

COUNTY OF ALLEGHENY
ALLEGHENY COUNTY HEALTH DEPARTMENT

BEFORE: Max Slater, Esquire
Administrative Hearing Officer
Allegheny County Health Department

IN RE: 6410 ADELPHIA STREET,
PITTSBURGH, PA 15206

PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON BEHALF OF
APPELLANTS, MICHAEL A. AND JANICE M.
CAPUTO

Filed on Behalf of:
Appellants, Michael A. and Janice M. Caputo

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Appellants, Michael A. and Janice M. Caputo (together the “Caputos”), by their undersigned counsel, file the following Proposed Findings of Fact and Conclusions of Law:

I. PROPOSED FINDINGS OF FACT

A. Hearing, Witnesses and Exhibits

1. The hearing in this matter was held on March 7, 2018 beginning at 9:30 a.m. at the Clack Health Center, Building 7, 301 39th Street, Pittsburgh, Pennsylvania, before Max Slater, Esquire, Administrative Hearing Officer for the Allegheny County Health Department (“Hearing”).¹

2. The Caputos offered the testimony of two (2) witnesses in support of their case during the Hearing: (1) the testimony of Michael A. Caputo (“Mr. Caputo”) as a fact witness (Tr., pp. 8-79); and (2) Stephen Emery, Esquire, Head Underwriter/Area Manager, Chicago Title Insurance Company, as an expert witness (Tr., pp. 80-96; Tr. Ex. Q).

¹ All citations set forth herein are from the official Hearing transcript. Citations to the testimony and exhibits introduced at the Hearing are designated as “Tr., p. ___” or “Tr. Ex. ___”.

3. The Caputos offered Exhibits A through Q in support of their case during the Hearing, each of which was introduced into evidence. (Tr., pp. 53, 103; Tr. Exs. A-Q).

4. The Allegheny County Health Department ("ACHD") offered the testimony of one (1) witness in support of its case during the Hearing: Andrew F. Grese, Plumbing Program Manager, Allegheny County Health Department, as a fact witness. (Tr., pp. 97-116).

5. The ACHD offered Exhibits D1 through D5 in support of its case during the Hearing, each of which was introduced into evidence. (Tr., pp. 54, 102, 104, 105, 106; Tr. Exs. D1-D5).

6. The ACHD did not present any expert witness(es), nor did it offer any expert witness testimony. (Tr., pp. 3-116).

B. The Caputos' Purchase/Subdivision of their Property (6410 and 6414 Adelpia Street)

7. The Caputos purchased the property then known as 6414 Adelpia Street in January 2012. (Tr., pp. 11-12; Tr. Ex. B).

8. The Caputos subsequently subdivided the property then known as 6414 Adelpia Street into two (2) adjacent, contiguous lots, which now are known as 6414 Adelpia Street, also known as "Lot 1," and 6410 Adelpia Street, also known as "Lot 2." (Tr., pp. 10-11; Tr. Ex. A).

9. At the time of the Caputos' purchase of the properties now known as 6414 Adelpia Street and 6410 Adelpia Street, which were on the same deed prior to subdivision by the Caputos, the property that is now 6414 Adelpia Street contained a house and a detached garage, and the property that became 6410 Adelpia Street contained a two-bay garage. (Tr., p. 13; Tr. Exs. A, B).

10. The Caputos' intention when purchasing the properties now known as 6414 Adelpia Street (Lot 1) and 6410 Adelpia Street (Lot 2) was to subdivide the land, keep the

existing house on 6414 Adelpia Street (Lot 1) and build a new house on 6410 Adelpia Street (Lot 2). (Tr., p. 14).

11. In fact, the formerly combined properties were advertised for sale as having enough land for an additional building lot. (Tr., p. 14).

C. Building Permit Approval for the House Constructed at 6410 Adelpia Street (Lot 2)

12. The Caputos constructed a house at 6410 Adelpia Street (Lot 2). (Tr., p. 14).

13. In order to build the house at 6410 Adelpia Street (Lot 2), the Caputos went through all of the steps necessary to subdivide the property, survey it, request all the various permits, and receive the required approvals. (Tr., p. 15).

14. Indeed, on July 22, 2016, the City of Pittsburgh issued a building permit to the Caputos authorizing them to build the house at 6410 Adelpia Street (Lot 2). (Tr., p. 15; Tr. Ex. C).

D. Representations and Understandings Regarding Public Sewer Access

15. When the Caputos purchased the properties now known as 6414 Adelpia Street and 6410 Adelpia Street in 2012, they believed that public sewer access existed. (Tr., pp. 14-17).

16. Notably, the Seller Disclosure Statement for the properties now known as 6414 Adelpia Street and 6410 Adelpia Street specifically represented that public sewer access existed. (Tr., pp. 16-17; Tr. Ex. D).

