

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARING

ROBERT AND WENDY REDINGER, : In re: 1881 Painters Run Road,
: Pittsburgh, PA 15241
Appellants, :
: Docket No. ACHD-16-011
v. :
: Copies Sent To:
ALLEGHENY COUNTY HEALTH : *Counsel for Robert and Wendy*
DEPARTMENT, : *Redinger:*
: Andrew J. Karas, Esq.
Appellee. : FAIR SHAKE ENVIRONMENTAL
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: :
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: *Department:*
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**DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH
DEPARTMENT HEARING OFFICER**

I. INTRODUCTION

The key issue here is whether a sewer line is public or private property. Appellants Robert and Wendy Redinger (“Appellants” or the “Redingers”) own property at 1881 Painters Run Road in Upper St. Clair Township. On May 31, 2016, the Allegheny County Health Department (“ACHD” or the “Department”) issued a Notice of Violation to the Redingers, for violation of ACHD Rules and Regulations Article XV—Plumbing and Building Drainage, § AC-703.3.1, which provides:

“Existing Common Sewer Lateral. When the [Department] identifies the existence of a common sewer lateral (CSL), that is not recorded in the Recorder of Deeds Office of Allegheny County, it may issue orders to all affected

property owners to separately connect to an available public sewer, or in the alternative, to record in the Recorder of Deeds Office of Allegheny County, a document, approved by the [Department], identifying the existence of the CSL and adequately specifying the maintenance responsibilities for property owners.”

The Redingers filed a timely appeal of this Notice of Violation, contending that the sewer line servicing their property (the “Painters Run Line”) is public, not private, and that the Township of Upper St. Clair (“Township”) is responsible for maintaining and repairing that sewer line. A hearing was held on February 10, 2017. However, a ruling on this matter was stayed while the Township was joined as an indispensable party to this proceeding in July of 2017. A continuation hearing was held on October 15, 2018 to allow the Township to present evidence.

This tribunal rendered a decision in January of 2019, holding that the Redingers failed to prove that the Painters Run Line is public. In July of 2021, the Commonwealth Court remanded the matter, directing this tribunal to place the burden of proof on the Department to show that the Painters Run Line is private.

After reviewing the evidence, the papers submitted by the parties, and the relevant law, this tribunal finds that the Department has proven by a preponderance of the evidence that the Painters Run Line is private, not public. Additionally, this tribunal rejects the Redingers’ argument that they are unable to comply with the NOV. The Redingers’ appeal is therefore dismissed.

II. EVIDENCE

The Parties elected to forego an additional hearing, and submitted this matter on briefs. However, this tribunal admits the exhibits from the previous

hearings in this matter into evidence. The following exhibits were offered by Appellants Robert and Wendy Redinger and admitted into evidence:

- A and A1: Subdivision and Land Development Plan for Best Oil Company, dated August 1998
- B and B1: Township response to Redingers' Right to Know request
- C: Redinger questions to Township Department of Public Works
- D: Township dye test compliance letter
- E: Township No Lien letter

The following exhibits were offered by the Township of Upper St. Clair and admitted into evidence:

- 1: Notice of Violation dated May 31, 2016
- 2: Color map of public and private lines
- 3a: Color photo of Redinger home and Manhole Numbers 950-553
- 3b-3d: Color photos of Manhole Number 950-552
- 3e: Color photo of Manhole Number 950-551

The following exhibits were offered by the ACHD and admitted into evidence:

- 1: Inspection Report

III. PROCEDURAL HISTORY

This case has been wending its way through the courts for several years. In May of 2016, pursuant to Article XV, § AC-701.3.1, the Department ordered that the owners of the properties utilizing the Painters Run Line either (1) disconnect from the Painters Run Line and connect to a public sewer, or (2) enter into a mutual maintenance agreement and record the same with the recorder of deeds.

The Redingers' timely appeal followed on June 3, 2016. An initial hearing was held on February 10, 2017, at which time the Department and the Appellants each presented evidence and testimony. *See generally First Hearing Tr.* At the time of this initial hearing, the ACHD Rules governing hearing procedure provided that

the “person filing the appeal shall bear the burden of proof and the burden going forward with respect to all issues.” *See* Opinion and Order of January 9, 2019, 4-5 (citing previous ACHD Rules, Article XI § 1107). However, on December 18, 2017, the ACHD Rules were amended to place the Burden of Proof on the Department “[w]hen it issues an Order.” Article XI §1105(C)(7).

On July 18, 2018, the Department moved to join the Township of Upper St. Clair as an indispensable party. The Hearing Officer granted the Department’s Motion on July 26, 2018. A second hearing was held on October 15, 2018, at which the Township presented testimony and evidence. *See generally Verbatim Record of Proceedings, October 15, 2018* (“Second Hearing Tr.”).

