

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE DECISION

PITTSBURGH WATER AND SEWER AUTHORITY, : In re: Public Sanitary Sewer
Appellant, : 2625 Brownsville Road,
v. : Pittsburgh, PA 15227
ALLEGHENY COUNTY HEALTH DEPARTMENT, :
Appellee. :

INTRODUCTION

At issue in this case is whether a sewer line is public or private, and who is responsible for repairing and maintaining it. In January of 2016, the Allegheny County Health Department (“ACHD”) received a citizen’s complaint of sewage discharge at the rear of 2625 Brownsville Road (the “Property”). Appellant Pittsburgh Sewer and Water Authority (“PWSA”) appeals a determination by the ACHD that the sewer line behind the Property is a public line. PWSA contends that the line is private, and marshals a series of maps and title search documents in support of its argument. The ACHD argues that PWSA’s evidence is insufficient to prove that the line is private. Based on the evidence presented, I find that the sewer line is public and that PWSA is responsible for repairing and maintaining it.

EVIDENCE

The following exhibits were offered into evidence by PWSA:
A1: Capital Lease Agreement
A2: Notebook Drawing
A3: Profile Drawing

A4: Map
A5: Abstract title document
A6: Abstract title document
A7: Abstract title document
A8: Abstract title document
A9: Abstract title document

The following exhibits were offered into evidence by the ACHD:

D1: Map
D2: Map
D3: Notice of Violation
D4: Inspection Reports

FINDINGS OF FACT

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

1. PWSA is a municipal authority created by the City of Pittsburgh. (Hearing Transcript (“H.T.”) at 4).
2. In 1995, PWSA and the City of Pittsburgh entered into a Capital Lease Agreement, under which PWSA agreed to take and lease from the City the entire network of City-owned water and sewage transmission lines. (Ex. A1).
3. In January 2016, the ACHD’s plumbing inspection program received a citizen’s complaint of sewage discharge at the rear of 2625 Brownsville Road. Investigations by the ACHD in January and July 2016 confirmed that sewage was discharging through a retaining wall at 2625 Brownsville Road. (Ex. D3).
4. On August 10, 2016, the ACHD sent a Notice of Violation to PWSA, indicating that there was raw sewage flowing from the base of a retaining wall behind 2625 Brownsville Road. (H.T. at 31; Ex. D4).

5. PWSA engaged a title abstractor to determine whether there were easements for the sewer line. (H.T. at 5).
6. The title abstractor found two easements: One to Equitable Gas Company for gas lines behind the property, and one to Pennsylvania American Water Company for water lines behind the property. (H.T. at 5-6; Ex. A5).
7. On February 7, 2017, a hearing was held before Administrative Hearing Officer.

DISCUSSION

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 proof of showing that the sewer line behind the Property is private.

PWSA makes several arguments in its post-hearing memorandum. First, that the sewer line is private, and therefore PWSA is not responsible for maintaining it. Second, that the ACHD cannot assert alleged violations against the PWSA outside of those set forth in the Letter. And third, that PWSA would be trespassing on private property if it repaired the sewer line without the owners’ consent.

The Sewer Line is Public.

The biggest issue in this appeal is whether the sewer line servicing the Property is public or private. As both sides point out, this case bears many resemblances to *Golankiewicz et al. v. Allegheny County Health Department*. In that case, I found that a sewer line servicing a series of homes on Homehurst Avenue

was public, and that PWSA is responsible for maintaining and repairing the line. *Golankiewicz v. ACHD*, 2 (2016), available [here](#).

I based my decision largely on two factors: (1) The historical and cartographical evidence of the sewer system encompassing the properties at issue; and (2) The results of a title search for easements on the property. *Id.* at 8.

In *Golankiewicz*, these factors weighed in favor of the homeowners because the maps presented indicated that the sewer line at issue was public, and the title search was cursory. Here, the factors weigh in favor of the ACHD.

The Maps

The maps presented as evidence suggest that the sewer line servicing the Property is public. The first map that PWSA introduced was Exhibit A2, a notebook drawing of the sewer lines around the Property. Rick Obermeier, PWSA's Director of Engineering and Construction, testified that the fact that the area to the right of the sewer line on the notebook drawing was marked "private property" indicates that the sewer line servicing the Property is private. (Ex. A2; H.T. at 12). However, there is no indication of when the notebook drawing was made, who gave the drawing to the City of Pittsburgh, and no legend to distinguish between different types of sewer lines. As such, I accord the notebook drawing little weight.

PWSA then introduced a profile drawing ("Profile Drawing") of the sewer submitted to the Department of Public Works and Engineering. (Ex. A3; H.T. at 11). The Profile Drawing show that the sewer behind the Property is located on private property. But there are two problems with PWSA's argument here. First, the fact

that a sewer line is located on private property does not indicate that the sewer itself is private. *See Golankiewicz* at 5-6. Second, the Profile Drawing marks all sewers as solid black lines, and does not differentiate between private and public sewers.

Next, PWSA introduced Exhibit A4, a detailed sewer map of the area surrounding the Property. A4 indicates that the sewer behind the Property is private. (Ex. A4; H.T. at 12-14). But like the maps that PWSA produced in *Golankiewicz*, A4 was produced after the Notice of Violation was issued, in this case nearly five months afterward. The Notice of Violation was issued on August 10, 2016. A4 was produced on January 4, 2017. By contrast, PWSA's map of the Property and its surrounding area produced on July 25, 2016—before the Notice of Violation—indicates that the sewer line behind the property is public. (Ex. D1). I find the pre-Notice of Violation map more credible than the map created after litigation in this case began.

