

**ALLEGHENY COUNTY HEALTH DEPARTMENT  
ADMINISTRATIVE HEARINGS**

ROBERT AND WENDY	)	
REDINGER,	)	
	)	
Appellants,	)	In re: Common Sewer Lateral
	)	1881 Painters Run Rd.
vs.	)	Pittsburgh, Pennsylvania 15241
	)	
ALLEGHENY COUNTY HEALTH	)	
DEPARTMENT	)	
	)	
Appellee.	)	

**THE ALLEGHENY COUNTY HEALTH DEPARTMENT'S  
POST-HEARING MEMORANDUM**

**I. Introduction and Background.**

The Allegheny County Health Department (hereinafter “ACHD” or “Department”) files this post-hearing memorandum summarizing and supporting its position in the appeal of the above captioned property owners of 1881 Painters Run Rd., Pittsburgh, PA 15241 (hereinafter “Appellants”).

The appeal was filed on June 3, 2016 and was based on a notice of violation sent to the Appellants by the ACHD dated May 31, 2016 (hereinafter “May 31<sup>st</sup> NOV”). The May 31<sup>st</sup> NOV is attached hereto as Exhibit D8. Pursuant to § 1105 of Article XI (Hearings and Appeals) of the ACHD’s Rules and Regulations (hereinafter “Article XI”), a full evidentiary hearing was held on February 10, 2017 (hereinafter “Hearing”).

The appeal challenges the ACHD’s determination found in the May 31<sup>st</sup> NOV that a common sewer lateral (hereinafter “CSL”) exists on the Appellant’s property (hereinafter “Painters CSL”). In the appeal, the Appellants claim the ACHD has not provided proof that the common sewer lateral exists, that the Appellants are connected to the lateral, or that the sewer is

private. The appeal further seeks to overturn the ACHD’s order found in the May 31<sup>st</sup> NOV that, pursuant to § 701.3.1 of the ACHD’s Rules and Regulations, Article XV, Plumbing (hereinafter “Article XV”), the property owners must either separately connect to the available public sewer or enter into a mutual maintenance agreement that is then recorded in the deeds of all properties connected to the Painters CSL. Appellants acknowledge that the ACHD attempted to provide a drawing of the location of the sewer. The Appellants did not request and the ACHD Director did not unilaterally grant a stay of the proceedings, therefore, pursuant to Article XI § 1111, the ACHD’s determination found in the May 31<sup>st</sup> NOV remains in full force and effect.

**II. Proposed Findings of Fact.**

- A. 1881, 1883<sup>1</sup>, 1887<sup>2</sup>, 1901, and 1909 Painters Run Rd. are connected to a common sewer line (previously identified as the “Painters CSL”). Exhibit 1; Verbatim Record of February 10, 2017 Hearing (hereinafter “Record”) at p. 31.
- B. The Painters CSL is not recorded on a mutual maintenance agreement with the Recorder of Deeds of Allegheny County.
- C. The Painters CSL is a private sewer line. Exhibits 1, A, and B1; Record at pp. 33-34.

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<sup>1</sup> Appellant’s Exhibit B.1 identifies this location as 1883 Painters Run Rd. ACHD’s investigation shows that 1883 does not exist, and the property address is 1880 Painters Run Rd. For the purpose of this brief, this location will be referred to as 1883. The specific house number does not change the ACHD’s May 31<sup>st</sup> Order, the property is still tied to the Painters CSL.

<sup>2</sup> Appellant’s Exhibit B.1 identifies this location as 1887 Painters Run Rd. ACHD’s investigation shows that 1887 does not exist, and the property address is 1885 Painters Run Rd. For the explanation provided above, this location will be referred to as 1887.

### III. Discussion.

In an administrative appeal of a final agency action of the ACHD, the appellant “shall bear the burden of proof and the burden of going forward with respect to all issues.” Article XI § 1105.D.7. Therefore, because this matter revolves around Article XV § 701.3.1, in order to prevail in their appeal, the Appellants must prove by a preponderance of the evidence either that a sewer lateral does not exist on 1881 Painters Run Rd (hereinafter “1881 Property”), or, if there is a sewer lateral, then that lateral is a public line or the 1881 Property is not connected to it.

The ACHD based its determination found in the May 31<sup>st</sup> NOV on evidence in its possession at the time the NOV was issued. Specifically, it found that the Painters CSL exists on the 1881 Property, it is a private sewer line, and that the 1881 Property is connected to it. The Appellants have presented no evidence that the Painters CSL does not exist, that they are not tied to it, or that it is a public line. Therefore, the ACHD contends that Appellants have failed to meet their burden of proof and their appeal must be dismissed.

