

ALLEGHENY COUNTY HEALTH DEPARTMENT  
ADMINISTRATIVE HEARING

EMMA L. DAVIS,	:	In re: 916 2 <sup>nd</sup> Street, McKees Rocks,
	:	PA 15136
Appellant,	:	
	:	Docket No. ACHD-18-029
v.	:	
	:	<u>Copies Sent To:</u>
ALLEGHENY COUNTY HEALTH	:	<i>Counsel for Emma L. Davis:</i>
DEPARTMENT, and MCKEES	:	Gianni Floro, Esq.
ROCKS BOROUGH,	:	GIANNI FLORO, P.C.
	:	935 Beaver Grade Road, Suite 6
Appellees.	:	Moon Township, PA 15108
	:	
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	:	
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	:	<i>Department:</i>
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**DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH  
DEPARTMENT HEARING OFFICER**

**I. INTRODUCTION**

This case centers on who is responsible for the repair of a sewer lateral: a homeowner or the Borough of McKees Rocks? In June of 2018, a sewer lateral collapsed near 916 2<sup>nd</sup> Street in McKees Rocks, PA (the “Borough”), where Emma L. Davis (“Mrs. Davis”) resides. Mrs. Davis contends that the Borough is responsible for maintaining and repairing the sewer lateral. Mrs. Davis bases her argument on two main grounds: First, that the Borough is liable under the language of Borough

of McKees Rocks Ordinance No. 1449 (“Ordinance 1449”). Second, that the Borough is liable under an exception to the Pennsylvania Subdivision Tort Claims Act (“PSTCA”).

The Borough argues that Ordinance 1449 clearly indicates that Mrs. Davis, as the property owner of 916 Second Street, is obliged to repair and maintain the damaged sewer lateral. Additionally, the Borough argues that it is shielded from liability under the PSTCA, which bars certain lawsuits against municipal entities.

The Allegheny County Health Department (“ACHD”) largely echoes the Borough’s arguments. The ACHD explains that it consulted with Doug Evans, an engineer who does work for the Borough, to identify the party responsible for maintaining and repairing the lateral. Based on this consultation, the ACHD issued the order to repair the lateral to Mrs. Davis. The ACHD makes two arguments that track the Borough’s. First, that Ordinance 1449 states that it is the responsibility of the property owner to maintain the damaged sewer lateral, even if the Borough caused the damage. Second, the ACHD argues that even if the party that caused the damage bears the cost of repair, the Borough still is not liable because Mrs. Davis did not provide sufficient evidence that the Borough caused the damage.

Based on the evidence and testimony presented at the hearing as well as the relevant statutes and regulations, this tribunal finds that Mrs. Davis is responsible for the repair and maintenance of the sewer lateral located beneath the surface of 2<sup>nd</sup> Street in front of 916 2<sup>nd</sup> Street.

## II. EVIDENCE

The following exhibits were offered by Appellant and admitted into evidence:

A1-A50: Photographs  
A51: Aerial photograph  
A52: Notice of Appeal and Letter

The following exhibits were offered by Appellee McKees Rocks Borough and admitted into evidence:

MR1: Letter  
MR2: Ordinance 1449  
MR3: Inspection report  
MR4: Map  
MR5: Real estate information  
MR6: Letter from ACHD

The following exhibits were offered by Appellee Allegheny County Health Department and admitted into evidence:

D1: Photograph  
D2: Photograph  
D3: Photograph  
D4: Photograph

## III. FINDINGS OF FACT

Based on my review of the evidence and having resolved all issues of credibility, I find the following facts:

- 1) Emma L. Davis (“Mrs. Davis” or “Appellant”) has lived in a house at 916 2<sup>nd</sup> Street (the “Property”) in McKees Rocks Borough (the “Borough”) since 1953. (Hearing Transcript (“H.T.”) at 8).
- 2) In 2004, a sinkhole developed on 2<sup>nd</sup> Street near the Property. (H.T. at 9).
- 3) According to Mrs. Davis, the portion of the roadway on 2<sup>nd</sup> Street on which the 2004 sinkhole developed sank or collapsed approximately eight times between 2004 and 2018. (H.T. at 10).

