

ALLEGHENY COUNTY HEALTH DEPARTMENT  
ADMINISTRATIVE HEARING

PITTSBURGH WATER AND SEWER AUTHORITY,	:	In re: Sewer Line
	:	2805-2915 Homehurst Avenue
	:	Pittsburgh, PA 15234
Appellant,	:	
	:	
v.	:	
	:	
ALLEGHENY COUNTY HEALTH DEPARTMENT,	:	
	:	
Appellee,	:	
	:	
NATALIE LEON GOLANKIEWICZ,	:	
PATRICIA SCHANCK, BRYAN	:	
DEFRANCO, KENNETH M.	:	
FINNEGAN, JAMIE M. WAGNER,	:	
ARIEL and KAREN ABAD,	:	
ROBERT A. SELL, and	:	
CHRISTOPHER J. CRATSLZY,	:	
	:	
Intervenors.	:	

**I. INTRODUCTION**

At issue in this case is whether a sewer line servicing a series of homes in Overbrook is public or private. Intervenors Natalie Leon Golankiewicz et al. (“Homeowners”) own homes between 2805 and 2915 Homehurst Avenue. They contend that the sewer line underneath Homehurst Avenue (“Sewer Line”) is public, and that it is therefore the responsibility of Appellant Pittsburgh Water and Sewer Authority (“PWSA”) to repair and maintain it. PWSA claims that the Sewer Line is private, and that the Homeowners are thus responsible for the line’s maintenance and repairs.

Based on the evidence presented, I find that the Sewer Line is a public line, and that PWSA is responsible for its maintenance and repairs.

## II. PROCEDURAL HISTORY

On October 24, 2016, an administrative hearing was held to resolve whether the Sewer Line was public or private. The hearing was captioned “*Natalie Leon Golankiewicz [et al.] (Appellants) v. Allegheny County Health Department (Appellee)*.” Present at that hearing, other than the Homeowners and Counsel for the Allegheny County Health Department (“ACHD”) were Councilwoman Natalia Rudiak and PWSA’s in-house counsel, Shannon Barkley.

Following that hearing, I issued a decision,<sup>1</sup> on December 22, 2016, holding that the Sewer Line was public, and that it was the responsibility of PWSA to repair and maintain the line.

On February 22, 2017, the ACHD issued a Notice of Violation to PWSA regarding the sewer line under Homehurst Avenue, ordering PWSA to “[i]mmediately take action to eliminate the discharge of sewage by clearing the blockage or bypass pumping around it,” and “within ten (10) days of receipt of this notice, submit in writing...a plan and schedule for repairing and maintaining [the sewer line...].”

On March 1, 2017, in response to the Notice of Violation, PWSA filed a timely Notice of Appeal with the ACHD, contending that the Sewer Line was private, and therefore the responsibility of the Homeowners.

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<sup>1</sup> The decision is available at [http://www.achd.net/legal/pub/pdf/Homehurst\\_Administrative\\_Decision.pdf](http://www.achd.net/legal/pub/pdf/Homehurst_Administrative_Decision.pdf).

On March 24, 2017, ACHD Director Karen Hacker (“Dr. Hacker”) issued a letter denying PWSA’s Notice of Appeal on the grounds that “the issues raised in [PWSA’s] appeal have already been addressed in the [October 2016 hearing].”

On April 11, 2017, PWSA filed a statutory appeal of Dr. Hacker’s March 24<sup>th</sup> letter with the Allegheny County Court of Common Pleas at Docket Number SA-17-312 (the “Statutory Appeal”). PWSA argued that because it was not named as a party to the October 2016 hearing, there was no legal basis to take action against the PWSA.

On May 18, 2017, Judge Robert Colville of the Allegheny County Court of Common Pleas remanded this matter to me “for an administrative hearing to establish the record.”