As noted above, the regulation upon which this matter must be decided is Article XV § 701.3.1, which states as follows:

**“Existing Common Sewer Lateral.** When the Administrative Authority 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 Administrative Authority, identifying the existence of the CSL and adequately specifying the maintenance responsibilities for property owners.”

This regulation simply provides that if a common sewer lateral<sup>3</sup> is identified by the “Administrative Authority”<sup>4</sup>, then orders may be issued to connect to a public sewer if a mutual maintenance agreement is not recorded with the Recorder of Deeds of Allegheny County.

In the present case, the ACHD based its determination that the Painters CSL triggers Article XV § 701.3.1 on site inspections and confirmations from Scott Township, the borough in which the Painters CSL is situated. Specifically, the ACHD relied on dye tests to determine that the Appellants’ home is connected to a common sewer lateral. Exhibit 1; Record at p. 45. The ACHD then turned to a municipal map and verbal assurances provided by Scott Township to identify the Painters CSL as a private sewer that is not illustrated on the map and maintained by the municipality. Record at p. 49-50; Exhibits D3 and D4. Therefore, based upon its own on-the-ground investigation and verifications by Scott Township, the ACHD lawfully made the determination that the Painters CSL is a private CSL not recorded with the Recorder of Deeds and, pursuant to Article XV § 701.3.1, correctly issued orders to the Appellants to either connect to a public sewer or to enter into a mutual maintenance agreement. The Appellants have not met their burden of proof in this appeal because they failed to present any evidence affirmatively showing that the Painters CSL does not exist, and if it does exist, they are not tied to it or the line is a public sewer.

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<sup>3</sup> Article XV defines the term “common sewer lateral” as “a private sewer that collects the sewage discharge of more than one building drain/sewer and conveys it to a public sewer.” Article XV § 202.

<sup>4</sup> Article XV defines the term “Administrative Authority” as “the Director of the Allegheny County Health Department or his authorized representative”. Article XV § 202.

**A. Appellant's Exhibits Should Be Disregarded Solely for the Purpose That They Do Not Support Appellant's Position.**

During the course of the Hearing, it became apparent that Appellants misunderstood the location of the Painters CSL and instead, made regular reference to a public sewer that is not in dispute.

The Appellants introduced Exhibits A and A.1 (collectively "Survey Plan"), B.1 (hereinafter "USC Map"), and C ("USC Email"). The purpose of these exhibits was to show that the sewer line from MH 950-553 to MH 950-552 to MH 950-551 and ending at MH 950-550 is a public sewer owned by the municipality of Upper St. Clair.<sup>5</sup> Exhibits A, A.1, B.1<sup>6</sup>, and C; Record at pp. 13-14. This sewer line begins opposite the properties and then crosses Painters Run Rd., but it does not pass through 1881, 1883, 1887, and 1901 Painters Run Rd. Exhibit B.1. The ACHD does not dispute the sewer line identified by the Appellants is public, but that line is not the basis of the May 31<sup>st</sup> NOV issued by the ACHD. Record at pp. 32, 50. The sewer line that gave rise to the May 31<sup>st</sup> NOV runs through the private properties of 1881, 1883, 1887, 1901, and 1909 Painters Run Rd. before connecting to a public sewer. Record at pp. 31-32, 49. The sewer line the ACHD concluded to be a CSL is not depicted in the Survey Plan, USC Map, or referenced in the USC Email. Record at p. 32.

The Survey Plan, dated 1998, was submitted to the Township of Upper St. Clair by the developer of 1909 Painters Run Rd (hereinafter "1909 Property"). The Survey Plan shows the

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<sup>5</sup> Appellants allege manholes MH 950-553, MH 950-552, MH 950-551, and MH 950-550 are owned by Upper St. Clair. Exhibits B.1 and C; Record at p. 14. Scott Township claims that it owns them, therefore, the ACHD did not contact Upper St. Clair. Exhibits 4 and 5; Record at p. 49-50. Neither party in this action disputes that these manholes and the sewer line connecting them are a public sewer. Therefore, the determination of which municipality owns these manholes is not relevant to the resolution of this case.