This tribunal rendered a decision on January 9, 2019, rejecting the Redingers’ arguments that (1) the burden of proof should be borne by the Department, and (2) that the Department’s enforcement action constituted an unconstitutional taking without just compensation. *See generally Opinion and Order of January 9, 2019*. This tribunal stated that the proper allocation of the burden of proof was a “threshold matter” guiding its decision on whether the Painters Run Line was public or private. *Id.* at 4. This tribunal found that the Redingers failed to prove that the Painters Run Line is public. *Id.* at 7-11, 13.

That decision was affirmed following an appeal to the Allegheny County Court of Common Pleas on June 25, 2020. The Redingers appealed the trial Court’s decision to the Pennsylvania Commonwealth Court on July 23, 2020.

The Commonwealth Court reversed and remanded on July 15, 2021.

Specifically, the Commonwealth Court found that the change in the Department's own rules of procedure after the first hearing but before the second required placing the burden of proof on the Department:

Retroactivity is not explicitly at issue here because the hearing had not concluded prior to the change in ACHD's Rules and Regulations. It may have been otherwise if the hearing had concluded before the Rules and Regulations had changed. As this was not the situation, the Hearing Officer had an opportunity to apply the new law, even if primarily in an abundance of caution, during the proceedings to ensure that the Redingers were not denied due process. ACHD argues that to do so would have been to impose new duties on it with respect to an already completed transaction. However, the transaction at issue here was not complete. It is true that the first hearing in the matter had concluded, but it was ACHD that sought to join the Township as an indispensable party, and once that joinder was allowed, the hearing was continued until a date after ACHD's Rules and Regulations had changed. Because the "transaction" was not complete until the second hearing concluded, the change in the law should have been applied. While it is true that the new Rules and Regulations were silent as to matters in progress, it seems that fairness would dictate the Redingers would receive the benefit of the change during the pendency of a transaction during which the rules were changed by ACHD, itself — the same entity that also extended the litigation by filing the Motion to join the Township.

Redinger v. Allegheny Cty. Health Dep't., No. 729 C.D. 2020, __ A.3d. __, 2021 WL 4439295, 2021 Pa. Commw. LEXIS 557, *24-25 (2021). Accordingly, the case was remanded to the Hearing Officer "to reconsider his January 9, 2019 order in light of the [ACHD] Rules and Regulations that became effective on December 8, 2017, and to hold an additional hearing(s) if deemed necessary." *Id.* at *26.

Following remand, and after a status conference held on August 26, 2021, this tribunal entered an order memorializing the parties' stipulations, releasing the Township as a party, and establishing a briefing schedule for arguments by the Department and the Redingers. Upon agreement of the parties, no additional evidentiary hearings were held, though certain agreements were reached as to the record. *See* August 27, 2021 Order (excluding from evidence unauthenticated attachments to Redingers' 2017 and 2018 filings); *see also* Hearing Officer Email dated August 27, 2021 (allowing Redingers to represent that their "negotiations concerning a mutual maintenance agreement have not been successful").

IV. FINDINGS OF FACT

After reviewing the evidence and having resolved all issues of credibility, this tribunal finds the following facts:

1. Robert and Wendy Redinger (the "Redingers") own property at 1881 Painters Run Road in Upper St. Clair Township, Pennsylvania. (October 15, 2018 Hearing Transcript ("H.T.") at 11).
2. There are two sewer lines near the Redingers' property: a public sewer line with a diameter of 30 inches located across the street on Painters Run Road from the Redingers' property; and a sewer line with a diameter of 6 inches located directly in front of the Redingers' property (the "Painters Run Line"). (October 15, 2018 H.T. at 21-23; Ex. 2).
3. On May 31, 2016, the Allegheny County Health Department ("ACHD") issued a Notice of Violation to the Redingers for violations of ACHD Article XV—Plumbing and Building Drainage ("Article XV") § AC-701.3.1 for failure to either enter into a mutual maintenance agreement concerning a common sewer lateral or to connect to a public sewer.
4. On June 3, 2016, the Redingers timely appealed the ACHD's Notice of Violation.

