens on Dwyer’s use and enjoyment of the easement or frustrate the purpose for which the easement was created.

The Court noted that an owner of property burdened by an easement may make any and all beneficial uses of such property consistent with the easement and that the criteria set forth in Section 4.8(3) serve to protect the interests of the holder of the easement. Rejecting the notion that an easement could not be relocated under any circumstances without the consent of the holder of the easement, the Court observed that such a rule preventing reasonable changes in the location of an easement would render a right of way into a virtual possessory interest. In the absence of agreement, the party seeking to relocate an easement should seek a declaratory judgment from the Court that the proposed relocation meets the criteria set forth in Section 4.8(3) and its ruling. In such action, the holder of the easement would have the opportunity to show that the proposed relocation would cause damage.

The Court’s decision impacts the owners or proposed purchasers of property burdened by easements, who, heretofore, may have felt limited in development possibilities due to the current location of easements. The clarification of the common law provided by the decision provides property owners with a framework for relocating easements to permit the full development of their property, while at the same time assuring the holder the continued use and enjoyment of the easement.