- 4) On approximately June 9, 2018, Borough police and Public Works personnel discovered that the lateral sewage line located beneath the surface of 2<sup>nd</sup> Street (the “sewer lateral”) that connected to the Borough’s main sewer line had collapsed. (H.T. at 6).
- 5) After learning of the sinkhole, Bobby Thompson (“Mr. Thompson”), the working foreman for the Borough Public Works Department, contacted Timothy Mahoney (“Mr. Mahoney”), Plumbing Inspector/Supervisor for the ACHD, who then inspected the sinkhole. (H.T. at 7, 80).
- 6) During this inspection, Mr. Mahoney discovered a break in the sewer lateral.
- 7) On July 5, 2018, the ACHD issued an order instructing Mrs. Davis to repair the sewer lateral.
- 8) On July 13, 2018, Mrs. Davis filed an appeal, claiming that the Borough caused the sewer lateral to break.
- 9) On October 4, 2018, an administrative hearing was held in this matter.

#### **IV. DISCUSSION**

Under Article XI § 1105.C.7 of the ACHD’s Rules and Regulations, the ACHD bears the burden of proof in an administrative appeal when it issues an order. Therefore, to prevail, the ACHD must prove by a preponderance of the evidence that Mrs. Davis is responsible for repairing the sewer line.

##### **Liability under McKees Rocks Ordinance 1449**

The Borough of McKees Rocks Ordinance No. 1449 (“Ordinance 1449”) states, “It shall be the responsibility of any property owner within the Borough to maintain and protect from damage the building sewer from their premises to and including the point of connection to the public sewer.” Ordinance 1449, Art. III, § 12.

Mrs. Davis contends that a close reading of this section only requires property owners to maintain and protect from damage the building sewer, not the

lateral sewage line under the surface of 2<sup>nd</sup> Street. Mrs. Davis argues, “The street is controlled by the Borough, and not by Mrs. Davis; and it would be an unreasonable interpretation to make a resident responsible for maintenance of a roadway subsurface[.]” (*Appellant’s Brief* at 4).

Mrs. Davis points to Ordinance 1449’s differing definitions of “building sewer” and “public sewer.” The Ordinance defines “building sewer as “The conduit which conveys waste-water from any property...beginning five (5) feet outside the inner face of the building wall and extending to and including the point of connection to the public sewer or place of disposal.” Ordinance 1449, Art. II, §1(b). The Ordinance defines “public sewer as “The common conduit which conveys wastewater and is controlled by the Borough or other governmental agency.” Ordinance 1449, Art. II, § 1(f).

Mrs. Davis contends that her building sewer’s point of connection is at the “curb stop,” at which point it connects to “the lateral sewage line which is part of the public system not on her property.” (*Appellant’s Brief* at 6). She contends, “Nothing in [Ordinance 1449] requires Mrs. Davis to maintain and repair the lateral sewage lines located off her property...The Ordinance is ambiguous relative to what sewers are addressed and who has the responsibility to maintain and protect from damage and/or to maintain and repair when damage results.” (*Appellant’s Brief* at 7). Mrs. Davis asserts that because the sewer lateral is not on her property and is not a “building sewer,” there is no way for her to maintain that

area, as it is within a public thoroughfare, and thus out of her control. (*Appellant's Brief* at 9).

The Borough argues that the only reasonable interpretation of Ordinance 1449 is that it requires that property owners be held responsible for the maintenance and repair of the lateral sewage lines. (*Borough's Brief* at 5). The Borough bases its argument on three points. First, the Borough contends that “building sewer” and “lateral sewage line” are interchangeable terms because several witnesses, including Mrs. Davis, used these terms interchangeably at the hearing. (*Id.* at 5-6). Second, the Borough argues that property owners are responsible for maintenance and repair of the sewer line beyond the curb stop. (*Id.* at 6). Third, the Borough asserts that the language of Ordinance 1449 stipulates that property owners are responsible for the maintenance and repair of sewage laterals even if a portion of that lateral is under a public street. (*Id.* at 7-8).

