

**COUNTY OF ALLEGHENY
ALLEGHENY COUNTY HEALTH DEPARTMENT**

RE: Complaint 235-14

POSITION STATEMENT OF HOMEOWNERS

Summary of History

1. In April of 2014, the public sewer line on Homehurst Ave. clogged and was ultimately remedied by PWSA.
2. In September of 2014, the public sewer line on Homehurst Ave. clogged again, and the PWSA dispatcher would not take a service request because Cyril "Rick" Obermeier told the dispatcher Homehurst was a private line.
3. PWSA informed the Allegheny County Health Department ["ACHD"] that the alleged private line was clogged..
4. On October 14, 2014 the ACHD filed Complaint 235-14 against homeowners on Homehurst.
5. On October 27, 2014 Homehurst residents appealed the charge because their line was always serviced by the City of Pittsburgh as a "public" line.
6. On October 31, 2014, Hearing Officer Sala scheduled a hearing for December 4, 2014.
7. On November 17, 2014, Hearing Officer Sala continued the hearing at the sole request of PWSA.
8. Subsequent to November 17, 2014, PWSA searched the Homehurst deeds for an indication of private sewer lines, and their search was negative in all respects.
9. On March 1, 2016, because PWSA did not request that the hearing be rescheduled due to lack of sufficient evidence, homeowners took it upon themselves to request a final hearing.
10. An administrative hearing was held before Hearing Officer Slater on October 16, 2016, at which PWSA was represented by counsel.
11. At the October 16, 2016 hearing, PWSA entered an undated, altered map into evidence.
12. Homeowners presented substantial, credible evidence at the October 16, 2016 hearing, including documentation wherein PWSA denied homeowners the service records for Homehurst Ave transferred to them by the City of Pittsburgh along with a sworn declaration of Cyril Obermeier stating he knew of no rule or regulation requiring anything larger than a 6" sewer line.
13. On December 22, 2016, an Order and Opinion was issued in favor of Homeowners who met their burden of proof with regards to substantiating the fact that Homehurst Ave. is a public sewer line.
14. On 2/22/17, the ACHD ordered PWSA to repair the Homehurst line.
15. PWSA appealed the repair order on 3/1/17.
16. On 3/24/17, Dr. Hacker denied the appeal and request for rehearing based on *res judicata*.
17. PWSA ultimately filed an appeal in Common Pleas Court challenging the jurisdiction of the ACHD.
18. A second administrative hearing was held on July 13, 2017.
19. At the second administrative hearing, PWSA's only witness admitted he did not know where the Homehurst property line was and that there were no rules, regulations or plumbing codes requiring the Homehurst sewer line to be larger than 6 inches in diameter.

Submission Post Hearing of Ordinance 113 Dated July 5, 1917 [Ex. H-5] by Homeowners

The emails attached to Ordinance 113 indicate that PWSA through right to know requests sought a copy of this Ordinance prior to the Opinion and Order of December 22, 2016. Baldwin Township had difficulty locating the old record, but ultimately was able to provide this information to PWSA. Ordinance 113 establishes requirements/specifications for public sewer lines in Baldwin Township. It stipulates the required use of “six inch Terra-cotta Pipe” and a depth of at not less than 3 ½ feet. [Homehurst is 4’ in depth.] These specifications were put into place more than 10 years before the Homehurst residences [which were part of Baldwin Township before being annexed by the City of Pittsburgh] were built. Clearly, the residences on Homehurst met the requirements for a public sewer line when they were built. PWSA cannot now claim we are private because we have a 6” line as that was the exact requirement for public sewer lines in Baldwin Township. This Ordinance, in and of itself, makes PWSA’s claim that Homehurst is a private line because of the 6” pipe fail.

The Claim of PWSA that the Homehurst Sewer Line is Private Could Not be Proven by PWSA With the Altered Map it Submitted to the ACHD to Further its Own Agenda

Through his own admission, Rick Obermeier provided an altered, undated map [10/24/16 Tr., Ex. D3¹; 7/13/17 Tr. ___]² to the ACHD. drawn up “after the fact” to facilitate PWSA’s own agenda. [See 10/24/16 Tr, p. 98; Opinion and Order, p 7]

Prior to the 10/24/16 hearing PWSA’s website contained a map dated October 27, 2014 [10/24/16 Ex. A-15; 7/13/17 Ex. ___]³, depicting the Homehurst area. This map did not show that Homehurst had a private sewer line based on the map’s legend. However, the undated map provided to

¹ The 10/24/16 Exhibits were stipulated to prior to the July 13, 2017, hearing.

² Court Reporter Error: Exhibit does not appear in List of Exhibits

³ Court Reporter Error: Exhibit does not appear in List of Exhibits

the ACHD, admittedly drawn up after the fact by PWSA's only witness and decision maker, Rick Obermeier, did the following:

1. Changed the legend at the bottom of the map.
2. Added privacy marks on Homehurst Ave. which did not exist on PWSA's official intranet map dated October 27, 2014 [since removed from their website].
3. Added a City of Pittsburgh manhole that Mr. Obermeier did not even know existed when he declared Homehurst to be a private sewer line.

The altered map was the map the ACHD relied upon in issuing the original charges against the Homehurst properties. "We go by PWSA sewer charts...." [10/24/16 Tr.p. 69] The maps relied on were actually generated by PWSA. [10/24/16 Tr. p. 75]

In addition, the ACHD admitted it relied on the "verbal assurances" of PWSA in issuing those charges. [See ACHD Post-Hearing Memo, p. 4]"...They verified that it was still ... a private line." [10/24/16 Tr. P. 73]

The Claim of PWSA that the Homehurst Sewer Line is Private Because it is a 6" Line is Erroneous

The City of Pittsburgh annexed the Homehurst area and sewer lines from Baldwin Township. The map attached to Ordinance 234 [Ex. R-1] shows the area taken over by the City of Pittsburgh. Sewer District 8 was created by Ordinance 234, and Home [now known as Homehurst Ave.] was specifically included in the annexed area. Ordinance 343 [Ex. R-3] places responsibility for construction, maintenance and repair on the participating municipalities, and, more specifically, the City of Pittsburgh as it was the beneficiary of the project.

Ordinance 113 dated July 5, 1917 [Ex. H-5] specified the requirements for public Baldwin sewer lines at least 10 years before Homeowners' properties were erected, which included, among other

specifications, that sewer lines be 6" terra cotta pipe and be at least 3 1/2 feet deep. The homes between 2805-2915 Homehurst were built in complete compliance with the Baldwin requirements. In addition, Ordinance 343 placed the full financial responsibility for the maintenance and control of the sewer lines being annexed totally upon the City of Pittsburgh. As a result thereof, the City of Pittsburgh and its Department of Public Works served the Homehurst sewer line for over 70 years until PWSA, accepting responsibility for all City sewer lines, took over in 1999. In addition, in response to a right to know request dated June 28, 2016, Cyril Obermeier signed an affidavit claiming he knew of no requirement for a six inch line. [10/24/16 Ex. A6; 7/13/17 Ex. H-1] Therefore, the claim that Homehurst is a private line because it is 6" is moot based of Mr. Obermeier's own affidavit and Standards submitted with it.

Rick Obermeier, the decision maker for PWSA, testified that he was basing the fact he thought a 6" line was private on a Procedure Manual in his possession. {Tr. ___} He testified that this procedure manual is 20 years old, and admitted there are no statutory rules, regulations or plumbing codes listed in that Procedure Manual that the Homehurst properties violate. In any event, that manual cannot be applied retroactively to homes that are about 100 years old, and certainly establishes no legal basis or requirement that the Homehurst line be greater than 6". Lacking any legal, factual or written, credible evidence, Mr. Obermeier cannot arbitrarily declare Homehurst Ave. "private." His opinion is not law, and PWSA, through its counsel and staff, should not have relied on the opinion of one person that cannot be substantiated with even a simple plumbing code. In addition, since Mr. Obermeier testified he has no records prior to 1995 [Tr. P. ___], his testimony regarding pre-1995 matters would be nothing more than personal speculation and conjecture.