On July 13, 2017, a hearing was held.<sup>2</sup>

### **III. EVIDENCE**

The following exhibits were offered into evidence by the PWSA:

- PWSA1: Map
- PWSA2: Map
- PWSA3: Sewer Plan
- PWSA4: Capital Lease Agreement

The following exhibits were offered into evidence by the Homeowners:

- H1: Affidavit
- H2: Survey of 2901 Homehurst Avenue
- H3: Seller’s Disclosure Statement
- H4: Deed Document

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<sup>2</sup> At the July 13, 2017 hearing, the PWSA lodged a continuing objection to the consideration of the transcript from the October 2016 hearing or the December 22, 2016 administrative decision because PWSA was not formally named as a party to that action. (H.T. at 19-20). I disagree with PWSA’s position. Judge Colville’s Order directs me to hold a hearing to afford PWSA an opportunity to present evidence and testimony, and to cross-examine the evidence and testimony of the other parties. It does not direct me to act as if the October 2016 hearing never happened. Furthermore, PWSA’s in-house counsel was present at the October 2016 hearing, during which she cross-examined several witnesses, and after which she submitted a post-hearing brief on behalf of PWSA.

- H5: Baldwin Township Ordinance 113 and Accompanying Emails

The following exhibits were offered into evidence by the ACHD:

- D1: February 22, 2017 Letter
- D2: December 22, 2016 Hearing Decision
- D3: General Inspection Report

The following exhibits were offered into evidence by Councilwoman Natalia Rudiak:

- R1: Baldwin Township Ordinance No. 234
- R2: Baldwin Township Ordinance No. 343
- R3: City of Pittsburgh Ordinance No. 485, and Accompanying Letter
- R4: MLS Home Listings
- February 16, 2017 Letter

#### **IV. FINDINGS OF FACT**

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

- 1) Intervenors Natalie Leon Golankiewicz et al. own homes between 2805 and 2915 Homehurst Avenue, Pittsburgh, PA 15234.
- 2) The Homeowners' houses are on a common sewer line. (Ex. D1).
- 3) The sewer line underneath the Homeowners' houses is six inches in diameter. (Ex. D1).
- 4) The Homeowners' houses were originally part of Baldwin Township. (Ex. R2).
- 5) In 1929, Baldwin Township passed an ordinance establishing Sanitary Sewer District Number 8, which created a sewer system encompassing the area that includes the Homeowners' houses. (Ex. R1).
- 6) In 1930, the City of Pittsburgh annexed the portion of Baldwin Township that includes the Homeowners' houses. (Ex. R2).
- 7) In October 2014, the ACHD responded to an ongoing sewage backup in the sewer line servicing the Homeowners' houses. (Ex. D1).
- 8) On October 14, 2014, the ACHD issued notices of violation to the Homeowners, requiring them to either connect to the public sewer or to record an easement and mutual maintenance agreement. (Ex. D1).

- 9) On October 24, 2014, the Homeowners appealed the notices of violation. (Ex. D1).

## V. DISCUSSION

### A. Burden of Proof

In an administrative appeal of a final agency action of the ACHD, the appellant “shall bear the burden of proof and the burden going forward with respect to all issues.” Article XI § 1105.D.7. Therefore, PWSA bears the burden of proving by a preponderance of the evidence that the Sewer Line is private, rather than public.

PWSA contends that it is “improper, inequitable and in violation of the PWSA’s constitutional rights to place the burden of proof on the PWSA in this enforcement proceeding.” (*PWSA’s Memorandum in Opposition to the Allegheny County Health Department’s February 22, 2017 Letter (“PWSA Brief”)* at 7). PWSA equates having the burden of proof in this matter to being “guilty until proven innocent.” (*PWSA Brief* at 8-9).

In support of its argument, PWSA cites three Pennsylvania Commonwealth Court decisions for the proposition that government entities have the burden of proof when these entities assert a violation of their rules and procedures. (*See PWSA Brief* at 7 (citing *Comm. Ex rel. Allegheny County Health Dept. v. Univ. of Pittsburgh*, 388 A.2d 1163 (Pa. Cmwlth. Ct. 1978); *Leatherwood Inc. v. Comm.*, 819

A.2d 604 (Pa. Cmwlth. Ct. 2003); *Comm. Dept. of Envir. Resources v. Leon E. Kocher Coal Co.*, 305 A.2d 784 (Pa. Cmwlth. Ct. 1973)).