The ACHD points out additionally that there is no language in Ordinance 1449 that discusses “whether the burden to maintain the sewer line shifts if it is determined that the disrepair is caused by the actions of another party.” (*ACHD Brief* at 2). Thus, Mrs. Davis would be responsible for repair and maintenance of the sewer lateral regardless of which party caused the sewer lateral to collapse.

This tribunal finds that the Borough has the better argument. First, the term “building sewer” is practically interchangeable with “lateral sewage line” here. The language of Ordinance 1449 requires property owners to “maintain and protect from damage the building sewer from their premises *to and including the point of*

*connection to the public sewer.”* Ordinance 1449, Art. III, § 12 (emphasis added). This contradicts Mrs. Davis’s claim that her building sewer ends at the “curb stop” in front of her home. (*See Appellant’s Brief* at 4). Further, there is no language in Ordinance 1449 indicating that a property owner’s responsibility for a sewage line ends at a “curb stop.” And Mrs. Davis did not present any evidence or testimony to that effect. Therefore, Mrs. Davis’s argument misses the mark.

Second, there is nothing in Ordinance 1449 that shields a homeowner from liability if the damaged sewer lateral occurs under the surface of a public street. Rather, the ordinance holds property owners liable for maintaining and repairing lateral sewage lines all the way to the “point of connection to the public sewer.” Ordinance 1449, Art. III, § 12. The plain language of Ordinance 1449 does not support Mrs. Davis’s claims.

### **Liability under the Political Subdivision Tort Claims Act**

Mrs. Davis contends that even if the Borough is not responsible for repair and maintenance of the sewer lateral under Ordinance 1449, the Borough is still liable under the Political Subdivision Tort Claims Act (“PSTCA”), 42 Pa. C.S. § 8542(b)(5). (*Appellant’s Brief* at 12). Under the PSTCA, “a local agency is immune from liability for damages on account of an injury to a person or property caused by its own acts or the acts of its employees unless the injury falls into one of the enumerated exceptions to governmental immunity.” 42 Pa. C.S. §§ 8541-42. Mrs. Davis argues that the Borough is liable under the utility services facilities exception

(“utility exception”) of the PTSCA. (*Appellant’s Brief* at 13). Under the utility exception, five criteria must be met for governmental immunity to be waived:

- 1) a dangerous condition of a utility service facility owned by the local agency and located within rights-of-way;
- 2) the dangerous condition created a foreseeable risk of injury of the kind of injury that later occurred;
- 3) the local agency had notice of the dangerous condition or could reasonably be charged with notice;
- 4) despite said notice, the local agency, with the means and personnel to do so under the circumstances presented, failed to take necessary and appropriate remedial measures to protect against injury resulting from the dangerous condition; and
- 5) the failure to remediate the dangerous condition was a proximate cause of the injury and resulting damages. 42 Pa. C.S. § 8542(b)(5); *Metropolitan Edison Co. v. City of Reading*, 162 A.3d 414, 421 (Pa. 2017).

In her brief, Mrs. Davis argues that the Borough is liable under the utility exception because the collapse of the sewer line was “more likely than not due to the Borough’s failure to inspect and maintain the lateral sewer line[.]” (*Appellant’s Brief* at 12).

#### **1) A dangerous condition**

In order for a political subdivision such as the Borough to be liable for a dangerous condition, the allegedly dangerous condition must derive from, originate from, or have its source from the local agency’s utility service facility. *Le-Nature’s, Inc. v. Latrobe Mun. Auth.*, 913 A.2d 988, 994 (Pa. Cmwlth. Ct. 2006).



Here, Mrs. Davis argues that the sewer lateral collapsed as a result of the 2004 sinkhole that occurred at or near the same location. (*Appellant's Brief at 15*; H.T. at 56).