Mr. Obermeier asserted that the discrepancy between the two maps was that PWSA did a more thorough investigation after the Notice of Violation was issued. (H.T. at 14). However, Mr. Obermeier's basis for re-labelling the sewer line behind the property as private was title search documents, which, as indicated below, I did not find indicative of a private sewer.

The Title Search Documents

Although the title search in this case appears to be more robust than the one in *Golankiewicz*, it still does not indicate that the sewer behind the Property is

private. In *Golankiewicz*, the title abstractor that PWSA hired looked through the deeds of the houses at issue, and concluded, “None of the chain deeds make reference to sewer easements.” *Golankiewicz* at 8. I found that reasoning unpersuasive because PWSA “[did] not provide any support for their conclusion that the absence of sewer easements indicates the presence of a private sewer line.” *Id.*

Here, PWSA found that although there were easements for gas and water lines for the Property, there was no easement for a sewer line (*Memorandum in Opposition to the Allegheny County Health Department’s August 10, 2016 Letter (“PWSA Brief”)* at 3; Exs. A5-A9). But the absence of evidence is not evidence of absence. Furthermore, the easement exhibits that PWSA submitted do not indicate whether the sewer behind the property is public or private. For example, PWSA emphasized Exhibit A9, a 1979 indenture (“Indenture”), which conveys to a grantee the “right to lay, use and forever maintain sewer, water pipes and gas pipes...[t]ogether with the right at all times to enter upon said property for the purpose of repairing or renewing the same.” (Ex. A9; H.T. at 17-18).

However, there are several issues with the Indenture. First, it refers to the property owner of 2618 Churchview Avenue, not 2625 Brownsville Road. Second, as the ACHD points out, the Indenture grants an easement to John F. Sankey in 1906 for the purpose of laying and maintaining sewer, water and gas pipes. But there was no evidence that Mr. Sankey constructed the Brownsville Road sewer line, when that line was constructed, or through whose property the line would run. (Ex. A9; *The Allegheny County Health Department’s Post-Hearing Memorandum (“ACHD*

Brief) at 12-13). The bottom line is that the title search exhibits presented by PWSA are insufficient to show the existence of a private sewer.

PWSA is Required to Follow ACHD Rules and Regulations, Even Those Not Explicitly Mentioned in the Letter.

PWSA contends that the ACHD cannot charge it with a violation of Section 1409.5 of the ACHD Rules and Regulations because the ACHD did not cite to that section in the Letter. (*PWSA Brief* at 7). PWSA claims that this failure to list Section 1409.5 among the regulations that ACHD cited in the letter violates PWSA's procedural due process rights. (*Id.*, citing *LT Int'l Beauty Sch. v. Bureau of Prof'l & Occupational Affairs*, 13 A.3d 1004, 1013 (Pa. Commw. Ct. 2011)).

But PWSA's argument falls short. The *LT* court held that the Commonwealth's inspectors violated a beauty school's due process rights by claiming there were missing items from students' beauty kits, but failed to identify which students had incomplete kits or how many students had incomplete kits. 13 A.3d at 1012-13. In other words, the Commonwealth hid the ball by not sufficiently identifying the allegedly unlawful conduct.

Here, there is no such ball-hiding because PWSA identified the allegedly unlawful conduct in the Letter—failing to eliminate sewage discharge behind the Property. (Ex. D3). Moreover, Section 1409.5 is titled “Common Sewer Laterals,” the very subject of this appeal. It states, “It shall be the responsibility of the municipality to manage the repair, upgrade, and maintenance of common sewer laterals within its boundaries so far as it is necessary to undertake the elimination of a public health problem.” ACHD Art. XIV, § 1409.5. The continual discharge of

sewage is a textbook public health problem. Additionally, PWSA is a sophisticated municipal authority, represented by one of the most prestigious law firms in Pittsburgh. Its claim of litigation by ambush therefore rings hollow. PWSA is bound to follow Section 1409.5 of the ACHD Rules and Regulations, regardless of whether it was explicitly mentioned in the Letter.

PWSA’s Trespass Claim is Unpersuasive.

Finally, PWSA argues that if it undertook repairs to the private sewer line without the property owner’s consent, it would be trespassing upon private property and also in violation of its own Rules and Regulations. (PWSA Brief at 8). PWSA points to Section 605.1 of its regulations, which declares that ownership of sewer laterals lies with the property owner, and that the Owner is responsible for the sewer lateral’s “operation, inspection, maintenance, repair, replacement, abandonment, and removal[.]” PWSA Regulations, § 605.1.

The problem with PWSA’s trespass argument is that Section 605.2 of the PWSA Regulations gives PWSA the authority to go onto private property in order to abate a public health risk:

“Should the condition of a Sewer Lateral be such that there is a risk to public health or safety or of damage to public property, and the property owner fails to take prompt action to cure the problem following notice to do so, **the Authority shall have the right, but not the duty, to make the necessary repair or replacement** and to charge the property owner with the reasonable cost of the repair or replacement.” PWSA Regulations, § 605.2. (emphasis added).

PWSA's own regulation explicitly allow the agency to make repairs to a public health hazard on private property. Therefore, PWSA's trespass argument falls flat.

CONCLUSION

Based on the evidence presented during the Hearing, I find that the sewer line behind 2625 Brownsville Road is public, and PWSA is responsible for repairing and maintaining that line.

Max Slater
Administrative Hearing Officer
Allegheny County Health Department

Dated: _____

Copies Sent To:

Counsel for PWSA:

Danny P. Cerrone, Esq.
CLARK HILL, PLC
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219

Counsel for ACHD:

Michael Parker, Esq.
Vijyalakshmi Patel, Esq.
301 39th Street, Building 7
Pittsburgh, PA 15201