

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARING

NATALIE LEON GOLANKIEWICZ,	:	In re: Common Sewer Lateral
PATRICIA SCHANCK, BRYAN	:	2805-2915 Homehurst Avenue
DEFRANCO, KENNETH M. FINNEGAN,	:	Pittsburgh, PA 15234
JAMIE M. WAGNER, ARIEL and	:	
KAREN ABAD, ROBERT A. SELL, and	:	
CHRISTOPHER J. CRATSLZY,	:	
	:	
Appellants,	:	
	:	
v.	:	
	:	
ALLEGHENY COUNTY HEALTH	:	
DEPARTMENT,	:	
	:	
Appellee.	:	

**DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH
DEPARTMENT HEARING OFFICER**

I. INTRODUCTION

The central issue in this appeal is whether the sewer line servicing 2805 through 2915 Homehurst Avenue is public or private. Appellants Natalie Leon Golankiewicz et al. (“Homeowners”) own homes between 2805 and 2915 Homehurst Avenue. They contend that the sewer line underneath Homehurst Avenue is public, and that the City of Pittsburgh is responsible for the costs of any maintenance or repairs to the line. Appellee Allegheny County Health Department (“ACHD”) argues that the sewer line is a private common sewer lateral, and that the Homeowners are therefore responsible for the costs of any maintenance or repairs.

Based on the evidence presented, I find that the sewer line underneath Homehurst Avenue is a public line, and that the City of Pittsburgh is responsible for the sewer line's maintenance and repairs.

II. EVIDENCE

1. The following exhibits were offered into evidence by the Homeowners:
 - A1: Plumbing Inspection Report
 - A2: Response to Right-to-Know Request
 - A3: Cooperation Agreement dated 6/15/15
 - A4: Operative Lease Agreement
 - A5: Response to Right-to-Know Appeal
 - A6: Recommended Standards
 - A7: Multi-page Exhibit and Addendum
 - A8: E-mail Exchange (Not admitted into evidence)
 - A9: PWSA Mission Statement
 - A10: Photographs
 - A11: Multi-Listing for 2901 Homehurst Avenue
 - A12: Sales Agreement for 2901 Homehurst Avenue
 - A13: Deed for 2901 Homehurst Avenue
 - A14: PWSA Bills for 2901 Homehurst Avenue
 - A15: Map dated 10/27/14

2. The following exhibits were offered into evidence by the ACHD:
 - D1: Plumbing Inspection Report (Same exhibit as A1)
 - D2: ACHD Record
 - D3: Map
 - D4: Full-Scale Map of D3
 - D5: Estimate of Cost

3. The following exhibits were submitted by Pittsburgh City Councilwoman Natalia Rudiak, post-Hearing:¹
 - Enclosure 1: Baldwin Township Ordinance 234 of 1929, with supporting documentation
 - Enclosure 2: Baldwin Township Ordinance 343 of 1930, with supporting documentation

¹ Although the evidence that Councilwoman Rudiak submitted was not presented during the Hearing, I have decided to admit it for two key reasons: First, it is highly relevant to whether or not the sewer underneath Homehurst Avenue is public or private. Second, there is no provision of Article XI of the Allegheny County Health Department Rules and Regulations that forbids the admission of evidence submitted post-hearing. This is not to say that all such evidence is admissible.

4. The following exhibit was submitted by the Pittsburgh Water and Sewer Authority (“PWSA”):
PWSA 1: Title Abstractor Letter and Accompanying Legal Memorandum²

III. FINDINGS OF FACT

Based on my review of the evidence and having resolved all issues of credibility, I find the following facts:

1. Appellants Natalie Leon Golankiewicz et al. own homes between 2805 and 2915 Homehurst Avenue, Pittsburgh, PA 15234.
2. The Homeowners’ houses are on a common sewer line. (Ex. A1).
3. The sewer line underneath the Homeowners’ houses is six inches in diameter. (Record (“R.”) at 90).
4. The Homeowners’ houses were originally part of Baldwin Township. (Enclosure 1).
5. In 1929, Baldwin Township passed an ordinance establishing Sanitary Sewer District Number 8, which created a sewer system encompassing the area that includes the Homeowners’ houses. (Enclosure 1).
6. In 1930, the City of Pittsburgh annexed the portion of Baldwin Township that includes the Homeowners’ houses. (Enclosure 2).
7. On October 8, 2014, ACHD plumbing inspector Thomas Mueller responded to an ongoing sewage backup in the sewer line servicing the Homeowners’ houses. (Ex. A1).
8. The ACHD performed a dye test to determine the source of the backup. (Ex. 1).
9. Mr. Mueller drafted a plumbing inspection report, dated October 8, 2014. He concluded, based on the dye test, that the Homeowners’ houses “are all tied on to the private common sewer that is connected to the public main on Elwyn Ave.” (Ex. A1).

² I allowed PWSA to file a submission to respond to Councilwoman Rudiak, and allowed Councilwoman Rudiak and the Homeowners to, in turn, respond to PWSA’s submission.

10. On October 14, 2014, ACHD Plumbing Inspector Supervisor Flawzel A. Hall, notified the Homeowners that they were in violation of Article XV, “PLUMBING,” referenced as Complaint 235-14.

11. On October 27, 2014, the Homeowners appealed the violation.

IV. DISCUSSION

In an administrative appeal of a final agency action of the ACHD, the appellant “shall bear the burden of proof and the burden going forward with respect to all issues.” Article XI § 1105.D.7. Therefore, Appellants bear the burden of proving by a preponderance of the evidence that the sewer line servicing 2805 through 2915 Homehurst Avenue is public, rather than private.

I find that Appellants have met their burden of proving that the sewer line servicing their homes is public. First, the Baldwin Township Ordinances and their supporting documentation indicate that the sewer line is public. Second, the evidence and testimony presented by the ACHD did not sufficiently rebut this finding. Third, the evidence submitted by PWSA was unpersuasive.

A. The Baldwin Township Ordinances

After the Hearing, Councilwoman Natalia Rudiak presented two pieces of evidence in support of the Homeowners’ position that the sewer line underneath Homehurst Avenue is public. She presented Baldwin Township Ordinance 234 of 1929 (“1929 Ordinance”) and Ordinance 343 of 1930 (“1930 Ordinance”). These two ordinances and their supporting documents bolster the Homeowners’ case.

The 1929 Ordinance establishes a sewer district known as Sanitary Sewer District Number Eight, which encompasses, among other streets, “Home Avenue,

from First Street to Fifth Street.”³ (Enclosure 1). This section includes the houses in which the Homeowners live.

The 1930 Ordinance states that the City of Pittsburgh has annexed the section of Baldwin Township which includes the section of Homehurst Avenue where the Homeowners live. (Enclosure 2).

Although the ordinances do not explicitly state whether the sewer system is public or private, their language implies that the sewer is public. The 1929 Ordinance establishes “Sanitary Sewer District Number Eight,” with precise geographic boundaries, designed by Baldwin’s “Township Engineer.” (Enclosure 1). All these details indicate that the sewer system was the municipal brainchild of Baldwin Township.

Also, the 1929 Ordinance declares that the then-newly-constructed sewer system would be “the *official* sanitary sewer system for Sanitary Sewer District Number Eight of the said Township of Baldwin[.]” (Enclosure 1) (emphasis added). Considering that the ordinance is governmental legislation, the word “official” is more authoritative in this context than in the context of, say, declaring that Bud Light is the *official* beer of the NFL.