The Claim of PWSA that the Homehurst Sewer Line is Private Because it is on Private Property is Arbitrary and Capricious Because PWSA Does Not Know the Actual Location of the Homehurst Property Lines.

PWSA's only witness and decision maker at the July 13, 2017 administrative hearing unequivocally stated he does not know the size of the street or the width of the pavement on Homehurst Ave. even though PWSA admitted several maps [Exs. PWSA 1, 2, 3], all showing that Homehurst Ave. is 50 feet wide. The map for the 1956 project [Ex. PWSA 3] is totally irrelevant as it was a private project that occurred years after construction of 2805-2915 Homehurst and did not even include this portion of Homehurst Ave. nor have any bearing upon Homehurst Ave. Rick Obermeier also testified that he was not a "surveyor" [Tr. ____] and therefore could not state how wide Homehurst Ave. is or where the property line is. Even though PWSA's Exhibits 1, 2 and 3 clearly indicate Homehurst is 50' wide, he unequivocally stated that the Homehurst sewer line is on private property because it is "4-5 feet from the pavement." [Tr. P. ____]. A person who admits he does not know the size of the street or the location of a property line is absolutely not credible and unqualified to make a determination in any way relating to a property line location. And if he cannot rely on his own maps that indicate Homehurst is 50' wide, then this forum cannot rely on any testimony regarding his maps.

However, testimony was introduced by homeowners that the paved portion of Homehurst Ave. is 28 feet wide, at most. [Leon testimony, Tr. ____] Since Rick Obermeier testified that the Homehurst Sewer line is 4-5 feet from the paved area, it is certainly not on private property but is definitely in the public right of way on the 50' wide street. PWSA has had since April of 2014 to measure Homehurst Ave. to determine the property line location, which is what Mr. Obermeier, admittedly not a surveyor [Tr. ____], could have managed with a tape measure. An unsubstantiated claim that the Homehurst sewer line is on private property is actually malicious, against public policy, and is continuing to permit a public health hazard to exist. PWSA cannot now credibly claim that the placement of the line is immaterial. Rather, they need to concede that their decision maker and only witness, Rick Obermeier, made a fatal error when claiming the Homehurst sewer line is on private property, as did Sharon Barkley, in her 12/9/16 rebuttal memo to Hearing Officer Slater. Obviously, Ms. Barkley failed to check the width of

Homehurst Ave. also when she states "...appears to be on private property and not within the cart way of the public street...." Although she indicated at the 10/24/16 hearing that "When we researched our records, we have no indication that this was ever part transferred to the City of Pittsburgh...."

[10/24/16 Tr. P. 19] "So far no one has provided us with any evidence that these lines were ever owned by the City...and then the responsibility would have been conveyed to PWSA." [10/24/16 Tr. P. 22]

However, in that rebuttal, she argued against Ordinance 234 which provided her with the actual evidence she claimed she sought.

Jaime Wagner, whose property at 2901 Homehurst was surveyed, introduced a written surveyor's report [Ex. H-2] and photographs [Ex. ___]⁴ indicating by tape measure and surveyor stakes that her property line is almost 14 feet from the pavement on the street. [The tape measure only went up to 12 feet, but the stake was approximately 2 feet past the measure.] [Tr___] This is viable evidence that the Homehurst sewer line is no where near any of the residents' property lines. The title search also introduced [HO. Ex.. ___]⁵ clearly indicates that the sewer line is public.

Ms. Wagner's deed [Ex. H-4] has no notation of a private sewer line, that she pointed out existed on the map for only one home on Ferdinand St. that PWSA introduced. [Ex. PWSA 2] No residence on Homehurst Ave. is listed as private on that map. [Tr. P___] There is absolutely no record in Allegheny County indicating that the Homehurst sewer is private.