17. With respect to public sewer access, as part of the process for construction of the house at 6410 Adelpia Street, the Caputos submitted an application dated July 8, 2016 to the Pittsburgh Water and Sewer Authority ("PWSA"), the government agency authorized to issue sewer permits. (Tr., pp. 17-18; Tr. Ex. E).

18. On July 8, 2016, PWSA issued a permit for the Caputos to connect their home being constructed on 6410 Adelpia Street to the public sewer system. (Tr., p. 20; Tr. Ex. F).

19. As part of the sewer permitting process, the Caputos paid to PWSA two (2) separate fees in the amounts of \$1,410.00 and \$500.00. (Tr., p. 20; Tr. Ex. F).

E. Construction of the Home at 6410 Adelpia Street

20. Following obtaining all necessary approvals, including the building permit from the City of Pittsburgh and the sewer permit from PWSA, the Caputos began construction of the house located at 6410 Adelpia Street in September of 2016. (Tr., pp. 20-21).

21. The excavation began first, and then the foundation was laid. (Tr., p. 21).

22. The house being constructed at 6410 Adelpia Street is unique in that it is a LEED certified home constructed in a very energy-efficient manner with portions of the home prefabricated offsite. (Tr., p. 21).

23. To date, the Caputos have spent approximately \$300,000.00 in constructing the home located at 6410 Adelpia Street, which remains unfinished. (Tr., p. 22).

F. Problem with Connection to the Public Sewer System Discovered During Construction

24. On October 26, 2016, the Caputos learned from their builder that contrary to everyone's understanding, there is no public sewer system access to 6410 Adelpia Street. (Tr., pp. 22-23).

25. Specifically, upon excavation by the Caputos' builder to install the sewer and water lines at 6410 Adelpia Street and connect them to the public utilities, no public sewer line was located. (Tr., pp. 22-23).

26. On March 8, 2017 – well after construction of the house at 6410 Adelpia Street had begun – PWSA refunded the Caputos the \$500.00 they previously had paid to PWSA for the

public sewer tapping fee with respect to the home being built at 6410 Adelpia Street. (Tr., pp. 23-24; Tr. Ex. G).

27. The reasons given in writing by PWSA for the refund of the public sewer tapping fee to the Caputos are “Sold to customer by mistake” and “PWSA does not have a sewer on Adelpia St. in the 6400 BLK.” (Tr., pp. 23-24; Tr. Ex. G).

28. On March 9, 2017 – a day after PWSA refunded the \$500.00 paid by the Caputos to PWSA for the public sewer tapping fee – PWSA further explained the public sewer situation to the Caputos. (Tr., p. 24; Tr. Ex. H).

29. Specifically, Rick Obermeier (“Mr. Obermeier”) from PWSA sent the Caputos via e-mail an annotated map showing plot plans of the 6400 block of Adelpia Street, where the houses are situated, and annotations to where the public sewer is located and where a private sewer lateral connecting to the public sewer is located. (Tr., pp. 24-26; Tr. Ex. H).

30. Notably, and as discussed by the Caputos with Mr. Obermeier from PWSA, a private sewer lateral extending into 6414 Adelpia Street and servicing that property is identified in green on the annotated map (the “Sewer Lateral”). The Sewer Lateral connects to the public sewer line to the east identified in orange on the annotated map. (Tr., pp. 24-29; Tr. Ex. H).

G. Review of Condition of the Private Sewer Lateral

31. On April 4, 2017, the Caputos hired a company by the name of American Leak Detection to camera the interior of the Sewer Lateral. (Tr., pp. 29-33; Tr. Ex. I).

32. The camera footage revealed that the Sewer Lateral is a six (6) inch terra-cotta pipe in excellent condition. There were no cracks, blockages or any problems discovered. (Tr., pp. 29-33, 36; Tr. Ex. I).

33. Additionally, the camera footage revealed that the only properties with connections to the Sewer Lateral were 6420 Adelphia Street, the Caputos' adjacent neighbors, and the Caputos' property located at 6414 Adelphia Street. (Tr., pp. 33, 36; Tr. Ex. I).

H. Failure to Advise as to the Existence of the Sewer Lateral

34. From the time that the Caputos purchased the properties now known as 6414 Adelphia Street and 6410 Adelphia Street through construction of the house at 6410 Adelphia Street, Richard X. Inesso and Annette I. Inesso (together the "Inessos") were the Caputos' adjacent neighbors and record owners of 6420 Adelphia Street. (Tr., pp. 37-38; Tr. Exs. H, J).

35. At no point in time prior to construction of the house at 6410 Adelphia Street did the Caputos' neighbors at 6420 Adelphia Street, the Inessos, ever mention the existence of the Sewer Lateral. (Tr., p. 37).