The supporting documentation to the 1929 Ordinance also indicates that the sewer is public. Appendix F, which gives a timeline of sewer construction in and around Baldwin Township, lists numerous collaborations between Baldwin and surrounding communities such as Mt. Lebanon, Castle Shannon and Dormont to

³ “Home Avenue” is now called “Homehurst Avenue.”

develop sewer systems. (Enclosure 1, Appendix F). Appendix F also chronicles the construction of numbered Sanitary Sewer Districts in Baldwin and adopts a plan to build a sewage works. (Enclosure 1, Appendix F). Additionally, Appendix F indicates that in 1927, Baldwin, Dormont, Mt. Lebanon and Pittsburgh authorized an agreement “concerning construction, maintenance and repair of a branch sanitary sewer in the Elwyn Hollow Branch Basin.” (Enclosure 1, Appendix F). All of these sewer-related actions by the government of Baldwin Township support Homeowners’ argument that the sewer line servicing their homes is public.

The Pittsburgh Water and Sewer Authority (“PWSA”), in their memorandum supporting the ACHD, point to Section 4 of the 1929 Ordinance, which states:

“[T]he costs, damages and expenses of the construction of said sewers be assessed upon the properties accommodated or benefited thereby by an assessment upon the several properties abutting the sewer[.]” (Enclosure 1).

At first glance, this language seems to support the argument that the costs associated with the sewer are the responsibility of the Homeowners. But Section 4 only references the costs associated with *construction* of the sewer, not the *maintenance* of it. The supporting documentation to the Ordinance repeatedly mentions agreements involving the maintenance of sewer systems in Allegheny County. If the residents of Homehurst Avenue were also responsible for the maintenance of the sewer, the Ordinances would have said so.

On balance, the relevant sections of the 1929 and 1930 Ordinances point to the conclusion that the sewer line underneath Homehurst Avenue is public.

B. The Sewer Maps

At the Hearing, ACHD produced several maps to support their argument that the sewer line beneath the Homeowners' houses is private. Rick Obermeier, the deputy director of engineering and construction for PWSA, testified at the hearing that the maps that PWSA produced indicate that the sewer line underneath Homehurst Avenue is private. (R. at 112-113, Ex. A15).

Mr. Obermeier testified that the "dotted brown lines" on the map are private, and that the "six-inch dotted line" underneath Homehurst Avenue was indeed one of these private lines. (Exs. A15, D3, R. at 96, 112). Mr. Obermeier concluded, "That dotted line [below Homehurst Avenue] on our GIS mapping is private." (R. at 113).

However, this testimony was not the cartographic sockdolager that the ACHD may have hoped for, as the maps that PWSA produced were made *after* the inspection of the sewer line, rather than *before*. The following exchange took place during the hearing:

Hearing Officer Slater: Was [the map] created after the inspection?

[...]

Mr. Obermeier, Yes, yes. It was created after, this map here, was created after all our televising and investigation in the field." (R. at 98).

Although the maps are relevant, they are also self-serving. The designation of the sewer underneath the Homeowners' homes as private conveniently buttresses ACHD's core argument. And the lack of any corroborating evidence further tempers the maps' impact.

C. PWSA's Post-Hearing Evidence

After the Hearing, PWSA submitted a legal memorandum and letter from a title abstractor, attempting to demonstrate that the sewer line underneath Homehurst Avenue is private. TR&A, the title abstractor, looked through the deed history of the Homeowners' houses, and found, "None of the chain deeds make reference to sewer easements." (PWSA 1). Based on this finding, the PWSA concludes, "Easements should have been recorded if a public sewer line was constructed on Homehurst Avenue." (PWSA 1).

But PWSA does not provide any support for their conclusion that the absence of sewer easements indicates the presence of a private sewer line. As such, I do not accord PWSA's evidence much weight.

V. CONCLUSION

Based on the evidence presented during and after the Hearing, I find that the sewer line servicing 2805 through 2915 Homehurst Avenue is public. Key language from the Baldwin Township Ordinances and their supporting documentation indicate that the sewer line underneath what is now Homehurst Avenue is a public line. And the evidence submitted by the ACHD and PWSA does not sufficiently rebut this finding.

__[signature on file]_____
Max Slater
Administrative Hearing Officer
Allegheny County Health Department

Dated: December 22, 2016