<sup>6</sup> The pink line shown to cross 1887, 1901, and 1909 Painters Run Rd. is not a sewer line, it is a boundary line between Scott Township and Upper St. Clair. Exhibits B.1 and C; Record at p. 17-18. The red line is the public sewer maintained by Upper St. Clair. Exhibits B.1 and C; Record at p. 14.

public sewer crossing Painters Run Rd., through the 1909 Property, and then crossing Bower Hill Rd. Exhibits A and A.1; Record at pp. 10-12. Appellants indicated that because Upper St. Clair accepted and adopted this plan, it is an accurate depiction of the sewer line on the 1909 Property. Record at p. 40. As stated before, the ACHD does not dispute the location of the sewer line depicted on the Survey Plan, however, the absence of the Painters CSL on the Survey Plan does not indicate the CSL does not exist. As Andy Grese, Program Manager of the Plumbing Division of the Department testified, very few CSLs are recorded in Allegheny County which is why homeowners and municipalities are not always aware that a CSL runs on their private property. Record at p. 23. Testimonial evidence shows that prior to the Hearing, the Appellants did not know the path sewage from their property takes to reach a public sewer. Record at p. 21. Moreover, the Appellants and their witness were not aware of a sewer line crossing through 1881, 1883, 1887, 1901, and 1909 Painters Run Rd. Record at pp. 18-20. Thus, the acceptance and adoption of the Survey Plan by Upper St. Clair is not dispositive of the absence of a CSL on the 1881 Property.

The Appellants then introduced a letter from Upper St. Clair (hereinafter “USC Dye Letter”) stating that a dye test was performed at the 1909 Property and they did not find an illegal storm or surface water connection into the sanitary system. Exhibit D. The 1909 Property is the closest property on the Painters CSL to the public sewer the CSL ties into. To determine whether a CSL exists, suspected properties have to be dye tested with a camera at the property closest to the manhole the lateral connects to, in this case the gas station at the 1909 Property. Record at p. 45. If dye from a different property appears at the sewer the 1909 Property is connected to, then it is conclusive that at least two properties are on a CSL. A dye test on a single property located at the end of a CSL does not indicate the existence or absence of a CSL.

The last piece of evidence introduced by the Appellants at the Hearing is a letter from the Upper St. Clair Tax Office stating that there are no outstanding delinquent sewage charges against the 1909 Property (hereinafter "Tax Letter"). Exhibit E. The Tax Letter was admitted into evidence as Exhibit E. This letter is not dispositive of the absence of a CSL or that the Painters CSL is a public sewer because all CSLs eventually tie into a public sewer or a septic. Record at p. 46. In this case, the ACHD confirmed that the Painters CSL ties into a public sewer, therefore, the municipality is providing sewage services once sewage from 1909 Painters Run Rd. enters a public sewer. The ACHD does not dispute that the municipality provides sewage services to the property owner, the disagreement between the parties is at what geographic point does the municipality begin to provide the services. The Tax Letter and USC Dye Letter should be disregarded because they do not demonstrate the existence or absence of the Painters CSL, whether the sewer line is public or private, or whether the 1881 Property is tied to it.

Three exhibits were introduced by the Appellants after the Hearing. For reasons set forth below, all three exhibits are inconclusive in the Appellants' claim that the municipality of Mt. Lebanon constructed and operates the Painters CSL. The first document, labelled Exhibit B, is a deed for 1883 Painters Run Rd. Appellants claim that the sewer line referenced in part (4) of the second full paragraph of page 5 is the Painters CSL. However, this conclusion is not based on any facts. The deed does not describe the location of the sanitary trunk sewer line on 1883 Painters Run Road. Moreover, the relevant section indicates that it is meant to be read alongside an Agreement dated August 30, 1938, which has not been introduced by the Appellants. Due to changing property lines since 1938, there is no indication that the sewer line in the deed is currently on 1883 Painters Run Rd. Additionally, Appellants have not provided evidence that

the Painters CSL is thirty inches in diameter or that it meets any description set forth in the referenced Agreement. Therefore, the mere mention of a sanitary sewer line on the property without further description is not conclusive that the deed refers to the Painters CSL.

The second document introduced by the Appellants is an Allegheny County Real Estate Assessment Record page for the parcel 254-D-170. Exhibit C. The ACHD does not dispute that lot and parcel number 254-D-170 is 1880 Painters Run Rd, as indicated on the exhibit.

The last document introduced by the Appellants is an easement dated March 13, 1944. Exhibit D. Appellants introduced the easement to demonstrate that because Mt. Lebanon built a sanitary sewer line on a property in Scott Township, the Painters CSL was also constructed and operated by Mt. Lebanon because it is located in Scott Township. This conclusion is unconvincing because it would imply that all sewer lines with disputed ownership in Scott Township were constructed and operated by Mt. Lebanon. Therefore, the easement should be disregarded as irrelevant.

**B. The ACHD's Evidence Established that the Sewer Line on the Private Properties of Painters Run Rd. Met the Characteristics of a CSL.**

The ACHD presented convincing evidence that the Painters CSL exists, is private, and the 1881 Property is connected to it. As noted above, the ACHD conducted dye tests on the CSL and based on the results, determined the CSL exists and the 1881 Property is connected to it. Record at pp. 30-31. They also confirmed that this sewer line does not cross Painters Run Rd. Record at p. 32.