The core problem with PWSA's burden of proof argument is that as the Hearing Officer of the ACHD, I am bound by the ACHD's Rules and Regulations, especially Article XI, which governs Hearings and Appeals. The validity of these Rules and Regulations is not for me to decide. Article XI § 1105.D.7 states, "The person filing the appeal shall bear the burden of proof and the burden of going forward with respect to all issues." The "person" filing the appeal in this case is PWSA. They therefore bear the burden of proof.

## **B. PWSA's Evidence**

PWSA makes two arguments in support of its argument that the Sewer Line is private. First, that the Sewer Line does not appear on any public record. Second, that the characteristics of the Sewer Line are consistent with a private lateral. (*PWSA Brief* at 8-10).

### **i. Public records**

PWSA claims, "There is no reference to the Sewer Line in any records of the PWSA, the City or any other public entity." (*PWSA Brief* at 8). At the hearing, PWSA called its acting director of field services, Rick Obermeier. Mr. Obermeier testified that he conducted an investigation of records from the City of Pittsburgh pertaining to the sewer line under Homehurst Avenue to determine whether it was public or private. (H.T. at 22-23). He concluded, "There was never a public sewer established on that street." (H.T. at 25).

Mr. Obermeier based his conclusion on three maps of the sewers under Homehurst Avenue. (Exs. PWSA 1-3). Exhibits PWSA 1 and 2 are maps that Mr. Obermeier received from the City of Pittsburgh during his investigation. PWSA 2 is a clearer reproduction of PWSA 1. (H.T. at 28). Mr. Obermeier determined from looking at the maps that because there is no sewer line indicated on Homehurst Avenue on the maps, no public sewer line exists on Homehurst Avenue. (H.T. at 30).

However, there are several problems with these two maps. First and foremost, they are undated. As such, there is no way to know when they were made or how current they are. Mr. Obermeier testified that the maps were transferred to PWSA by the City of Pittsburgh. (H.T. at 24, 26). But this does nothing to clarify the maps' production date or currentness.

Second, PWSA's maps lack keys or legends that explain what the various sewer markings mean. As such, it is extremely difficult to decipher the significance of these notations.

Additionally, Exhibit PWSA 2 indicates that the sewer line underneath Fernland Way—a street one block from Homehurst Avenue—is labeled “PRIVATE SEWER,” while Homehurst Avenue is not. (Ex. PWSA 2). This was pointed out on Mr. Obermeier's cross-examination by Bethani Cameron:<sup>3</sup>

“Q (by Ms. Cameron): Can you read the handwritten note about the sewer on Fernland Way?

A (by Mr. Obermeier): It says, private sewer.

Q: Private sewer, okay. So that is recorded as being a private sewer?

A: Yes, it is.

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<sup>3</sup> Bethani Cameron (“Ms. Cameron”) is the Community Relations Manager for Pittsburgh City Councilwoman Natalia Rudiak, who represents Council District 4, where the Homeowners live.

Q: Is there any record on Homehurst Avenue of a private sewer, on this map?

A: No, there is not.” (H.T. at 73).

Although this is not definitive proof that the Sewer Line is public, the lack of a “private sewer” label does cast doubt on PWSA’s claim that it presented “uncontroverted evidence that the Sewer Line is private[.]” (*PWSA Brief* at 3).

Mr. Obermeier then presented Exhibit PWSA 3, a 1956 map of record drawings for sewers that were installed on Elwyn Avenue, where it intersects Homehurst Avenue. (H.T. at 30-31). Mr. Obermeier said that this map was a private sewer contract made by a developer on Elwyn Avenue. (H.T. at 33). He declared that the map buttressed his conclusion that the Sewer Line was private because the line which connected with the Elwyn line at Homehurst was a “six-inch terra cotta pipe of no record.” (H.T. at 34).

But this map is also of limited value. First, it is not an official municipal map, but rather a drawing of a sewer made by a private developer. Second, the map does not show the homeowners’ houses and corresponding sewer line. (H.T. at 32).

