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November 20, 2018

Max Slater, Esquire
Administrative Hearing Officer
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Re: Emma L. Davis v. Allegheny County Department of Health
and McKees Rocks Borough
In the Allegheny County Health Department - Administrative Hearing
Docket No. ACHD-18-029

Dear Ms. Davis:

Enclosed for filing is the original Appellant's Brief and Appendix of Exhibits.

Very truly yours,

Gianni Floro

cc with enclosures:

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COUNTY OF ALLEGHENY COUNTY
ALLEGHENY COUNTY HEALTH DEPARTMENT

Emma L. Davis,

Docket No. ACHD-18-029

v.

Allegheny County Department of Health
and McKees Rocks Borough,

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APPELLANT'S BRIEF

AND NOW, comes the Appellant, Emma L. Davis, by and through her attorney, Gianni Floro, Esquire, and files this Appellant's Brief, arguing as follows:

I. HISTORY AND RELEVANT BACKGROUND OF THE CASE

On approximately June 9, 2018, the Borough of McKees Rocks (hereinafter, the "Borough") discovered that the lateral sewage line located beneath the surface of Second Street and connecting to the Borough's main sewer line had collapsed approximately ten (10) feet from the main line. (App. at Ex. 2, Tr. pg. 6, lns. 5-11, pg. 75, lns. 2-16) Before the discovery of the collapsed lateral in 2018, there were two (2) sink holes that had developed beneath the surface of Second Street (hereinafter, the "Street"). The Street is approximately twenty-four (24) feet wide. (See App. at Exhibit 1, true and correct copy of McKees Rocks Borough's NIRA Consulting Engineers Inc. Daily Observation Report (hereinafter, the "Report"))

The first sink hole developed in 2004 and was repaired by the Borough at least eight (8) times between 2004 and 2018. (App. at Ex. 2, Tr. pg. 10 lns. between 10-25, pg. 11, lns. 1-11) The repair of the first sink hole is presently indicated by an asphalt patch on the surface of the Street's centerline. (App. at Ex. 3, D 1, D2) According to the Report, the collapse of the lateral sewer in 2018 was in the location of the asphalt patch. (App. at Ex. 1, Sheet 1-2) The second sink hole was discovered in June of 2018 and is also located beneath the surface of the Street at the curb stop in front of Mrs. Davis' property. (App. at Ex. 2, Tr. pg. 75, lns. 2-16, Ex. 3, D 3,

D4)

On approximately June 25, 2018, Mrs. Davis was notified by Megan Turnbull, Solicitor of the Borough that the Borough has determined that the sanitary sewer lateral connecting her home at 916 Second Street to the Borough's system had collapsed and was in violation of local and state health and infrastructure standards. The Borough gave Mrs. Davis until July 3, 2018 to respond and take the necessary steps and contact the Borough Engineer, Mr. Doug Evans. (App. at Ex. 8) Notably, Mrs. Davis' three (3) different plumber's where never provided with information relative to exactly what repairs were sought to be made.

Mrs. Davis contends that the lateral sewage lines are not located on her property and that over the course of many years and most recently, the Borough has failed to appropriately maintain the Street; so that a dangerous condition came about and existed, whereby the support beneath the lateral sewer line which runs from the curb stop located at 916 Second Street to the main sanitary sewer line has become undermined; resulting in sink holes and has caused damage to the lateral sewer line and further caused a dangerous condition to human life constituting a hazard to safety, health or public welfare by reason of inadequate remediation of the sink hole and negligent inspection and maintenance of the lateral sewage lines located in the Street. The first sink hole developed in 2004 and was repaired by the Borough at least eight (8) times between 2004 and 2018, by continuing to pour sand down the sink hole. (App. at Ex. 2, Tr. pg. 10 lns. between 10-25, pg. 11, lns. 1-11)

II. STATEMENT OF THE QUESTIONS INVOLVED

1. **WHETHER THE LATERAL SEWAGE LINE IS LOCATED ON THE BOROUGH OF MCKEES ROCKS' PROPERTY AND NOT ON MRS. DAVIS' PROPERTY.**

SUGGESTED ANSWER: YES

IN THE ALTERNATIVE:

2. IF IT IS FOUND THAT MRS. DAVIS IS RESPONSIBLE TO MAINTAIN AND PROTECT THE LATERAL SEWAGE LINES BENEATH THE SURFACE OF SECOND STREET; IS THE BOROUGH OF MCKEES ROCKS RESPONSIBLE FOR THE DAMAGE PURSUANT TO THE EXCEPTION TO THE POLITICAL SUBDIVISION TORT ACT.