The ACHD independently determined that the Painters CSL must be private because of the size of the sewer line, absence of manholes, and absence of a recorded easement. At six

inches, the diameter of the sewer line was too small to be a public sewer. Public sewer lines are generally eight inches or larger. Record at p. 33. Moreover, the Painters CSL had four and six inch cleanouts. Public sewers typically have manholes, not four- and six-inch cleanouts. Record at p. 24, 33. The ACHD did not find any manholes on the Painters CSL. Record at p. 34. Since the Painters CSL is located on private property, recorded easements are relevant in determining whether the sewer line is public or private. Easements are not necessary if the sewer line is on public property. If a sewer is on private property, the ACHD assumes it is a private line unless there is a recorded easement from the property owner to the municipality. Record at p. 25. The ACHD did not find any recorded easements from the properties connected to the Painters CSL granting a municipality the right to enter the property and maintain the sewer line. Record at p. 34. Moreover, the Appellants admit that they did not grant Upper St. Clair an easement for this purpose. Record at pp. 21-22. Therefore, after analyzing the characteristics of the Painters CSL, the ACHD properly determined that it is a private sewer line.

Randy Lubin, Director of Public Services at Scott Township, confirmed the ACHD's assessment that the Painters CSL is private sewer line. Exhibits 4 and 5; Record at. 49-50. Municipal sewer maps typically do not depict private sewer lines because the municipalities do not service them. Record at pp. 25-26. The map provided by Scott Township shows the public sewer in green lines. Exhibit 5; Record at p 50. The Painters CSL is not illustrated on this map. Exhibit 5. Appellants claim Upper St. Clair owns the Painters CSL. Record at p. 37-38. Not only have the Appellants failed to provide proof of this claim, but the Upper St. Clair Public Works website (hereinafter "USC Website") declares the following:

“Every home has a private sewer lateral, connecting the home to the Township sewer line. Homeowners are fully responsible for the maintenance and repair of their sewer lateral.” Exhibit 8.

The website also states that the sanitary sewers and manholes it services are located within easements. Exhibit 8. The Painters CSL does not have manholes, is not recorded in an easement, and it connects the 1881 Property to the public sewer. Based on the USC Website, this lateral is private and the homeowner is responsible for its maintenance and repair. Exhibit 8.

The Appellants emphasized that the ACHD did not conduct a survey of the Painters CSL to obtain a legal description in metes and bounds of the exact location of the CSL. Article XV does not require the ACHD to go further and obtain a metes and bounds description of the location of a CSL once it has been identified. That responsibility falls upon the property owners when they enter into and record a mutual maintenance agreement. Record at pp. 36, 55-56.

As noted above, pursuant to Article XI § 1105.D.7, the Appellants carry the burden of proof in this appeal. The Appellants introduced nine exhibits, the majority of which supported the ACHD’s position and the remaining were irrelevant. Therefore, the ACHD contends that the Appellants have failed to meet their burden of proof and their entitlement to relief on appeal.

**IV. Conclusions of Law.**

- A. The Painters CSL is a private sewer lateral triggering the requirements of Article XV § 701.3.1.
- B. The ACHD lawfully ordered the owners of the homes connected to the Painters CSL to either individually connect to a public sewer or to enter into a mutual maintenance agreement.
- C. The owners of the homes connected to the Painters CSL must either individually connect to a public sewer or enter into a mutual maintenance agreement to be recorded on the deeds of their properties with the Allegheny County Recorder of Deeds.

**V. Conclusion.**

This appeal was instituted based on a misunderstanding of the location of the Painters CSL. The Appellants mistakenly believed the ACHD identified a public sewer as the Painters CSL. The Appellants then claimed that because Upper St. Clair charges for sewage services, then it must own the Painters CSL. This belief is not correct because CSLs eventually connect to a public sewer line. The ACHD presented evidence that the Painters CSL is a private sewer line subject to the requirements of Article XV 701.3.1, which provides that when the ACHD identifies a private CSL that the property owners on the CSL must either separately connect to a public sewer line or enter into a mutual maintenance agreement. The Appellants, having the burden of proof, failed to present any evidence proving that the Painters CSL does not exist, is a public line, or the 1881 Property is not connected to it. Therefore, since the Appellants failed to

meet their burden of proof, the ACHD asserts that this tribunal is constrained to deny Appellants' request for relief on their appeal.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2017, I served a true and correct copy of the Post-Hearing Memorandum on the following persons by first class mail, postage paid, and addressed as follows:

Robert and Wendy Redinger (Email PDF also)  
1881 Painters Run Rd.  
Pittsburgh, PA 15241

Marilyn Le Lodico (Email PDF also)  
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