36. At no point in time during construction of the house at 6410 Adelphia Street did the Caputos' neighbors at 6420 Adelphia Street, the Inessos, ever mention the existence of the Sewer Lateral. (Tr., p. 37).

I. Maintenance Agreement with the Inessos for the Sewer Lateral

37. On October 10, 2017, the Caputos and the Inessos recorded with Allegheny County a Common Sewer Lateral Maintenance and Easement Agreement ("Sewer Lateral Maintenance and Easement Agreement"). (Tr., pp. 38-39; Tr. Ex. J).

38. The Sewer Lateral Maintenance and Easement Agreement provides, among other things, for the complete maintenance and repair of the entirety of the Sewer Lateral. (Tr., pp. 38-39; Tr. Ex. J).

39. The Sewer Lateral Maintenance and Easement Agreement states in paragraph 7 that the Sewer Lateral Maintenance and Easement Agreement "and all rights, duties, obligations

and/or privileges” thereunder is binding upon the Caputos, the Inessos, “and their respective successors and assigns.” (Tr., p. 40; Tr. Ex. J).

40. The Sewer Lateral Maintenance and Easement Agreement states in paragraph 7 that “[a]ll easements, covenants and restrictions herein granted shall be deemed covenants running with [6414 Adelpia Street and 6420 Adelpia Street].” (Tr., p. 40; Tr. Ex. J).

J. Maintenance Agreement by the Caputos for the New Sewer Lateral

41. On November 16, 2017, the Caputos recorded with Allegheny County a Declaration of Easement and Covenants (“Declaration of Easement and Covenants”). (Tr., p. 48; Tr. Ex. M).

42. The Declaration of Easement and Covenants provides, among other things, for the complete maintenance and repair of a new private sewer lateral extending from 6410 Adelpia Street to 6414 Adelpia Street (“New Sewer Lateral”) where it would connect to the existing Sewer Lateral. (Tr., pp. 48-49; Tr. Ex. M).

43. The Declaration of Easement and Covenants states in paragraph 2 that the Caputos declare and create “an easement over and across” 6414 Adelpia Street for the benefit of 6410 Adelpia Street for purposes of installing the New Sewer Lateral. (Tr., pp. 48-49; Tr. Ex. M).

44. The Declaration of Easement and Covenants states in paragraph 4 that “the covenants, restrictions and agreements set forth in this Declaration shall be considered covenants running with the land and shall bind, burden and benefit [6410 Adelpia Street and 6414 Adelpia Street].” (Tr., pp. 48-49; Tr. Ex. M).

45. The Declaration of Easement and Covenants also states in paragraph 4 that “[e]ach grantee accepting a deed, lease or other instrument conveying any interest in [6410

Adelphia Street or 6414 Adelphia Street] or any part thereof, whether or not the same incorporates or refers to this Declaration, covenants individually and for such grantee's heirs, personal representatives, successors and assigns to observe, perform and be bound by this Declaration." (Tr., pp. 48-49; Tr. Ex. M).

K. Connection Directly to the Public Sewer at the East Terminus on Adelphia Street

46. Mr. Caputo testified that connecting 6410 Adelphia Street directly to the public sewer line at the closest eastern terminus on Adelphia Street is not an option. (Tr., pp. 43-46).

47. Specifically, Mr. Caputo stated that after speaking with 10 to 12 plumbers, no one has even provided him with an estimate because no one wants to do this work. (Tr., pp. 43-44).

48. Of note, and as specifically observed by Mr. Caputo during excavation, there are extensive gas, water and sewer lines servicing each house in that area of Adelphia Street, which he described as "a spider web of pipes." (Tr., pp. 43-44).

49. Additionally, Mr. Caputo testified that no direct sewer line could be placed near any pre-existing sewer lines because they are constructed of 70-year-old terra-cotta pipe, and no digging should be done in that area. (Tr., pp. 44-45).

50. Notwithstanding that construction of a direct sewer line from 6410 Adelphia Street to the east terminus of the closest public sewer line is not possible, the cost to repair just 70 feet of the road in front of 6410 Adelphia Street would be \$17,000.00 to \$18,000.00 based on estimates received from three (3) or four (4) asphalt companies. (Tr., p. 45).

51. Additionally, the distance from 6410 Adelphia Street to the terminus of the closest public sewer line to the east is 160 feet. (Tr., pp. 30, 44, 77).

52. As the ACHD is fully aware, the terra-cotta sewer lines servicing Adelphia Street were constructed well prior to 1994. (Tr., p. 45).

L. Connection Directly to the Public Sewer at the West Terminus on Adelpia Street

53. The Caputos had multiple communications with Mr. Obermeier from PWSA regarding connecting 6410 Adelpia Street directly to the public sewer line. (Tr., pp. 60-63, 78-79; Tr. Ex. H).

54. Mr. Obermeier advised the Caputos that connecting 6410 Adelpia Street directly to the public sewer line at the closest western terminus on Adelpia Street is not an option. (Tr., pp. 60-63, 78-79; Tr. Ex. H).

55. At no point in time did Mr. Obermeier or the PWSA perform any planning, investigation or testing in furtherance of connecting 6410 Adelpia Street directly to the public sewer line at the closest western terminus on Adelpia Street. Rather, all of Mr. Obermeier's and PWSA's efforts in this regard were to the east. (Tr., pp. 60-63, 78-79; Tr. Ex. H).

56. To this point, an examination of the annotated map showing plot plans of the 6400 block of Adelpia Street, where the houses are situated, and annotations to where the public sewer lines and the Sewer Lateral are located that was provided to the Caputos by Mr. Obermeier of PWSA on March 9, 2017 makes clear that Mr. Obermeier's and PWSA's focus and direction was to connect 6410 Adelpia Street to the public sewer line by going east. (Tr., pp. 60-63, 78-79; Tr. Ex. H).

57. Given the circumstances, Mr. Obermeier advised the Caputos to connect 6410 Adelpia Street to the public sewer line through the existing Sewer Lateral located on 6414 Adelpia Street. (Tr., pp. 60-63, 78-79; Tr. Ex. H).

M. Request/Denial for a Variance to Connect the New Sewer Lateral to the Sewer Lateral

58. On October 14, 2017, the Caputos formally requested in writing that the ACHD

grant a variance to the ACHD's Plumbing Code and allow the Caputos to connect the New Sewer Lateral to the Sewer Lateral. (Tr., pp. 46-47; Tr. Ex. K).

59. On November 6, 2017, Andrew F. Grese, Plumbing Program Manager, Allegheny County Health Department ("Mr. Grese"), sent a letter acknowledging the Caputos' variance request and denying the same. (Tr., p. 47; Tr. Ex. L).

60. The sole reason for denying the Caputos' variance request as set forth in Mr. Grese's November 6, 2017 letter on behalf of the ACHD is as follows: "Section AC-701.3.1 states that in order to connect to an existing common sewer lateral, a maintenance agreement must be recorded in the deeds of all properties involved. Presently there is not an agreement adequately specifying maintenance responsibilities for the sewer recorded in the deeds of the properties located at 6410, 6414 and 6420 Adelphia Street. For this reason, your request to connect to the [Sewer Lateral] is denied. Please be advised that your request to install a grinder pump would have been approved provided the required maintenance agreement issue was resolved." (Tr., p. 47; Tr. Ex. L).

61. Subsequently, the Caputos responded in writing to Mr. Grese's November 6, 2017 denial letter. (Tr., pp. 49-51; Tr. Ex. N).

62. Specifically, in the Caputos' correspondence responding to Mr. Grese's November 6, 2017 denial letter, the Caputos provided Mr. Grese with copies of both the Sewer Lateral Maintenance and Easement Agreement (which addresses the maintenance of the Sewer Lateral) and the Declaration of Easement and Covenants (which addresses the maintenance of the New Sewer Lateral) and includes citations to where each document has been recorded with Allegheny County. (Tr., pp. 49-51; Tr. Ex. N).

63. In response, Vijya Patel, Esquire, Assistant Solicitor for the ACHD (“Attorney Patel”), sent e-mail correspondence dated November 22, 2017 to Kevin F. McKeegan, Esquire, counsel for the Caputos (“Attorney McKeegan”). (Tr., pp. 51-52; Tr. Ex. O).

64. In her November 22, 2017 e-mail, Attorney Patel advised that the ACHD “cannot approve [the Caputos’] variance request unless all the properties on an existing sewer lateral and those wishing to connect to the common sewer lateral have signed one mutual maintenance agreement that is then recorded in the deeds of all the properties.” (Tr., pp. 51-52; Tr. Ex. O).

65. By way of his letter dated November 29, 2017, Attorney McKeegan filed with the ACHD an appeal (“Appeal”) on behalf of the Caputos with respect to the ACHD’s November 6, 2017 denial of the Caputos’ request for a variance under Section AC-701.3.1 of the ACHD Plumbing Code. (Tr., p. 52; Tr. Ex. P).

66. As noted in the Appeal, Attorney McKeegan advised the ACHD that “[t]he combination of these two recorded instruments [the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants] satisfies the stated ground for denial of the Caputos’ variance request.” (Tr., p. 52; Tr. Ex. P).

N. Expert Testimony of Stephen Emery

67. Stephen Emery, Esquire, Head Underwriter/Area Manager, Chicago Title Insurance Company (“Mr. Emery”), was qualified and accepted as an expert witness by the Administrative Hearing Officer at the time of Hearing in this matter without objection. (Tr., pp. 80-83; Tr. Ex. Q).

68. Specifically, Mr. Emery was qualified and accepted as an expert in real estate, title and related issues, including as to sewer and utility easements, covenants, declarations, and maintenance agreements and their impact on any affected real estate. (Tr., p. 83).

69. All of Mr. Emery's testimony was provided to a reasonable degree of professional certainty. (Tr., pp. 83, 89).

70. Mr. Emery testified that the Sewer Lateral Maintenance and Easement Agreement was signed, recorded with Allegheny County, provides for the maintenance and repair of the Sewer Lateral, runs with the land of the burdened parcels (6414 Adelphia Street and 6420 Adelphia Street), and is binding not only upon the parties (the Caputos and the Inessos), but also their successors and assigns. (Tr., pp. 83-85, 89; Tr. Ex. J).

71. Mr. Emery also testified that the Declaration of Easement and Covenants was signed, recorded with Allegheny County, provides for the maintenance and repair of the New Sewer Lateral, runs with the land of the burdened parcels (6414 Adelphia Street and 6410 Adelphia Street), and is binding not only upon the parties (the Caputos), but also their successors and assigns. (Tr., pp. 85-87, 89; Tr. Ex. M).

72. Mr. Emery further testified that the Declaration of Easement and Covenants in paragraph 2 creates an easement across 6414 Adelphia Street for the benefit of 6410 Adelphia Street to accommodate the New Sewer Lateral and its connection to the existing Sewer Lateral. (Tr., p. 86; Tr. Ex. M).

73. Mr. Emery testified that the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants, when viewed together, fully address the maintenance and repair responsibilities for the Sewer Lateral and the New Sewer Lateral, which would account for all of the private sewer laterals extending from 6410 Adelphia Street all the way to the public sewer line to the east. (Tr., p. 87; Tr. Exs. J, M).

74. Mr. Emery further testified that the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants run with the land of all the burdened

parcels (6410 Adelpia Street, 6414 Adelpia Street and 6420 Adelpia Street). (Tr., pp. 87-88; Tr. Exs. J, M).

75. Mr. Emery further testified that the duties and obligations set forth in the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants would apply to any subsequent owners of the affected properties (6410 Adelpia Street, 6414 Adelpia Street and 6420 Adelpia Street). (Tr., p. 88; Tr. Exs. J, M).

76. Mr. Emery further testified that the duties and obligations set forth in the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants would survive the transfer of title to any of the affected properties (6410 Adelpia Street, 6414 Adelpia Street and 6420 Adelpia Street). (Tr., p. 88; Tr. Exs. J, M).

77. Mr. Emery further testified that maintenance and repair responsibilities set forth in the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants would survive any changes to any of the affected properties (6410 Adelpia Street, 6414 Adelpia Street and 6420 Adelpia Street), such as a change in use or removal of any of the structures. (Tr., pp. 88-89; Tr. Exs. J, M).

78. Mr. Emery testified that the rights, duties and obligations imposed by the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants will persist and be enforceable upon the burdened parcels (6410 Adelpia Street, 6414 Adelpia Street and 6420 Adelpia Street) in perpetuity. (Tr., p. 89; Tr. Exs. J, M).

79. Mr. Emery also testified that the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants, when taken together, are tantamount to one agreement amongst the property owners, and while there physically may be two

documents that were signed on different dates, they really should be read together in terms of the maintenance obligations. (Tr., p. 90; Tr. Exs. J, M).

80. Mr. Emery further testified that there is not one inch of the private sewer laterals extending from 6410 Adelphia Street all the way to the public sewer line to the east (namely the Sewer Lateral and New Sewer Lateral) that is not accounted for in some way, shape, or form by a common maintenance agreement that is recorded with Allegheny County (namely the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants). (Tr., pp. 90-91; Tr. Exs. J, M).

81. Mr. Emery also testified that a property owner owns that portion of a private sewer lateral that is situated on the property owner's land. (Tr., p. 91).

82. Mr. Emery further testified that if a property owner desires to connect to a private sewer lateral located on an adjacent property, that property owner would need an easement and permission from that adjacent property owner. (Tr., pp. 93-94).

83. Mr. Emery's expert testimony was un rebutted by any other expert witness or expert testimony. (Tr., pp. 3-116).

O. Andrew F. Grese, Plumbing Program Manager, Allegheny County Health Department

84. The ACHD can grant a variance for a common (private) sewer lateral. (Tr., p. 99).

85. There is no public sewer line running in front of 6410 Adelphia Street or 6414 Adelphia Street. (Tr., pp. 105-107; Tr. Exs. D3, D5).

86. There are private sewer laterals running in or around 6410 Adelphia Street and 6414 Adelphia Street. (Tr., p. 105; Tr. Ex. D3).

87. Mr. Grese testified that he has no evidence to contradict Mr. Caputo's testimony that Mr. Caputo was advised by Mr. Obermeier of PWSA that he could not connect 6410

Adelphia Street directly to the public sewer line located to the west of 6410 Adelphia Street. (Tr., pp. 109-110).

88. Mr. Grese testified that he has no evidence to contradict Mr. Caputo's testimony that Mr. Caputo contacted between 10 and 12 plumbers about possibly connecting directly to the public sewer line located to the east of 6410 Adelphia Street, but that none of those plumbers was willing even to give Mr. Caputo a bid to do that work. (Tr., p. 110).

89. Mr. Grese is not aware of any thoughts or conversations on the part of PWSA about potentially connecting 6410 Adelphia Street directly to the public sewer line located to the west of 6410 Adelphia Street. (Tr., pp. 109-110).

90. Mr. Grese agrees that an examination of the annotated map showing plot plans of the 6400 block of Adelphia Street, where the houses are situated, and annotations to where the public sewer lines and the Sewer Lateral are located that was provided to the Caputos by Mr. Obermeier of PWSA on March 9, 2017 does not depict anything in a westerly direction to connect 6410 Adelphia Street to the public sewer line located there. (Tr., p. 111).

91. Mr. Grese testified that the concern of the ACHD in this instance is that it wants to make sure that there is not a break in maintenance responsibilities with respect to the Sewer Lateral and New Sewer Lateral. (Tr., p. 113).

P. Additional Facts

92. The Inessos, the record owners of 6420 Adelphia Street, did not appear at the Hearing in this matter, nor did they present any testimony or evidence during the Hearing to contradict the testimony of Mr. Caputo or Mr. Emery.

93. No evidence whatsoever was presented at the time of Hearing even suggesting that the proposed connection and use of the New Sewer Lateral to the Sewer Lateral would in any way present a health hazard or constitute inadequate or unsanitary plumbing.

II. PROPOSED CONCLUSIONS OF LAW

1. The stated intent of the ACHD Plumbing Code is "...to protect the public from the health hazards of inadequate or unsanitary plumbing..." AC-101.3.

2. The ACHD can grant a variance for a private residence to connect to a public sewer line through a private sewer lateral. AC-701.2.1.2; AC-105.1; GMH Associates v. Allegheny County Health Department (In re: Cork Factory Pool), SR# HCE-201405619-3119, p.

5.

3. Notably, AC-105.1 states: "**Modifications.** Whenever there are practical difficulties involved in carrying out the provisions of this code, the Director and/or his designee shall have the authority to approve modifications on a case by case basis, provided that the Director and/or his designee shall first find that special circumstances make the strict letter of this code impractical. Such modifications shall be in conformity with the intent and purpose of this code, such that they do not negatively impact human or environmental health or fire safety. The details of an action granting a modification to this code shall be recorded and maintained in the files of the Plumbing Program."

4. The Caputos' Appeal dated November 29, 2017 in response to the ACHD's November 6, 2017 denial of the Caputos' request for a variance under Section AC-701.3.1 of the ACHD plumbing regulations was properly and timely filed with the ACHD.

5. The scope of these administrative proceedings is limited to the interests of the ACHD.

6. Notably, as Pennsylvania's appellate courts have long held, it is well settled that issues concerning property rights in instruments of title must be resolved in the courts, not in administrative proceedings. BR Associates v. Board of Commissioners of the Township of Upper St. Clair, 136 A.3d 548, 561 (Pa. Cmwlth. 2016); see also Michener Appeal, 382 Pa. 401, 115 A.2d 367 (Pa. 1955) (any consideration of building restrictions placed on a property by private parties has no place in proceedings under the zoning laws for a building permit or variance); Anderson v. Board of Supervisors of Price Township, 63 Pa. Cmwlth. 335, 437 A.2d 1308, 1309-10 (Pa. Cmwlth. 1981) (subdivision plan must be approved if it complies with the applicable regulations; a subdivision plan that conforms to all the technical requirements cannot be denied based on deed restrictions).

7. Additionally, as the Commonwealth Court in Gulla v. North Strabane Twp., 676 A.2d 709 (Pa. Cmwlth. 1996), citing Michener Appeal and Anderson, observed:

The gravamen of Gullas' complaint is that, by deed, they have been granted an interest in spring water flowing on the Lindencreek property. Gullas assert that this fact entitles them to notice of the subdivision proceedings to allow them to assert their claim before the Township and thus, modify the subdivision plan to locate and reflect those rights. However, the law in this Commonwealth is that enforcement of private rights has no application in a zoning dispute. [Michener Appeal]. If such covenants are violated, the remedy is enforcement of the restrictions in a court by the persons entitled to enforcement, not by way of zoning proceedings. County of Fayette v. Cossell, [60 Pa. Commw. 202, 430 A.2d 1226 (Pa. Cmwlth. 1981)]. Courts, in trying zoning cases, ordinarily exclude evidence of private restrictions and, in trying a private restriction case, will exclude evidence of zoning on grounds of immateriality. Zoning laws are enacted under the police power and interest of public health, safety and welfare; there is no concern whatever with building or use restrictions contained in instruments of title and which are created merely by private contracts. [Michener Appeal].