5. On February 10, 2017, a hearing was held in this matter, which included legal counsel for the Redingers and the ACHD.
6. On May 19, 2017, the Redingers and the ACHD submitted their briefs pursuant to the February 10, 2017 hearing.
7. On May 26, 2017, this tribunal granted a stay of proceedings to allow for the Townships of Mt. Lebanon and Upper St. Clair to provide documentation regarding the sewer systems near the Redingers' property.
8. On July 18, 2017, the ACHD presented a motion to join the Township of Upper St. Clair (the "Township") as an indispensable party, which this tribunal granted.
9. On December 18, 2017, the Department's Rules and Regulations, Article XI (Hearings and Appeals) were amended to place the burden of proof on the Department "[w]hen it issues an Order." (ACHD Art. XI, § 1105(C)(7)).
10. On October 15, 2018, a continuation hearing was held in this matter to allow the Township to present evidence because it was not a party to the February 10, 2017 hearing.
11. On January 9, 2019, this tribunal issued a decision, rejecting the Redingers' arguments that the burden of proof should be borne by the Department, and that the Department's enforcement action was an unconstitutional taking. The Redingers timely appealed this decision.
12. On June 25, 2020, the Allegheny County Court of Common affirmed this tribunal's decision. The Redingers then timely appealed to the Pennsylvania Commonwealth Court.
13. On July 15, 2021, the Commonwealth Court remanded the case to this tribunal, directing this tribunal to place the burden of proof on the ACHD.
14. Rather than conduct an additional hearing, the parties chose to submit briefs in this matter.

V. DISCUSSION

1. Burden of Proof

The Pennsylvania Commonwealth Court directed this tribunal to place the burden of proof on the Department. Pursuant to the Department's Rules and

Regulations Article XI, (“Hearings and Appeals”), § 1105(C)(7), the Department bears the burden of proof in an administrative appeal when it issues an order. Here, the Department has the burden to prove by preponderance of the evidence that the Painters Run Line is private, rather than public. The preponderance of evidence standard “is tantamount to a ‘more likely than not’ standard.” *Agostino v. Twp. of Collier*, 968 A.2d 258, 269 (Pa. Cmwlth. Ct. 2009) (citing *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Cmwlth. Ct. 2002)).

2. Private Ownership of the Painters Run Line

The Redingers’ core argument is that the Department has not proven that the Painters Run Line is private. In their brief, the Redingers conclude, “Because no evidence convincingly demonstrates the circumstances of the Painters Run Line’s construction, maintenance history, or ownership, it is respectfully submitted that the Commonwealth Court’s re-allocation of the burden of proof in this matter is outcome determinative.” (*Appellants’ Brief* at 5). In other words, Appellants argue because the evidence is not conclusive, the Department has failed to prove its case.

As a framework for their argument, the Redingers emphasize that in previous cases concerning whether sewer lines are public or private, this tribunal has looked to three key factors: (1) the historical and cartographical evidence of the sewer system involving the properties at issue; (2) the results of title search(es) for easements on the property; and (3) the physical characteristics of a sewer’s construction. (*Appellants’ Brief* at 4-5 (citing *Pittsburgh Water & Sewer Auth. v.*

ACHD, (“*2625 Brownsville Road*”) (May 18, 2017) at 4¹; *Golankiewicz v. ACHD*, (“*Homehurst I*”) (December 22, 2016) at 8²; *Pittsburgh Water & Sewer Auth. v. ACHD*, (“*Homehurst II*”) (October 2, 2017) at 6-9³).

In support of its argument, the Redingers first point to the cartographic evidence introduced in the case, focusing on two maps presented during the hearings: first a map produced by George Kostelich, the Township’s Director of Public Works, which was created over thirty years ago, and depicts the public line north of Painters Run Road, but does not depict the Painters Run Line. (See Redingers Ex. B). Second, a map depicting the public sewer path in black, but also a blue line depicting the approximate location and path of the Painters Run Line. (See Township’s Exhibit 2) (See also *Appellants’ Brief* at 6-9). Next, the Redingers point out that the absence of sewer easements on the Painters Run Line is not necessarily probative of whether the Painters Run Line is public or private, echoing this tribunal’s earlier reasoning in *2625 Brownsville Road*. (*Appellants’ Brief* at 8). Finally, the Redingers contend that although the Painters Run Line has a six-inch diameter, rather than the thirty-inch diameter of most public sewer lines nearby, the Department has failed to demonstrate why a six-inch sewer line is incompatible with public ownership. (*Id.* at 9-10).

The Department rebuts each of the Redingers’ arguments. Regarding the maps submitted, the Department argues that the Redingers have not marshalled

¹ Available at [2625-Brownsville-Rd-Administrative-Decision.pdf \(allegHENYcounty.us\)](#).

² Available at [Homehurst Administrative Decision.pdf \(allegHENYcounty.us\)](#).