Next, Mr. Obermeier concluded that the Sewer Line is most likely private because there are no records in PWSA’s system from either Pittsburgh or Baldwin Township indicating that the line is public, and that if the Sewer Line were built by or assumed by Pittsburgh or Baldwin Township, it would have been in PWSA’s system. (H.T. at 37-38).

There are a couple issues with Mr. Obermeier’s argument, however. First, Mr. Obermeier admitted in an affidavit that after a thorough record search, he



could not find any regulations or other authority specifying that all sewer lines within the City of Pittsburgh had to be eight inches in diameter. (Ex. H1). Second, he admitted on cross-examination that he was unsure if sewer maintenance records existed for Homehurst Avenue between approximately 1920 and 1999. (H.T. at 63).

**ii. Characteristics of the sewer line**

The Sewer Line is six inches in diameter and buried about two-and-a-half to three feet deep. (H.T. at 37-38). Mr. Obermeier declared that because the sewer line underneath Homehurst Avenue had this diameter and depth, it was likely not a public line, as in his experience, public lines are usually thicker and deeper. (H.T. at 43, 45).

To rebut Mr. Obermeier's claims, the Homeowners introduced Baldwin Township Ordinance No. 113, which was dated July 5, 1917. (Ex. H5).<sup>4</sup> Section 7 of the Ordinance states, "All Connection from the public sanitary sewer system to the houses shall be made with six inch Terra-cotta Pipe Sewer laid at a depth of not less than three and one-half feet of the surface of the ground[.]" (Ex. H5). The language of this ordinance suggests that there are at least some six-inch pipes that are part of the public sanitary sewer system.

**C. Evidence that the Sewer is Public**

After PWSA presented its case, the Homeowners, the ACHD, and Councilwoman Rudiak introduced evidence attempting to show that the Sewer Line is public.

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<sup>4</sup> In 1917, the street now known as Homehurst Avenue was part of Baldwin Township.

**i. The Homeowners' Evidence**

The Homeowners first produced Exhibit H1, the affidavit from Rick Obermeier, which, as discussed in Section (B)(i) above, declares that Mr. Obermeier is not aware of any regulations or other legal authority requiring Pittsburgh sewer lines to be eight inches in diameter.

Next, the Homeowners introduced Exhibit H2, a survey of Homeowner Jamie Wagner's property, and accompanying photographs, taken by Ms. Wagner. The Homeowners introduced the survey and photographs to show that Homehurst Avenue is 50 feet wide, a fact the Homeowners argued indicated the presence of a public sewer.

However, I do not accord the survey and accompanying photographs much weight. First, William Whye, the person who conducted the survey, was not at the hearing to testify. Second, the photographs do not clearly indicate the width of Homehurst Avenue.

The Homeowners then introduced Exhibit H3, a section of the Pennsylvania Code titled "Seller's Property Disclosure Statement." This section, 49 Pa. Code § 35.335(a), states in relevant part, "Buyers may wish to determine the existence of easements and restrictions by examining the property and ordering an abstract of title or searching the records in the Office of the Recorder of Deeds for the county before entering into an agreement of sale." (Ex. H3).

The Homeowners attempted to couple this exhibit with an affidavit from an manager of Allegheny County Sanitation Authority ("Alcosan") to allegedly show

that no sewer easements exist for their homes. However, I excluded the Alcosan affidavit as hearsay, as the manager did not testify at the hearing. (H.T. at 105-06). As such, Exhibit H3 is of little value to my decision here.

The next document Homeowners introduced was Exhibit H4, a deed document from a property on Fernland Street, near Homehurst Avenue. The deed reads, in relevant part, “Grantee to pay pro-rata share of maintaining the private sewer in good repair with owners of other properties adjacent thereto using said sewer[.]” (Ex. H4). Ms. Wagner then testified that her deed on Homehurst Avenue did not contain this language referencing a private sewer. (H.T. at 114). I find that the explicit mention of a private sewer in this deed counsels in Homeowners’ favor, although it is not especially strong evidence of a public sewer line underneath Homehurst Avenue.