SUGGESTED ANSWER: YES

III. ARGUMENT

A. **A decision to sustain the appeal in favor of Mrs. Davis is warranted because the lateral sewage line is not located on her property and Ordinance 1449 does not require Mrs. Davis to repair the lateral sewage line located beneath the surface of the Street, the Borough's interpretation of the ordinance is unreasonable.**

Mrs. Davis is the owner in fee simple title to property situate in the Borough, being Lot No. Seventy (70) in the Guthrie Plan of Lots as recorded on the Recorder's Office of Allegheny County in Plan Book Volume 14, page 73, said lot being bounded and described as follows to wit:

HAVING a width or frontage of twenty-five (25) feet on Second Street, in said Borough and Plan and extending back, preserving said width of twenty-five (25) feet a distance of One Hundred Ten (110) feet to Richard Alley.

(App. at Ex. 4, Deeds dated 1953, 1990 and 2001)

The Borough alleged that: "On approximately June 9th, 2018, the Borough discovered that the lateral sewage line located "on her property" connecting her property to the Borough sewage system had failed." And that: "According to Borough Ordinance No, 1449, property owners are responsible for maintaining and repairing lateral sewage lines located "on their property." Emphasis added. (App. at Ex. 2, Tr. at pg.6, lns. 5-15, pg. 49, lns. 5-7) The Borough further contended that: "Despite receiving notice from the Borough and Health Department

regarding the lateral sewage line located “on her property,” the Appellant has not taken any corrective action to repair the lateral sewage line “on her property.” Emphasis added. (App. at Ex. 2, Tr. pg.6, lns. 15-24)

By virtue of her recorded Deed, Mrs. Davis does not own the property located in, on, or beneath the surface of the Street fronting her property located at 916 Second Street, where the lateral sewage lines are located and therefore she is not subject to Ordinance 1449 (hereinafter, the “Ordinance”) relative to those particular lateral sewage lines. In fact, the Ordinance does not address or define the lateral sewage lines located beneath the surface of the Street. Rather, the Ordinance addresses and defines only a building sewer and public sewer.

The Borough contends that Section 12, of the Ordinance is “just” a section that says that property owners are responsible for repairing the lateral sewage lines. (App. at Ex.2, Tr. pg. 49, lns.5-7) To the contrary, a close reading of the Ordinance reveals that it only requires the property owners to maintain and protect from damage, the building sewer. Nothing in the Ordinance requires the property owner to maintain and further repair any damage to the lateral sewage line located beneath the surface of Second Street, which is Borough’s property. The Street is controlled by the Borough, and not by Mrs. Davis; and it would be an unreasonable interpretation to make a resident responsible for maintenance of a roadway subsurface, especially one that has experienced so many frequent subsurface issues as on the Street.

Pursuant to the Ordinance, Mrs. Davis contends that she is only responsible for the “building sewer” on her property that runs from her structure to the curb stop, and which thereafter connects with the Borough’s lateral sewage line leading to the main line. Section 12 only requires the property owner to maintain and protect from damage the “building sewer” and

does not require the property owner to maintain and further repair a “lateral sewage line” that is not on her property. Nothing in Section 12 of the Ordinance requires the property owner to repair the lateral sewage line. (App. at Ex. 5) The Borough’s strained interpretation is unreasonable.