³ Available at [Homehurst-II-Administrative-Decision.pdf \(allegHENYcounty.us\)](#).

any evidence indicating that the Painters Run Line is public. (*ACHD Reply Brief* at 1-2). Regarding sewer easements, the Department notes that no easements were found granting a municipality entrance to either the Redingers' property or any other properties along the Painters Run Line. (*ACHD Brief* at 8). And regarding the characteristics of the Painters Run Line, the Department points to the testimony of Jennifer Slagle ("Ms. Slagle"), the Township Engineer, who declared at the initial hearing that no six-inch sewer line in the Township could be public, and that any public sewer line would have to be eight inches or greater. (*See Id.*, citing *First Tr.* at 23-24).

The Department distinguishes the current case from the *Homehurst II* and *2625 Brownsville Rd.* cases that the Redingers cite. The Department asserts, "In both *Homehurst II* and *2625 Brownsville Rd.*, evidence was offered to robustly or conclusively demonstrate that the sewer line was public. No such evidence was offered in the present matter to rebut the Department's evidence demonstrating the Painters CSL is private." (*ACHD Reply Brief* at 2). The Department concludes, "[The] Redingers have not introduced any evidence demonstrating that the Township of Upper St. Clair ordered the construction of Painters CSL, paid for the construction, held maintenance or repair duties at any time, or created an exception to the typically large diameters of public sewer lines." (*ACHD Reply Brief* at 2).

This tribunal holds that the Department has the stronger case here. With respect to the maps, even if one disregards the Township's Exhibit 2, which was produced after litigation in this matter commenced, the map depicted at Redingers'

Exhibit B does not show the Painters Run Line. And no cartographic evidence produced indicates the Painters Run Line is public, or in any way part of the Township's sewer system. Although the Redingers liken this case to *2625 Brownsville Road* and the two *Homehurst* decisions, there was strong cartographic evidence presented in those cases that the respective sewer lines were public. There was no evidence presented in either hearing in this case indicating the Painters Run Line was public.

Regarding the sewer easements, both parties agree that none have been found regarding the Painters Run Line. The Redingers argue that the lack of easements "militates toward finding that the Department has failed to meet its burden of proof" and point to this tribunal's holding in *2625 Brownsville Road* that the absence of sewer easements does not indicate evidence of absence. (*Appellants' Brief* at 8-9). However, in *2625 Brownsville Road*, there was substantial evidence produced that the line was public. No such evidence was produced here.

Finally, with respect to the characteristics of the sewer line, this tribunal has deemed Ms. Slagle's testimony credible concerning why a six-inch sewer like the Painters Run Line would not be public. *See Redinger v. ACHD* (January 9, 2019) at 10.⁴ No evidence was produced at either the first or second hearing that credibly refutes Ms. Slagle's findings.

Although the evidence is not definitive, it strongly suggests that the Painters Run Line possesses the key characteristics of a private sewer line. The lack of

⁴ Available at [1881-Painters-Run-Rd-Administrative-Decision.pdf \(alleghenycounty.us\)](https://www.alleghenycounty.us/1881-Painters-Run-Rd-Administrative-Decision.pdf).

cartographic evidence indicating public ownership, the lack of sewer easements, and the characteristics of the Painters Run Line all point to the line being private. The bottom line is that it is more likely than not that the Painters Run Line is private, not public. The Department has thus met its burden of proving by the preponderance of the evidence that the Painters Run Line is private.

3. The Redingers' Ability to Comply with the NOV.

The Redingers also argue that they lack the ability to comply with the Department's NOV because they cannot enter a mutual maintenance agreement. The Redingers point out that they have made good faith efforts to enter into a mutual maintenance agreement with their neighbors, but that such efforts have "proven unsuccessful." (*Appellants' Brief* at 11). In their brief, the Redingers detail unsuccessful attempts to negotiate with their neighbors concerning a mutual maintenance agreement, as well as efforts by some neighbors to connect independently to the public sewer line. (*Id.* at 11-12).

The Department responds that the Redingers have had five-and-a-half years to comply with the Department's NOV, since this action began in May of 2016. The Department also argues that granting a stay would also create unnecessary uncertainty regarding the responsibilities of the parties served by the Painters Run Line. (*ACHD Reply Brief* at 4). The Department sums up its position thusly: "Any additional time granted would be an unnecessary delay of an already continuing violation." (*Id.* at 3).

This tribunal concurs with the Department. The Redingers have had more than five-and-a-half years to either enter into a mutual maintenance agreement or connect independently to the public sewer line. They have done neither, despite ample time and opportunity.

VI. CONCLUSION

This tribunal finds that the Department has proven by a preponderance of the evidence that the Painters Run Line is private, not public. Additionally, this tribunal is unpersuaded by the Redingers' argument that they are unable to comply with the NOV. The Redingers' appeal is therefore dismissed. This administrative decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.



Max Slater
Administrative Hearing Officer
Allegheny County Health Department

December 17, 2021
Dated:

