




OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2024-065

TO: Mayor and Council

FROM: Garrett Lam
Assistant City Attorney 

DATE: January 7, 2025

MEETING: January 14, 2025

RE: Damage claim of
Carla Eldridge
1817 SW Charles Whitlow Ave
Lawton, Oklahoma 73501

Submitted in the amount of \$17,215.42 on November 11, 2024.

RECOMMENDATION: Denial

BASIS OF CLAIM: Claimant, Carla Eldridge, is the owner of the home at 1817 SW Charles Whitlow, Lawton, Oklahoma. She filed a claim on November 11, 2024, alleging several breaks to the water main had damaged the foundation of her home. She's seeking \$17,215.42 for foundation repair. She submitted an estimate for the repair from AAA Guardian Foundation out of Wichita Falls, Texas. The estimate is for foundation repair to the kitchen, the back bathroom, and the back bedroom.

DATE OF DAMAGE: September 23, 2024

FACTS: On September 20, 2024, Claimant called Water Distribution at 8:13 AM to complain about a water leak in her yard and water going over the curb. The Water Distribution crew responded and found the main line to be leaking. On September 23, 2024, Claimant states a blue paper was left on her door by Water Distribution to advise they would be working on the water pipes in her area. On September 27, 2024, she called Water Distribution again to complain about water around her mailbox that would eventually enter her yard. When the Water Distribution Crew responded, they noted on the work order that the "main line was flooding up to the porch".

The Water Distribution Crew would repair the water main on October 2, 2024. They stated that the main under the driveway was leaking and it would need further pipe work, but the leak was repaired. The crew documented the extensive nature of the repair with several pictures. They also photographed the state of disarray of the yard and several piles of trash piled up against the home. The home also showed signs of cracking in the siding. There is also a large tree adjacent to the driveway where the leak occurred.

Historical reports from Water Distribution show a previous water main break on July 4, 2022, that was repaired on July 5, 2022. No other breaks are noted in the last three years on this segment of the

Claims Memorandum

DC-2024-065

Page 2

main line.

Ms. Eldridge bought the home in April 2021. The real estate listing pictures are still up on Zillow and Realtor.com. These old pictures show a home already in disrepair. There are several pictures taken on September 17, 2019, showing the rear of the home with the concrete steps pulling away from the home. Also, the concrete pad on which the HVAC unit is sitting is also leaning. Later pictures taken in 2021 of the interiors of the home show the laminate flooring and cabinetry in the kitchen to have a pronounced dip. Other interior rooms show the flooring not aligned with the baseboard. Further, Google Earth pictures and pictures on the County Assessor's website of the property show several years of decline from lack of basic maintenance.

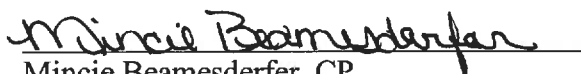
The property was viewed several times by the City Attorney's Claims Investigation staff members. The home has a large blue tarp over a good portion of the roof. The home is also leaning towards the road. Given the history of the property and its current state of disrepair, we are unable to attribute the damage to any negligence on behalf of the City and it's likely to have been damaged before the water main leaks.

LEGAL BASIS FOR DENIAL OF CLAIM: Pursuant to Title 51, Oklahoma Statutes, §151 et seq., municipalities are held accountable in the same manner as private entities or individuals for negligent acts or omissions that result in harm to others. Negligence comprehends the failure to exercise due care required by the circumstances. Berbohn v. Pinkerton, 255 P.2d 260 (Okla. 1953). However, negligence is never presumed, and the burden of proving negligence and that it was the proximate cause of the harm complained of, is on the complaining party. Oklahoma Ry. Co. v. Ivery, 204 P.2d 978 (Okla. 1949).

This office recommends denial of this claim in full because in this instance:

1. The general state of the home shows a lack of basic maintenance over several years, before Ms. Eldridge owned the home and before any water main leaks.
2. It appears that the home had foundation damage before Ms. Eldridge purchased the home, and it was damaged when she purchased it.
3. No negligence could be found on the part of the City.

GARRETT LAM,
ASSISTANT CITY ATTORNEY


Mincie Beamesderfer, CP
Claims Investigator