Mrs. Davis testified that she has lived in her home since 1953, approximately thirty-one (31) years before the enactment of the Ordinance and there were no problems with the sewage prior to the discovery of the lateral sewage line collapse in the middle of the roadway. (App. at Ex. 2, Tr. pg. 8 Ins. 10-18, pg. 9. Ins. 2-8)¹ The Borough produced a real estate document as Ex. 5 indicating that the property was built in 1900, which identifies Mrs. Davis’ deed. (App. at Ex. 2, Tr. pg. 53, Ins. 20-25, pg. 54, ln. 1; *see also* MR-5) The Borough’s Engineer, Mr. Evans when asked, testified that the lateral sewage line is the original line. (App. at Ex. 2, Tr. pg. 53, Ins. 16-19) However, Counsel for the Borough asked the Borough Engineer if the lateral sewage line that is located on this property, 916 Second Street, is the original. (App. at Ex. 2, Tr. pg. 53, Ins. 16-19) The public record, by virtue of the recorded Deed, is information that the Hearing Examiner can take judicial notice of, establishing that Mrs. Davis’ property ends at the curb fronting the Street and that the lateral sewage line is not located on her property. (App. at Ex. 4, Deeds dated 1953, 1990, 2001)

This would be in accord with the Department’s decision in Common Sewer Lateral 2805 2915 Homehurst Avenue December 22, 2016 (Homehurst I) and October 2, 2017 (Homehurst II),

¹ On approximately May 30th, 1990, Mrs. Davis's mother, Mrs. Margaret M. Wiser, widow, deeded the property over to Emma L. Davis and her sister, Harriett R. Wiser as joint tenants with the right of survivorship. Harriett R. Wiser died on May 17, 2000, thereby vesting the entire interest in Emma L Davis. On approximately February 18th, 2001, Emma L. Davis deeded the property to Emma L. Davis and her husband, Ronald C. Davis.

in which the Department found that lateral sewer lines underneath what is now Homehurst Avenue is a public line.

The Ordinance at issue does not address or define the lateral sewage lines that connects to the mainline beneath the surface of Second Street. Rather, the Ordinance only addresses the property owner's responsibility to maintain and protect from damage the **building sewer** from their premises to and including the point of connection to the public sewer, *i.e.* the lateral sewage line. Mrs. Davis contends that the lateral sewage line is a public sewer and is distinct and separate from the building sewer defined in the Ordinance. Specifically, Article II, Section 1, Definitions of the Ordinance addresses and defines (b) **Building Sewer** as: "The conduit which conveys waste-water from any property, dwelling, ... beginning five (5) feet outside the inner face of the building wall and extending to and including the point of connection to the public sewer or place of disposal."

(f) Public Sewer is defined as: "The common conduit which conveys wastewater and is controlled by the Borough or other governmental Agency." (App. at Ex. 5, Ordinance 1449)

Mrs. Davis contends that the building sewer's point of connection is at the curb stop where it connects to the lateral sewage line which is part of the public system not on her property. Importantly, Mrs. Davis does not own the property located beneath the surface of the Street, nor does she have control over the lateral sewage lines located off of her property. Rather, it is the Borough that controls the lateral sewage lines that lead to the main line. It was the Borough that conducted the camera inspection of both those lines, and the Report also identified the pipe beneath the surface of the Street leading to the curb as a lateral sewer and not a building sewer. (App. at Ex. 1, Report) The Borough's Engineer also referred to that particular pipe as the lateral

when he testified that: "In early September, we hired -- the Borough hired a company called Robinson Pipe to come out. Robinson Pipe is able to enter the public sewer and launch a lateral camera into laterals to see. Otherwise, you can't see the lateral." (App. at Ex. 2, Tr. pg. 50, lns. 5-9)

The Borough's Engineer made the bald contention that the property owners "of those laterals" are responsible for repairing and maintaining lateral sewage lines in the Borough. (App. at Ex. 2, Tr. pg. 39, lns. 23-25, pg. 40, ln. 1) However, nothing in the Ordinance requires Mrs. Davis to maintain and repair the lateral sewage lines located off her property. No evidence was produced as to who constructed and installed the laterals beneath the surface of the Street prior to the enactment of the Ordinance in 1984. The Ordinance is ambiguous relative to what sewers are addressed and who has the responsibility to maintain and protect from damage and/or to maintain and repair when damage results.

