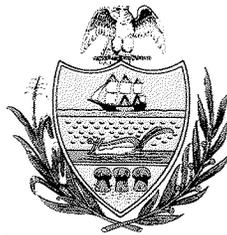


COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

December 10, 2018

VIA INTER-OFFICE MAIL AND EMAIL

Max Slater, Esq.
Administrative Hearing Officer
Allegheny Co. Health Dept.
542 Fourth Avenue
Pittsburgh, PA 15219

RE: Allegheny County Health Department's Position Statement in the Appeal Hearing for 916 Second Street, McKees Rocks, PA 15136 (Plumbing Reference #7-18).

Dear Hearing Officer Slater:

Pursuant to Allegheny County Health Department ("ACHD") Rules and Regulations Article XI, Hearings and Appeals, ("Article XI") § 1105, a full evidentiary hearing was held on October 4, 2018 to adjudicate the appeal filed by Emma L. Davis regarding the broken sewer lateral extending from the property located at 916 Second Street, McKees Rocks, PA 15136 ("916 Lateral" and "Property" respectively). The ACHD observed that the 916 Lateral was broken and discharging sewage in violation of ACHD Rules and Regulations Article XV, Plumbing and Building Drainage ("Article XV") §§ 102.3 and 108.7. On July 5, 2018, the ACHD ordered Ms. Davis to repair the 916 Lateral.

On July 13, 2018, Ms. Davis filed an appeal and claimed that the borough of McKees Rocks caused the 916 Lateral to break and despite this, she was prevented from repairing the lateral due to the borough's lack of response to her plumbers' repeated requests for information. Ms. Davis owns the Property.¹ Pursuant to Article XI § 1105.C.7, the ACHD bears the burden of proof in an administrative appeal when it issues an order. To prevail, the ACHD must prove by a preponderance of the evidence that Ms. Davis is responsible for repairing the sewer line.

The ACHD did not independently determine who the owner of the 916 Lateral is, but it is certain that the lateral is either publicly-owned or privately-owned. It follows that the owner is either Ms. Davis or the borough of McKees Rocks. Timothy Mahoney, the ACHD's Plumbing Inspector/Supervisor for the Southwest Office, testified that the ACHD does not keep in its possession sewer maps for the borough of McKees Rocks.² In fact, the ACHD relies on

¹ See Appellant's Exhibit 4, attached to Appellant's brief, dated November 20, 2018.

² Verbatim Record of October 4, 2018 Hearing (hereinafter "Tr.") at 79, 82.



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municipal records to determine ownership of sewer lines because factors determining ownership and related duties are not standard across all municipalities and boroughs in Allegheny County.³ In this case, Mr. Mahoney contacted McKees Rocks and spoke with Doug Evans, a civil engineer for NIRA Consulting Engineers⁴, to identify the responsible party of the 916 Lateral.⁵ Based on this conversation, the ACHD issued the order to repair the 916 Lateral to Ms. Davis.⁶

The borough of McKees Rocks introduced Ordinance No. 1449, executed on December 11, 1984 by the borough, as support of its claim that Ms. Davis is responsible for repairing the 916 Lateral.⁷ Specifically, Section 12 of this ordinance states that “[i]t shall be the responsibility of any property owner within the Borough to maintain and protect from damage the building sewer from their premises to and including the point of connection to the public sewer.”⁸ The plain meaning of “maintain” is “to keep in an existing state (as of repair, efficiency, or validity) : preserve from failure or decline.”⁹ Accordingly, it is unambiguously expected that the property owner will repair the sewer lateral in order to “maintain” it and prevent decline. This section does not discuss whether the burden to maintain the sewer line shifts if it is determined that the disrepair is caused by the actions of another party.¹⁰ Therefore, pursuant to Ordinance No. 1449, Ms. Davis, as the property owner, is responsible for repairing the 916 Lateral, even if actions by the borough of McKees Rocks caused the break. Thus, the ACHD properly issued the order to repair the 916 Lateral to Ms. Davis.

If this tribunal determines that Ordinance 1449’s silence on the subject of shifting the burden of maintaining sewer laterals in McKees Rocks merits a discussion such that the burden can shift to the party that is found to have caused the disrepair, the tribunal must still find that Ms. Davis is responsible for repairing the 916 Lateral. Mr. Evans could not definitely state whether the borough’s repairs of the sinkholes caused the break in the sewer lateral; however, he did not conclusively state that the repairs could not have caused the break either.¹¹ Notwithstanding, Ms. Davis did not provide any substantial evidence or expert testimony that the

³ Id. at p. 82.

⁴ NIRA Consulting Engineers provides engineering services to the borough of McKees Rocks. Id. at p. 46.

⁵ Tr. at p. 46, 82.

⁶ Id. at p. 82.

⁷ See Exhibit MR-2.

⁸ Id.

⁹ See <https://www.merriam-webster.com/dictionary/maintain>.

¹⁰ See Exhibit MR-2 & Tr. at p. 49, 71.

¹¹ Tr. at p. 56, 72, 75-76.

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borough's actions of filling the cavity surrounding the 916 Lateral with sand and tar led to, or could lead to, sinkholes appearing repeatedly in the same general location, which then caused, or could cause, the break in the 916 Lateral.¹² Moreover, and unfortunately, McKees Rocks does not maintain records related to road maintenance.¹³ Therefore, the exact nature and contents of the excavation and fill of each alleged sinkhole cannot be verified to determine through circumstantial evidence whether the borough's actions caused the break in the 916 Lateral.

In summary, Ms. Davis presented no evidence to counter the borough's ordinance which clearly and unambiguously places the burden to repair sewer laterals connecting properties to the public sewer main on the property owners in all situations. Therefore, the ACHD appropriately issued the July 5th notice to repair the 916 Lateral to Ms. Davis and the ACHD asserts that the appeal must be dismissed.

Sincerely,



Vijyalakshmi Patel, Esq.
ACHD Assistant Solicitor

cc: Ivo Miller, ACHD Plumbing Program Manager (via email)
Gianni Floro, Esq., Counsel for Appellant (via email)
Victor Kustra, Esq., Counsel for McKees Rocks (via email)

¹² Id. at p. 10-11.

¹³ Id. at p. 78.