The Claim of PWSA that the Homehurst Sewer Line is Private Because of Lack of Sewer Easements in the Homehurst Deeds is Erroneous and not in Compliance with Law

PWSA requested a postponement of the original administrative hearing in November 2014 in order to search homeowners' deeds for any indication of a private sewer line. Having found none, they failed to report these findings and failed to request that the hearing be rescheduled.

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As indicated above, the location of the Homehurst sewer line is well within the 50' public street. Under these circumstances, absolutely no sewer easements would appear in the Homehurst deeds because none were necessary. This claim was made after Homeowners requested the original hearing be rescheduled to deflect PWSA's responsibility for the repair and maintenance of the Homehurst sewer line, in violation of public policy and their written Agreements with the City of Pittsburgh already previously introduced by the Homeowners. The homes between 2805 and 2915 Homehurst met all the public sewer line requirements in existence in Baldwin Township when these homes were built. The City of Pittsburgh accepted total responsibility when it annexed the property in the Overbrook area, known as Sewer District 8. Sewer District 8 includes all the subject properties in this matter. The 1929 Ordinance [Rudiak Ex. R-1] clearly established this District 8, and clearly names Home [now Homehurst] as belonging to it. The 1929 Ordinance and attached map also clearly establishes that that the sewer is "public." The 1929 Ordinance further establishes the annexed area where Homeowners reside.

The standard PA Real Estate Disclosure form [Ex. H-3] makes clear:

"Most properties have easements running across them for utility services and other reasons. In many cases, the easements do not restrict the ordinary use of the property, and the seller may not be readily aware of them. Buyers may wish to determine the existence of easements and restrictions by examining the property and ordering an abstract of title or searching the records in the Office of the Recorder of deeds for the county before entering into an agreement of sale."

Prior to the PWSA Takeover of City Sewer Lines in 1999, the City of Pittsburgh/Department of Public Works/Alcosan maintained the Public Line on Homehurst for Over 70 Years

PWSA, by its own admission and Agreements with the City of Pittsburgh, took over responsibility for maintenance and repair of all public sewer lines. Ironically, the Capital Lease Agreement [PWSA Ex. 4] introduced at the July 13, 2017 hearing was objected to by PWSA's own counsel as being irrelevant

when the Homeowners introduced that same Exhibit in October 24, 2016. [10/24/16 Tr. p.15] The City itself installed a manhole on the Homehurst line to facilitate servicing the line. Nancy Hahne testified that as a young woman still living at 2913 Homehurst, she was a witness to a blockage situation on the sewer line caused by a young child that was repaired without charge to any residents. [Tr. ___] The City could not charge a fee to residents for repairing the public line. It was at that time that the City installed a manhole on Homehurst Ave. It was also procedure at that time to contact Alcosan with any sewage service problems. Although Rick Obermeier testified that he had no records regarding the Homehurst sewer, PWSA admitted in a right to know response to the residents that it was “withholding” our service records. [10/24/16 Ex. A-2] You cannot withhold something you do not have Therefore, the testimony of Rick Obermeier that he had no records is contrary to PWSA’s own admission.

Jurisdiction of Allegheny County Health Dept.

After an Opinion and Order was issued after the first administrative hearing, PWSA objected to the jurisdiction of the Allegheny County Health Dept. in this matter to find through credible evidence that the Homehurst line is public and ordering PWSA to repair it despite the fact that their entity through its decision maker, Rick Obermeier, invoked the jurisdiction of the Health Dept. when it provided false and misleading information to them when alleging Homehurst was a private sewer line and the residents bore responsibility for repair. The ACHD clearly admitted they did not have their own maps at both administrative hearings through ACHD witnesses, Tom Mueller [10/24/16 Tr. P. ___] and Edward Watkins [Tr. ___] and that the dye tests used clearly could not indicate that the line was private [Tr. ___]. The ACHD initially relied on these dye tests [ACHD Post-Hearing Memo, p. 4] even though their own plumbers testified that these dye tests could not be used to determine whether a line was private.

The ACHD has absolute jurisdiction in this matter based on the enabling statutes of Act 315 and 16 P.S. Section 12001, et seq. In addition, PWSA’s own website states:

Hundreds of acts, regulations and policies have been created by federal, state and local government to help protect the environment.