"The rules of statutory construction apply to ordinances as well as statutes." In re Holtz, 8 A.3d 374, 378 (Pa.Cmwlth. 2010). The interpretation of a statute or ordinance presents this Court with a pure question of law, which is generally subject to plenary review. Northampton Area School District v. Zoning Hearing Board of Township of Lehigh, 64 A.3d 1152, 1157 (Pa.Cmwlth.2013); Simko v. County of Allegheny, 869 A.2d 571, 573 n. 3 (Pa.Cmwlth.2005). Kohl v. New Sewickley Twp. Zoning Hearing Bd., 108 A.3d 961, 968 (Pa.Cmwlth. 2015)

"It is well settled that the object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the legislature as expressed by the words employed. 1 Pa.C.S. § 1921(a); Commonwealth v. Fisher, 485 Pa. 8, 400 A.2d 1284 (1979); Pennsylvania Human Relations Commission v. Alto-Reste Park Cemetery Ass'n., 453 Pa. 124, 306 A.2d 881

(1973); Clearview Bowling Center, Inc. v. Hanover Borough, 430 Pa. 579, 244 A.2d 20 (1968).
Barasch v. Pennsylvania Pub. Util. Comm'n, 516 Pa. 142, 155–56, 532 A.2d 325, 331 (1987),
aff'd sub nom. Duquesne Light Co. v. Barasch, 488 U.S. 299, 109 S.Ct. 609, 102 L.Ed.2d 646
(1989)

“It is fundamental that in ascertaining the legislature's intent, the plain words of its laws may not be ignored. Stegmaier Estate, 424 Pa. 4, 225 A.2d 566 (1967). A court may not alter, under the guise of interpretation, the express language and intent of the legislature. Comm. v. Pope, 455 Pa. 384, 317 A.2d 887 (1974); see Zimmerman v. O'Bannon, 497 Pa. 551, 442 A.2d 674 (1982). Thus, where the words of a statute are clear and free from ambiguity, a court may go no further to determine the legislative intent. Kritz Estate, 387 Pa. 223, 127 A.2d 720 (1956); Rich v. Meadville Park Theatre Corp., 360 Pa. 338, 62 A.2d 1 (1948); Comm. ex rel. Smith v. Clark, 331 Pa. 405, 200 A. 41 (1938); see 1 Pa.C.S. § 1921(b), (c). It is only when the words of the statute are not explicit that the intention of the legislature may be ascertained by considering other means of statutory interpretation or construction. Davis v. Sulcove, 416 Pa. 138, 205 A.2d 89 (1964); Commonwealth v. Chester County Light and Power Co., 339 Pa. 97, 14 A.2d 314 (1940); Barasch v. Pennsylvania Pub. Util. Comm'n, 516 Pa. 142, 156, 532 A.2d 325, 331–32 (1987), *aff'd sub nom.* Duquesne Light Co. v. Barasch, 488 U.S. 299, 109 S.Ct. 609, 102 L.Ed.2d 646 (1989)

Moreover, this is not a situation as presented to the Department in Coca-Cafe, ACHD Decision, April 18, 2018, where a statute or ordinance was found to be ambiguous, but the Department's interpretation was found to be reasonable; here the statute is not clear as to whose responsibility it is, it is ambiguous; and the Borough's interpretation is unreasonable, in that there

is no way for the property owner to possibly comply with the Ordinance and maintain a pipe within a public thoroughfare' it is a strained interpretation.

A close reading of Section 12 reveals that the Ordinance only requires the property owner to maintain and protect from damage the building sewer. Mrs. Davis has no way of maintaining an area within a public thoroughfare, or limiting travel above, protecting the lateral sewage line beneath the surface of the Street which is owned, maintained and controlled by the Borough. Even if it is found that Mrs. Davis somehow owns the lateral sewage lines at issue located beneath the surface of the Street, no evidence or testimony was produced by the Borough that could definitively say what caused the lateral to collapse, other than the testimony of the Appellant, and her son, who testified that sink holes in the Street were not an uncommon occurrence; which was also supported by the demonstrative evidence.

