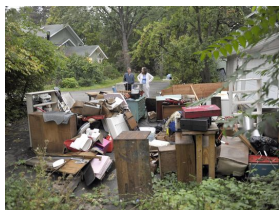


Road project upends Rochester Hills family

Mike Martindale, The Detroit News 12:01 a.m. EDT October 28, 2015



(Photo: Charles V. Tines / The Detroit News)

Rochester Hills — The Penberthy family finds itself in a fight with City Hall that has become a personal nightmare without an end in sight.

They're living in a hotel room after they say work on the city's Hamlin Road expansion project flooded their home. Their son is suffering at school since their lives have been upended. And city officials, who filed a condemnation complaint to win an easement on the Penberthy property, have been of limited help.

"I never expected things to get like this; some days, it's just overwhelming," said Mary Penberthy, a dental hygienist whose voice cracked with emotion. "It's not like we did the damage.

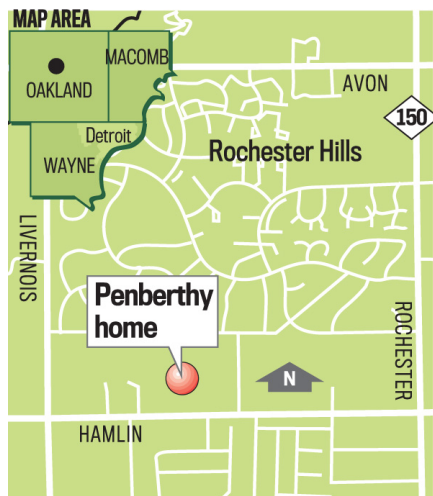
"It has been one thing after another, and now the house is beginning to show more damage, with mold growing inside it."

The Penberthys estimate damages are more than \$250,000, including irreplaceable antiques that were ruined and had to be thrown out. The four-bedroom farmhouse on more than four acres has been in the family since 1967. The Penberthys have lived there for eight years.

"It tears at your heart," she said. "Things like an 1880 table my grandmother used to make doughnuts on. How do you replace that?"

Timothy S. Ferrand, an attorney for Rochester Hills, said the city, which is overseeing the project, "has gone out of its way to help the family." Instead of taking the city to court the Penberthys should be looking for help from the contractors hired to do the work, he added.

"There is a claims process and due process that they seem to want to go around," he said. "And also a need to direct their actions against the responsible parties, and we don't believe that is Rochester Hills."



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The dispute began with the city taking a 30-foot right-of-way easement across the Penberthys' front yard on Hamlin between Crestline and Fieldcrest in May. Then, in June, after work began on the project, raw sewage filled their basement and spewed out of sinks and onto the main floor of their home after a work crew hired to relocate and reinstall a gas main instead severed a sewer pipe.

The following month, another work crew hit a water main, flooding the property, including a garage where the family had stored anything they were able to salvage from the sewer fiasco.

The next day, work crews caused a second sewage backup in the home's basement.

When the city ignored the Penberthys' request for repairs, the family's attorney filed a temporary restraining order to stop construction until the city arranged for accommodations for the family.

The family had tried to make some repairs but used up all their money after the first sewage backup. They applied for a home equity loan but were turned down because their home was

deemed uninhabitable due to the construction project.

Judge Martha Anderson ordered the city to stop construction along Hamlin between Livernois and Rochester roads. But the city did not want to delay the project and agreed to provide accommodations, including storing personal items, appointing a person to facilitate repairs for damage and providing temporary rental housing while repairs were done.

Three months later, the city insists it has complied with court orders "in every conceivable fashion" and is not responsible for making the Penberthys whole. Instead, the city attorneys argue in court documents, the family should be going after the contracted companies that did the damage.

"We have questions about how sewer damage would even result on the first floor. Very unusual," Ferrand said. "And they went through and removed much of the first floor and now want the city to pay for it all. We are not opening a checkbook for a home remodeling job.

Dispute over responsibility

H. Adam Cohen, an eminent domain specialist, entered the legal fray for the Penberthys after Rochester Hills filed a condemnation lawsuit. The two sides were unable to agree on the value of frontage land for the easement the city needed for the widening project.

The city offered \$8,132 for the land, which the Penberthys believe has more value. The city took possession of the easement and the Penberthys continued to live in their home, which is set back enough from the road that even after the road construction the family wants to move back in.

"The taking was made without their consent," Cohen said. "Under law, they have the legal right to take the property but they also have responsibilities. The city must pay for the damage that the work in their right-of-way caused."

No other Hamlin Road residents have experienced damages from work crews, according to Cohen.

Birmingham attorney Alan T. Ackerman, who has been involved in eminent domain cases for more than 30 years, says the city's claim the Penberthys are suing the wrong party is incorrect.

"Even if there is a dispute on who did what, the city should take responsibility to make (the Penberthys) whole," said Ackerman, an adjunct professor who teaches eminent domain law at the Michigan State University College of Law and who has also taught at University of Detroit Law School. "Then the city should be the collector and, in turn, go after the responsible party or parties."

Ackerman, also past chairman of the Michigan Real Property Section Condemnation Law Committee, American Bar Association Real Property Section Condemnation Committee, said municipalities are increasingly using eminent domain to "get what they want" while "abusing" the property owner.

"Under law a person whose residence is entitled to not less than 125 percent of market value, in addition to other reimbursement allowed by law," he said. "That's fair market value, not sentimental value. But municipalities are trying to get around this by not taking or condemning all of someone's property or residence — just an easement."

Heavy toll on family

The case's toll on the family continues. Philip Penberthy said his normally low blood pressure has "shot up" with each event.

"I think it is a direct result of the stress from all of this," he said. "You might think that moving into a hotel would be all right but it became old fast. And it's noisy and no one is sleeping properly."

Penberthy and a teen son often compete for the lone desk in the room. The son attends a prestigious high school but his parents claim that the lack of a stable home has affected his work and for the first time in his academic career, he is encountering problems at school. An older daughter is attending college out of state.

Even once legal matters are resolved, it is anticipated it will take months before the family can move back into their home and their lives will return to normal, they say.

"Just finding things we need now is difficult," Mary Penberthy said. "When the sewer and water damage happened, our first efforts were to salvage whatever we could and put them in plastic bins. Now everything has been packed up and put away and it was done so fast we couldn't keep track of what was what.

"I can't even find our winter coats, and we are going to be needing them soon," she said. "We have had to go and buy new clothes."

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