Regulatory agencies, such as the U.S. Environmental Protection Agency (EPA), the Pennsylvania Department of Environmental Protection (DEP) and **the Allegheny County Health Department are then authorized to create and enforce regulations that help to put the acts or laws into effect.** *[Emphasis added.]*

PWSA knew or should have known that the charges under AC-701.3.1 [Complaint 235-14] would be appealable under ACHD Rules and Regulations, Article XI, and that if the charges could not be substantiated, it would be determined that Homeowners' sewer line was public, thereby permitting the ACHD to exercise its authority to order that PWSA fix the affected line. They also knew they were not a party to the original action. They caused the charges to be issued, but never intervened, and yet testified in the presence of their own counsel, cross-examined witnesses and filed their own rebuttal statements. Then, to get a second bite of the apple, they requested a rehearing, which was properly denied by the ACHD. The present challenge to the authority of the ACHD is in direct contradiction to the fact that PWSA invoked the jurisdiction of the ACHD at its own behest.

Opinion and Order Dated December 22, 2016

After a full administrative hearing on October 27, 2016 regarding the charge lodged against residents based on the unsubstantiated allegations of PWSA, and at which hearing PWSA had full legal representation, it was properly concluded by the hearing officer that the Homehurst line was public and, therefore, PWSA was responsible for its repair. This Opinion was based on credible evidence and testimony provided by the residents and on public Ordinances that clearly indicated the Homehurst line was taken over by the City of Pittsburgh as public property. PWSA provided no credible evidence that the Homehurst line was private. Rick Obermeir's credibility was seriously at issue because of the altered map, his lack of knowledge as to the location of homeowners' property line and his lack of knowledge of

the actual width of Homehurst Ave. On the contrary, Homeowners did provide viable, credible evidence that their line is public. Despite this, at the present juncture, PWSA is still permitting a public health hazard to exist to the detriment of the health and welfare of the City of Pittsburgh and its citizens and in total contradiction to their mission statement. [10/24/16 Ex. A-9]

Summary

It is the position of home owners that Homehurst Ave. is and always has been a public sewer line as already demonstrated by 70 years of service by the City of Pittsburgh, by Ordinances 234, 343 and 113, by the location of the Homehurst property lines, their deed descriptions lacking any mention of private sewer lines, and by the determination of the hearing officer dated December 22, 2016. PWSA has the sole responsibility to repair the Homehurst sewer line and abate the public health hazard that has existed for over three years. The Opinion and Order of the hearing officer should stand as PWSA failed to substantiate any of its allegations that Homehurst is a private sewer line. On the contrary, the residents have shown by a preponderance of the evidence that their line is public, is not on private property, violates no plumbing codes, rules or regulations, and is actually in compliance with the regulations in effect when their homes were built as part of Baldwin Township. A 20 year old procedure manual [containing no statutory authority [Obermeier testimony, Tr. ___] cannot supersede Baldwin Township's requirements in effect when homes were built almost 100 years ago. Rick Obermeier's entire scope of testimony was based entirely on personal opinions and not verified by any credible facts or legal authority, and PWSA was able to produce no evidence to back up their witness. The fact that an entity as large as PWSA relies on the sole speculation and opinion of one individual, and that this reliance has resulted in an ongoing public health hazard, is unconscionable. The Health Dept. has the ultimate responsibility for the health and welfare of the public at large, and has the authority to order PWSA to repair the broken line. Since Homehurst Ave. has a public sewer, repair responsibility vests in

PWSA. PWSA bears sole responsibility for the existing, ongoing public health hazard and must be ordered to repair it.

Dated: September 9, 2017

/s/ Natalie Leon [2805 Homehurst]
/s/Louise M. Sell [2913 Homehurst]
/s/ Christopher J. Cratsley [2915 Homehurst]
/s/ James Rauber [252 Elwyn]
/s/ Jaime Wagner [2901 Homehurst]
/s/ Nancy Hahne [2913 Homehurst]