The Borough failed to prove that anything other than the sink hole in its street caused the lateral to collapse. In fact, the testimony established that the sink hole developed in 2004, approximately fourteen (14) years before the lateral collapsed, and was a regular re-occurrence. Testimony identifying numerous pictures were entered into evidence by Mrs. Davis indicating the various work performed by the Borough on the Street relative to two (2) water main breaks. Breaks which more likely than not compromised the subsurface of the Street. (App. at Ex. 2., Tr. pg. 18, Ins. 24-25, pg. 19, Ins. 1-5, pg. 20, Ins. 5-2) Additionally, the evidence of record in the Report shows that there was a liner failure Overcut Connection from 02 to 06 o'clock within 8 inches of joint, which said failure would have caused leakage into the subsurface of the Street. (App. at Ex. 7, pg. 2)

Notably, that information was omitted on the map presented by the Borough. (See copy

of map attached to Tr. as McKees Rocks Ex. 4, Ex. 2, Tr. pg. 51, Ins. 9-18) There was direct evidence indicating the various work done by the Borough on the Street in an attempt to remediate the first sink hole, which included continually pouring sand into the sinkhole, which eventually disappeared as well, and blatantly absent was any real subsurface investigation. The Borough's Engineer testified that he could not definitively say whether or not the work done on the Street would have cause the lateral to collapse because as he testified, he was not there. Because the Borough's Engineer was not there, he cannot definitively say that the work done on the Street did not cause the lateral to collapse. (App. at Ex. 2, pg. 56, Ins. 18-23) The Department's witness testified that he never made a determination of the cause of the broken sewer. (App. at Ex. 2, pg. 81, Ins. 19-21) The Appellant has carried her burden of proof that her lateral, from her home to the street curb, i.e., the end of her property line was not the cause of the collapse, and that the Borough is responsible for the damage that occurred to the lateral sewage lines located beneath the surface of the Street, for its failure to maintain the Street.

IV. CONCLUSION:

The Appellant showed by the preponderance of the evidence that she not is responsible to maintain and further repair any damage to the lateral sewage line located beneath the surface of the Street, which is not on her property. This would be in accord with the Department's decision in Common Sewer Lateral 2805 2915 Homehurst Avenue December 22, 2016 (Homehurst I) and October 2, 2017 (Homehurst II), in which the Department found that lateral sewer lines underneath what is now Homehurst Avenue is a public line. Mrs. Davis provided proof that she does not own the property located beneath the surface of the Street by virtue of her recorded Deed.

No evidence was provided by the Borough that Mrs. Davis owns the laterals beneath the surface of the Street, and in fact the evidence submitted would suggest otherwise. No evidence was provided by the Borough as to the background and history as to the construction and installation of the public sewer system prior to the enactment of the Ordinance in 1984. The Borough failed to prove that Mrs. Davis is subject to the Ordinance relative to the lateral sewage line located off of her property and beneath the surface of the Street. Since the Borough constructed and installed the lateral sewage line, Mrs. Davis is protected under the grandfather clause and/or acquired rights and is not required to maintain and protect it, let alone repair the lateral sewage line located beneath the surface of the Street.

The Ordinance was enacted thirty-one (31) years after Mrs. Davis moved into the house at 916 Second Street and approximately eighty-four (84) years after the house was built. A decision sustaining the appeal in favor of Mrs. Davis is warranted because the lateral sewage line is not located on her property and the Ordinance does not require Mrs. Davis to repair the lateral sewage line located beneath the surface of the Street, on property in which she does not own.

WHEREFORE, the Appellant, Emma L. Davis respectfully requests that the Hearing Officer decide in favor of sustaining the appeal and in favor of the Appellant and order the Borough of McKees Rocks to repair the lateral sewer located beneath the surface of Second Street.

IN THE ALTERNATIVE:

- B. If it is determined that Mrs. Davis is responsible to maintain and further repair the lateral sewage line located beneath the surface of the Street, then Mrs. Davis contends that the Borough is responsible for the damage to the lateral sewage line located beneath the surface of the Street pursuant to the Political Subdivision Tort Claims Act, as the Borough can only be responsible for support.**

V. ARGUMENT

Mrs. Davis contends that if she owns and/or is responsible for the lateral sewage lines located beneath the surface of the Street, then the Borough is responsible for the repair pursuant to the Political Subdivision Tort Claims Act, (hereinafter, "PSTCA") She contends that the Borough failed to appropriately inspect, maintain and sufficiently remediate the first sink hold on the Street after being notified several times, thereby causing damage and collapse of the lateral sewage line, by the Borough's failure to provide support. (App. at Ex. 6)