Lindencreek demonstrated to the trial court its right to subdivide the real estate. An application for a subdivision plan which

conforms to all the technical requirements of relevant ordinances cannot be denied on deed restrictions. [Anderson]. Thus, we hold the trial court correctly found that the Gullas did not have standing to appeal the subdivision approval process.

BR Associates, 136 A.3d at 561-62, citing Gulla, 676 A.2d at 710-11 (emphasis added).

8. Notably, the Commonwealth Court in Gulla held that "most importantly, the Township is not permitted to consider the private rights of individuals before granting subdivision approval." Gulla, 676 A.2d at 711.

9. Further, in Borough of Braddock v. Allegheny County Planning Department, 687 A.2d 407 (Pa. Cmwlth. 1996), the Commonwealth Court noted that neither the Allegheny County Planning Department, a local administrative body like the ACHD, nor the Court of Common Pleas of Allegheny County on appeal, would be the appropriate forum for addressing complex title questions involving competing ownership claims to an abandoned railroad line. Id. Rather, those issues should be resolved in a quiet title action. Id.

10. Additionally, following the reasoning in Braddock, the Commonwealth Court again recognized that proceedings before an administrative body are not the appropriate vehicle to deal with issues of use or title, which are properly resolved in a quiet title action or other court proceeding between the disputing parties. Kaufman v. Borough of Whitehall Zoning Hearing Board, 711 A.2d 539 (Pa. Cmwlth. 1998).

11. As the Commonwealth Court reasoned in Kaufman,

[Once] the prerequisite conditions required by a zoning ordinance have been fulfilled, the issuance of a building permit is 'merely ministerial.' Vagnoni v. Brady, [420 Pa. 411, 218 A.2d 235, 237 (Pa. 1966)]. Here, [the landowners] presented surveys of their properties, a deed, the trial court's order of 1986, and a construction drawing of the proposed fence with dimensions. Such documents surely provided sufficient information for the code enforcement officer or Zoning Board to decide whether the building permit requirements were met in this case. The only

action left to be taken at that point was to issue [the landowners] a permit to erect their fence.

Kaufman, 711 A.2d at 541-42.

12. Likewise here, the Hearing record contains sufficient evidence to determine whether the Caputos are entitled to a variance under Section AC-701.3.1 of the ACHD Plumbing Code.

13. While references to the Inessos' purported position on the ownership and/or use of the Sewer Lateral may have been suggested by witnesses during the Hearing, which testimony constitutes inadmissible hearsay and must be disregarded, the Inessos did not appear, testify, or present any evidence – oral or written – at the Hearing.

14. Regardless, the Inessos' stance on the ownership or use of the Sewer Lateral is not relevant or material to these proceedings. Indeed, any dispute, which may or may not exist, involving the ownership or use of the Sewer Lateral is a private matter between the Caputos and the Inessos that would have to be decided by the courts, not by a local government body such as the ACHD in connection with a request for a variance from the ACHD's Plumbing Regulations. Michener Appeal; Kaufman; Braddock; Gulla; Anderson.

15. The terra-cotta sewer lines servicing Adelphia Street were constructed well prior to 1994.

16. As the Caputos were advised by PWSA, and as the Hearing record demonstrates, connecting 6410 Adelphia Street directly to the public sewer line at the closest western terminus on Adelphia Street is not an option.

17. As the Hearing record demonstrates, connecting 6410 Adelphia Street directly to the public sewer line at the closest eastern terminus on Adelphia Street is not an option.

18. Moreover, the theoretical connection point on the public sewer line to the east near the 6400 Block of Adelpia Street, which was constructed prior to 1994, in closest proximity to 6410 Adelpia Street is in excess of 150 feet away and, thus, not “available” as defined by Section AC-701.2.2 of the ACHD Plumbing Code.

19. Distances to the public sewer line notwithstanding, as the Hearing record demonstrates, 6410 Adelpia Street does not have direct access to a public sewer line.

20. Accordingly, a public sewer line is not “available” to 6410 Adelpia Street per Section AC-701.2.2 of the ACHD Plumbing Code.

21. Notwithstanding the provisions of Section AC-701.2.2 of the ACHD Plumbing Code, the Caputos have demonstrated that they do not have the ability to connect 6410 Adelpia Street directly to a public sewer line.

22. The clear purpose of Section AC-701.3.1 of the ACHD Plumbing Code is to ensure that maintenance and repair responsibilities of any private sewer lateral are properly accounted for and addressed.

23. The Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants have been executed by the parties to those agreements and are properly recorded with Allegheny County.