Finally, the Homeowners introduced Exhibit H5, the Baldwin Township Ordinance 113, which, as discussed above, was used to impeach Mr. Obermeier’s testimony concerning whether public sewer lines could be six inches in diameter. I find that this Ordinance suggests that perhaps some public lines could be six inches, rather than eight inches.

**ii. The ACHD’s Evidence**

After the Homeowners introduced their evidence and testimony, the ACHD put on their case. First, the ACHD introduced Exhibit D1, the February 22, 2017 letter from the ACHD to PWSA ordering PWSA to eliminate the sewage discharge from the Sewer Line. (Ex.D1). This letter prompted PWSA to file its appeal.

Next, the ACHD introduced Exhibit D2, my Administrative Decision from December 22, 2016. PWSA lodged a continuing objection to the admission of this Administrative Decision. (*See, e.g.*, H.T. at 130). *See* Footnote 2, above.

Finally, the ACHD introduced inspection reports created by one of its Environmental Health Specialists, Edwin Bryant Watkins. Mr. Watkins testified that he performed dye tests of several of the Homeowners' homes to determine the source of the sewage discharge. (H.T. at 141). Mr. Watkins deduced from these dye tests that the homes shared a common sewer line, but did not identify whether the sewer was public or private. (H.T. at 141-42).

Mr. Watkins then testified that he examined a series of maps provided by the ACHD's plumbing department from a previous investigation to determine whether the sewer was public or private. (H.T. at 143). Mr. Watkins' conclusion after reviewing these maps was that he could not determine whether the line was public or private. (H.T. at 148).<sup>5</sup>

### **iii. Councilwoman Rudiak's Evidence**

Councilwoman Rudiak introduced five exhibits attempting to show that the Sewer Line is public. First, she introduced Exhibit R1, Baldwin Township

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<sup>5</sup> PWSA contends that Mr. Watkins "admitted that, based upon the maps and records that he reviewed, the Sewer Line is a private lateral." (*PWSA Brief* at 6). Respectfully, this mischaracterizes Mr. Watkins' testimony and conclusions. For example, Mr. Watkins sums up his investigation of sewer maps for Homehurst Avenue as follows: "You could see manholes and the sewers there. But for individual homes on Homehurst they had a dashed line that would indicate laterals coming to that manhole—coming from individual homes on Homehurst. So it was just a depiction, it doesn't say where the line is, it's just a generalization that they don't know." (H.T. at 143). A few minutes later, Ms. Cameron asked Mr. Watkins on cross-examination, "So, I guess, from your testimony here today, I would assume that what you found in your personal investigation was kind of unclear as it relates to the ownership of the sewer line; is that correct?" Mr. Watkins replied, "Yes." (H.T. at 148).

Ordinance 234 of 1929 and supporting documentation (“1929 Ordinance”). This Ordinance established Sanitary Sewer District Number Eight, which encompasses the block where the Homeowners live, “for the construction of a system of sanitary sewers or drains[.]” (Ex. R1). The 1929 Ordinance also proclaimed that the then-newly-constructed sewer system is “the *official* sanitary sewer system for Sanitary Sewer District Number Eight of the said Township of Baldwin[.]” (Ex. R1) (emphasis added).

The supporting documentation to the 1929 Ordinance also indicates that the Sewer Line is public. Appendix F, which gives a timeline of sewer construction in and around Baldwin Township, lists numerous collaborations between Baldwin and surrounding communities to develop sewer systems. (Ex. R1). Appendix F also chronicles the construction of numbered Sanitary Sewer Districts in Baldwin and adopts a plan to build a sewage works. (*Id.*). Additionally, Appendix F indicates that in 1927, Baldwin, Dormont, Mt. Lebanon and Pittsburgh authorized an agreement “concerning construction, maintenance and repair of a branch sanitary sewer in the Elwyn Hollow Branch Basin.” (*Id.*)

In my December 22, 2016 decision, I found the 1929 Ordinance and its supporting documentation to be persuasive evidence that the Sewer Line is public. (*See December 22, 2016 Decision* at 4-6). After reviewing the evidence and testimony presented during the July 13, 2017 hearing, I remain of the same opinion.