Mrs. Davis contends that a dangerous condition came about and existed upon the discovery of a sink hole in 2004 beneath the surface of the Street; and, whereby the support beneath the lateral sewer line which runs from the curb stop to the main sanitary sewer line had become undermined as a result of the 2004 sink hole and caused the eventual collapse of the lateral sewer line and development of the second sink hole discovered in 2018. This was more likely than not due to the Borough's failure to inspect and maintain the lateral sewer line and further caused a dangerous condition to human life constituting a hazard to safety, health or public welfare by reason of inadequate remediation of the sink hole and due to its failure to inspect and maintain the Borough's sewage lines located in the Street.

Mrs. Davis testified that she first moved to her property in 1953 and that she lived there all but two years after she got married and thereafter raised her family there. (Tr. pg. 8 lns. 10-18) She also testified that she notified and reported to Mayor Muhr when the development of a sink hole occurred in 2004 on Second Street. (Tr. pg. 9 lns.9-19) Mrs. Davis testified that Mayor Muhr came out and said "[i]t would be taken care of." (Tr. pg. 9 lns,13-19) Mrs. Davis testified that the Borough came out to repair the sink hole by putting sand in it first and then they

came out and put down tar and had a backhoe which pressed all the tar down and it still didn't hold up. (Tr. pg. 10 lns. 6-12) Mrs. Davis testified that between 2004 and 2018 she saw the roadway either sink or collapse again. (Tr. pg. 10 lns. 15-18)

Mrs. Davis testified that there were at least eight (8) occasions where that particular area of the roadway sank or collapsed and each time she notified and reported it to the Borough, specifically Mayor Muhr., and each time the Borough came out and repaired it the same way. (Tr. pg. 10 lns. between 10-25, pg. 11, lns. 1-11) Mrs. Davis testified that she never experienced any problems with her sewage system before the summer of this year. (Tr. pg. 9 lns. 2-8)

"Pursuant to sections 8541 and 8542 of the PSTCA, a local agency is immune from liability for damages on account of an injury to a person or property caused by its own acts or the acts of its employees unless the injury falls into one of the enumerated exceptions to governmental immunity." 42 Pa.C.S. §§ 8541–8542; see also Dunkle v. Middleburg Municipal Authority, 842 A.2d 477, 479 (Pa.Cmwlt.2004). To qualify for an exception, a plaintiff must prove that: (1) the damages would be recoverable under common law or a statute against a person unprotected by immunity; and (2) the negligent act of the local agency or its employees that caused the injury falls within one of the limited exceptions to immunity. 42 Pa.C.S. § 8542(a). Sobat v. Borough of Midland, 141 A.3d 618, 623 (Pa.Cmwlt. 2016)

"Section 8542(b)(5) of the PSTCA, the utility service facilities exception, provides that a local agency may be held liable for:

A dangerous condition of the facilities of ... sewer ... owned by the local agency and located within rights-of-way, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was

incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition." Id.

"Municipalities are under no common law duty to provide a sewerage system." Yulis v. Borough of Ebensburg, 182 Pa.Super. 423, 128 A.2d 118, 120 (1956). Therefore, a municipality cannot be held liable for damages resulting from an inadequate sewer system. Id. However, municipalities will be liable for injuries resulting from negligent construction or maintenance of the system. McCarthy, 962 A.2d at 1279–80; see Yulis, 128 A.2d at 120 ("[municipalities] may be called upon to answer for injuries resulting from negligence in the actual work of construction or for failure to keep the work in repair after it is completed").

"Although the issue of what constitutes a dangerous condition is a question of fact for the jury, whether an action is barred by immunity is purely a question of law." Le-Nature's, Inc. In order for liability to be imposed under Section 8542(b)(5), a strictly legal determination must be made in the first instance that the injury was caused by a condition of the property itself, which has its origin or source in the property. Metropolitan Edison Company v. City of Reading, 125 A.3d 499 (Pa.Cmwlt. 2015).