24. The rights, duties and obligations set forth in the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants run with the land of all the burdened parcels (6410 Adelpia Street, 6414 Adelpia Street and 6420 Adelpia Street).

25. The rights, duties and obligations set forth in the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants would be binding upon

any subsequent owner(s) of any right, title or interest in the affected properties (6410 Adelphia Street, 6414 Adelphia Street and 6420 Adelphia Street).

26. The rights, duties and obligations set forth in the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants would survive any changes to any of the affected properties (6410 Adelphia Street, 6414 Adelphia Street and 6420 Adelphia Street), such as a change in use or removal of any of the structures.

27. The rights, duties and obligations set forth in the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants will persist and be enforceable upon the burdened parcels (6410 Adelphia Street, 6414 Adelphia Street and 6420 Adelphia Street) in perpetuity.

28. There is no portion of the private sewer laterals extending from 6410 Adelphia Street all the way to the public sewer line to the east (namely the Sewer Lateral and New Sewer Lateral) that is not accounted for by a common maintenance agreement that is recorded with Allegheny County (namely the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants).

29. The Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants, when viewed together, fully address the maintenance and repair responsibilities for the Sewer Lateral and the New Sewer Lateral, which would account for the entirety of the private sewer laterals extending from 6410 Adelphia Street all the way to the public sewer line to the east.

30. The Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants, when taken together, are tantamount to one agreement among the property owners of 6410 Adelphia Street, 6414 Adelphia Street and 6420 Adelphia Street.

31. While the Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants may be two documents that were signed on different dates, they must be read together in terms of the maintenance and repair obligations of the Sewer Lateral and New Sewer Lateral.

32. The Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants, when taken together, adequately address the maintenance and repair concerns of the ACHD and satisfy the requirements of Section AC-701.3.1 of the ACHD Plumbing Code.

33. The Sewer Lateral Maintenance and Easement Agreement and the Declaration of Easement and Covenants, when taken together, fulfill the intent of Section AC-101.3 of the ACHD Plumbing Code "...to protect the public from the health hazards of inadequate or unsanitary plumbing..."

34. Special circumstances exist in this case with respect to the ability – or in this case inability – to connect 6410 Adelpia Street to the public sewer system, thus making the strict letter of the ACHD Plumbing Code impractical.

35. The granting of the Caputos' request for a variance under Section AC-701.3.1 of the ACHD Plumbing Code is in conformity with the intent and purpose of the ACHD and the ACHD Plumbing Code.

36. The granting of the Caputos' request for a variance under Section AC-701.3.1 of the ACHD Plumbing Code will not negatively impact human or environmental health or fire safety.

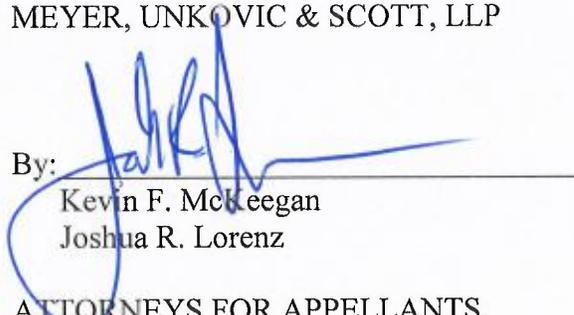
37. The ACHD's previous denial of the Caputos' request for a variance under Section AC-701.3.1 of the ACHD Plumbing Code was improper and is hereby overruled.

38. The variance under Section AC-701.3.1 of the ACHD Plumbing Code requested by the Caputos is hereby granted.

Respectfully submitted,

Date: April 19, 2018

MEYER, UNKOVIC & SCOTT, LLP

By: 

Kevin F. McKeegan
Joshua R. Lorenz

ATTORNEYS FOR APPELLANTS,
MICHAEL A. AND JANICE M. CAPUTO

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON BEHALF OF APPELLANTS, MICHAEL A. AND JANICE M. CAPUTO was served upon the following this 19th day of April, 2018, addressed as follows:

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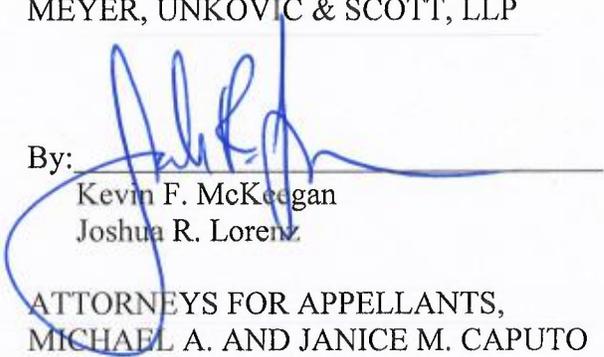
Joshua R. Lorenz

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: April 19, 2018

MEYER, UNKOVIC & SCOTT, LLP

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