Next, Councilwoman Rudiak introduced Exhibit R2, Ordinance 343 of 1930, which states that the City of Pittsburgh has annexed the section of Baldwin

Township which includes the section of Homehurst Avenue where the Homeowners live. (Ex. R2).

Councilwoman Rudiak then introduced Exhibit R3, City of Pittsburgh Ordinance 485 of 1927 and accompanying letter (“Ordinance 485”) indicating an agreement among Pittsburgh, Dormont, Mt. Lebanon, and Baldwin regarding the sewer system encompassing the area in which the Homeowners live. The Ordinance states that Pittsburgh, Dormont, Mt. Lebanon, and Baldwin will collectively pay for the “cost of construction, maintenance and repairs to the branch trunk sanitary sewer in the Elwyn Hollow Branch Basin, extending through Baldwin Township, from Mt. Lebanon, Dormont and the City of Pittsburgh to Saw Mill Run Trunk Sewer at Elwyn Station.” (Ex. R3). Ordinance 485 then apportions the costs for construction of the sewers among the four above-listed municipalities. (*Id.*).

The language from Ordinance 485 indicates that the sewer system that includes the area where the Homeowners live is public because the costs associated with the construction, maintenance, and repairs of the sewer are being borne by municipal governments, not by individual homeowners.

Councilwoman Rudiak then introduced Exhibit R4, a series of real estate listings for the Homeowners’ houses at 2901, 2905, and 2907 Homehurst Avenue. (Ex. R4). All of these listings state that the sewer servicing the houses is public. (*Id.*). Of course, a real estate listing is not as definitive as an official government document like an ordinance. Nonetheless, these listings add weight to the argument that the Sewer Line is public.

Finally, Councilwoman Rudiak introduced Exhibit R5, a letter from PWSA's Interim Executive Director to Homeowner Natalie Leon,<sup>6</sup> Cathy A. Lyons and Sue A. Gable, dated February 16, 2017. The letter states that PWSA "intends to construct a public sanitary sewer main on Homehurst Avenue to replace the failing private line." (Ex. R5). The letter then explains that PWSA will charge Ms. Leon, Ms. Lyons and Ms. Gable approximately \$7,227.03 for the costs of construction of this new sewer line. (*Id.*). At face value, the letter indicates that the current Sewer Line is private. But this assertion is self-serving as it's a letter from PWSA itself. Therefore, I accord it little weight.

The exhibits introduced by Councilwoman Rudiak are persuasive evidence that the Sewer Line is public. R1 and R3 are official government documents establishing an official sanitary sewer district encompassing the area where the Homeowners live, and indicating that the costs of construction, maintenance, and repairs of the Sewer Line would be borne by governmental entities, not individual homeowners.

## **VI. CONCLUSION**

Based on the evidence and testimony presented at the hearing, I find that PWSA has not met its burden of proof of showing that the sewer line servicing 2805-2915 Homehurst Avenue is private, rather than public. The maps presented by PWSA were either undated (Exs. PWSA 1 and 2) or inconclusive. (Ex. PWSA 3). And I found the evidence presented by Councilwoman Rudiak to be persuasive evidence that the

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<sup>6</sup> Natalie Leon's full name is Natalie Leon Golankiewicz. Exhibit R5 is formally addressed to "Ms. Natalie L. Golakiewicz, Ms. Cathy A. Lyons, and Ms. Sue A. Gable."

Sewer Line is public, especially the official government ordinances. (Exs. R1-R3). In sum, PWSA failed to prove by a preponderance of the evidence that the Sewer Line is private. Therefore, I find that the Sewer Line is public, and that PWSA is responsible for the Sewer Line's maintenance and repairs.

\_\_\_\_\_/s/\_\_\_\_\_  
Max Slater  
Administrative Hearing Officer  
Allegheny County Health Department

Dated: October 2, 2017

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