Mr. Evans, the Borough's Engineer testified that it was not until early September which was after the discovery of the second sink hole in June of 2018 that the Borough hired a company called Robinson Pipe to inspect the lateral sewage line. (App., at Ex. 2, Tr. pg. 49, lns. 23-25, pg. 50, lns. 1-9) The Borough never conducted an inspection after notification of the first sink hole. Mr. Evans testified that a report was generated by Robinson Pipe. (App. at Ex. 1 and Ex. 7) Mr. Evans testified that Robinson Pipe originally launched the camera from property located

at 918 mistakenly thought to be Mrs. Davis' property at 916. The Report documented that there was a pipe void thirty-three (33) feet from the main and then there was a large separation of thirty-three (33) feet from the main. According to Mr. Evans testimony, no further inspection were conducted of any other laterals located beneath the surface of the Street. (App. at Ex. 2, Tr. pg. 53, lns. 19-25, pg. 53, lns. 1-14) Testimony taken at the hearing indicated that the Borough does accept responsibility for the ground beneath the surface of the Street, and in fact, took control and attempted to remediate the sink hole (*albeit inadequately*) in 2004 and at least eight (8) more time since that discovery. (App. at Ex. 2, Tr. pg. 9, lns.9-25, pg. 10, lns. 1-25)

VI CONCLUSION:

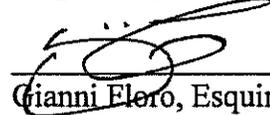
It is undisputed that the first sink hole occurred well in advance of the collapse of the lateral in 2018. (App. at Ex. 2, Tr. pg. 9, lns. 9-21; Ex. 6, Mrs. Davis Notice of Appeal) Mr. Evans testified that what the television camera saw in 2018 was a collapse of the lateral ten (10) feet from the main sewer line, coincidental to the location to where the previous 2004 sinkhole had occurred. (App. at Ex. 2, pg. 56, lns. 14-17) The fact that the Borough's Engineer testified that the sinkhole existed in 2004 would support Mrs. Davis' position that the sink hole, and general inadequate inspection, maintenance and repair of the subsurface of the Street caused the collapse of the lateral, and not the other way around as the Borough attempts to claim. In fact, the Report indicated that the collapsed pipe was in the location of the asphalt patch in the Street's centerline, *i.e.*, on Borough property. (App. at Ex. 1, ,pg. 1 and 2)

Mrs. Davis met the elements necessary to make a claim under the PSTCA, that the Borough owns the Street and has a duty to maintain the roadway, including providing the duty of support to pipe contained therein, and the Borough should not be permitted to shift ts liability to

its residents for its own inadequate inspection, maintenance and repairs. She repeatedly notified the Borough every time when the sink hole re-appeared and needed addressed. And, every time, the Borough failed to adequately remediate the problem, thus eventually causing the collapse of the lateral sewage line.

WHEREFORE, the Appellant, Emma L. Davis, respectfully requests that the Hearing Officer sustain the appeal and decide in favor of the Appellant and order the Borough of McKees Rocks to adequately address both sink holes and further repair the lateral sewer located beneath the surface of Second Street.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Gianni Floro, Esquire, do hereby certify that, on this 20th day of November, 2018, the original to Admin. Hearing Officer and a true and correct copy of the Appellant's Brief and Appendix was hand delivered and email addressed to the following:

Max Slater, Esquire
Administrative Hearing Officer
Allegheny County Health Department
542 Fourth Avenue
Pittsburgh, PA 15219

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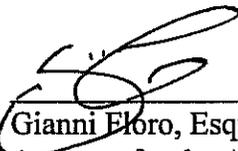
and sent U.S. Mail First Class and via email to the following:

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COUNTY OF ALLEGHENY COUNTY
ALLEGHENY COUNTY HEALTH DEPARTMENT

Emma L. Davis,

Docket No. ACHD-18-029

v.

Allegheny County Department of Health
and McKees Rocks Borough.

ORDER

AND NOW, this _____ day of _____, 2017, it is hereby
ORDERED, ADJUDGED AND DECREED that the appeal of Emma L. Davis is sustained, and
the Borough of McKees Rocks is hereby ordered to adequately remediate both sink holes and
further repair the lateral sewage lines located beneath the surface of Second Street in front of 916
Second Street.

Allegheny County Health Department:

Max Slater, Esquire
Administrative Hearing Officer