But the evidence presented at the hearing was inconclusive as to what caused the sewer lateral to collapse. The only evidence Mrs. Davis marshals to support her claim that the Borough's alleged negligence caused the sewer lateral to collapse was the testimony of her son, Arthur Davis ("Mr. Davis"). (H.T. at 16). Mr. Davis admitted on cross-examination that although he has lived at 916 2<sup>nd</sup> Street for 47 years, he does not have any professional experience in the maintenance and repair of roads or water mains. (H.T. at 43).

The Borough offered the testimony of Doug Evans ("Mr. Evans"), a civil engineer for NIRA Consulting Engineers, which does work for the Borough. Mr. Evans testified that he believed the sewer lateral was built around the same time Mrs. Davis's house was, in 1900. (H.T. at 53-54). Mr. Evans testified that it was unclear whether the sewer line collapsed from regular wear and tear over the 118 years it's been in place, or from anything the Borough may have done. (H.T. at 71).

The Borough offered the testimony of Bobby Thompson ("Mr. Thompson"), a foreman for the Borough. Mr. Thompson testified that there was not enough evidence to conclude that the Borough did anything to cause the lateral sewage line to collapse. (H.T. at 71). There was no conclusive evidence either way showing whether the Borough's actions caused the sewer lateral to collapse.

## **2) Foreseeable risk of injury**

Mrs. Davis concedes that the Borough “attempted to remediate the sink hole (*albeit inadequately*) in 2004 and at least eight (8) more times since that discovery.” (*Appellant’s Brief* at 15) (emphasis in original). Because Mrs. Davis does not establish any nexus between the repairs by the Borough to the 2004 sinkhole and the collapse of the sewer lateral in 2018, she has not demonstrated that an action of the Borough created a foreseeable risk of injury.

## **3) Notice by the Borough**

The Borough did receive notice of the sinkhole that appeared on 2<sup>nd</sup> Street in 2004 and a sinkhole that appeared on June 9, 2018. (H.T. at 75). Mrs. Davis has proved the third criterion under the PSTCA.

## **4) Appropriate remedial measures**



Mrs. Davis argues that whatever measures the Borough took to repair the street near her house were inadequate. (*Appellant’s Brief* at 15). But the evidence and testimony presented at the hearing indicate that the Borough took appropriate measures to fix protect against injury. Appellant even acknowledges that the Borough repaired the street at least eight times since the 2004 sinkhole. (*Appellant’s Brief* at 13, 15; H.T. at 9-11). After the Borough was informed of the 2018 sinkhole on June 9, 2018, it promptly contacted the ACHD, and notified Mrs. Davis of her responsibility to make repairs by June 25, 2018. The weight of the evidence shows that the Borough took appropriate remedial measures here.

**5) Proximate cause**

Mrs. Davis contends that the Borough’s alleged “inadequate inspection, maintenance and repair of the subsurface of the Street caused the collapse of the lateral[.]” (*Appellant’s Brief* at 15). But as discussed above in the section on a dangerous condition, there has been no determination with any degree of certainty that the Borough’s maintenance and repair of the 2004 sinkhole was a proximate cause of the sewer lateral’s collapse in 2018. Mrs. Davis has therefore only met one of the five criteria required to show an exception to governmental immunity under the PSTCA—notice. She has not shown that there was a dangerous condition, that there was a foreseeable risk of injury, that the Borough failed to take appropriate remedial measures, or that there was proximate cause.

**V. CONCLUSION**

Based on the evidence and testimony presented at the hearing, as well as the relevant Rules and Regulations, this tribunal finds that Mrs. Davis is responsible for the repair and maintenance of the sewer lateral located beneath the surface of 2<sup>nd</sup> Street in front of 916 2<sup>nd</sup> Street, and that Mrs. Davis’s appeal is therefore dismissed. This administrative decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.

  
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Max Slater  
Administrative Hearing Officer  
Allegheny County Health Department  
  
  
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Dated: