



By Email and Overnight Delivery

November 8, 2019

Hon. Melanie E. La Rocca
Commissioner
New York City Department of Buildings
280 Broadway
New York, New York 10007

Dear Commissioner La Rocca:

We have learned that the Department of Buildings' Retaining Walls Unit has recently sent many property owners along the New York City Transit Authority's B/Q and N lines in Brooklyn notices of violation for failing to file inspection reports for the retaining walls along the Transit Authority's below-grade rights-of-way in violation of the City's Administrative Code. While we appreciate the City's vigilance, our view is that inspection and maintenance of the retaining walls along those Brooklyn subway lines is the responsibility of the New York City Transit Authority, not of the adjacent homeowners. In fact, the Transit Authority regularly inspects those retaining walls and makes needed repairs.

While we continue to review the pertinent property records, it is our understanding that the retaining walls were constructed in the early 1900s by the Brooklyn Rapid Transit Company (or a predecessor) under easements acquired from adjacent property owners. Based on the property records we have reviewed, those easements obliged the railroad company (and its successors) to inspect and maintain the retaining walls. Eventually, the City acquired those easements and, pursuant to the Master Lease between the City and the MTA covering City property interests used for the transit system, those easements obligations are now the responsibility of the Transit Authority.

Further, it makes sense as a practical matter that the Transit Authority, as opposed to the adjacent homeowners, handle the inspection and maintenance of the retaining walls. Since inspections of and repairs to the retaining walls require access to active subway rights-of-way, having private engineers and contractors inspecting and repairing the retaining walls would be impracticable and unsafe. Also, it would be highly inadvisable to rely on homeowners for inspection and maintenance of retaining walls that are essential to the operation of the transit system.

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Accordingly, our view is that the notices of violation that have been issued to homeowners should be rescinded, with appropriate notification to the homeowners.

Please be assured that the New York City Transit Authority routinely inspects the retaining walls at least once a year and promptly undertakes any needed repairs and maintenance.

Sincerely,



David Farber
Acting General Counsel

Cc. A. Byford