

COUNTY OF ERIE
DEPARTMENT OF ENVIRONMENT AND PLANNING
DIVISION OF SEWERAGE MANAGEMENT

• • MEMORANDUM • •

TO: THOMAS M. BATT, P.E., Secretary, ECSD 4 Board of Managers (BOM)
FROM: *AMH* ANGELA M. HORTON, P.E., Coordinator of Sewer Construction Projects
DATE: September 18, 2015
SUBJECT: ECSD 4 BOM – Approval for Compliance Hearing Premium Assessments

Please find attached the compliance hearing summary to be presented at your next Board of Managers meeting for the property owner listed below. If the violation is not corrected within 30 days of the notification letter being sent, this property will receive a \$100 premium assessment. For each month following non-compliance a \$100/ month will be assessed.

1. **Thomas Orel, 5345 Genesee Rd, Bowmansville**, to date has not scheduled an inspection.

Should you have any questions, please contact me at 858-8437 or angela.horton@erie.gov.

MOVED BY: _____

SECONDED BY: _____

APPROVED/DISAPPROVED: _____

DATE: _____

Thomas M. Batt, P.E.
SECRETARY

cc: 4.2.2.I&I
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Item 5(d)

MATTHEW J. KIBLER
PARTNER
WRITER'S EXTENSION 208
mkibler@feldmankieffer.com



THE DCN BUILDING
110 PEARL STREET
SUITE 400
BUFFALO, NY 14202

September 15, 2015

Board of Managers
Erie County Sewer District No. 4 (ECSD 4)

Re: Enforcement Hearing - Failure to Permit Inspection
Thomas Orel – 5345 Genesee Rd, Bowmansville, NY 14026, SBL 82.19-1-46.2

Honorable Board Members:

Pursuant to a request by the Board of Managers (BOM) of Erie County Sewer District (ECSD) Nos. 1, 2, 3, 4 5 and 6 enforcement actions against the individuals referenced on the cover letter were held on May 20, 2015, to determine whether there were violations of Sections 305, 501 and/or 1001 of the Rules and Regulations for Erie County Sewer Districts.

Feldman Kieffer, LLP, was appointed to act as a Hearing Officer with respect to the referenced matter, and this report constitutes a summary of the Compliance (Enforcement) Hearing.

- I. DATE: Wednesday, May 20, 2015
- II. TIME: 1:26 p.m. to 3:30 p.m.
- III. PLACE: Southtowns Advanced Wastewater Treatment Facility (AWTF)
S-3690 Lake Shore Road, Buffalo, New York 14219
- IV. AUTHORITY: Rules and Regulations for Erie County Sewer Districts
(Revised and Adopted March 26, 2009, Erie County Legislature)
- V. RELEVANT PROVISIONS: Article X, Inspections
Section 1001 - Powers and Authority of Inspectors

Article XI, Enforcement
Section 1101 - Notice of Violations
Section 1103 - Enforcement Hearing
Section 1104 - Penalties
- VI. BOARD RESOLUTION: Feldman Kieffer, LLP was retained by the Erie County Division of Sewerage Management (DSM) and Erie County Sewer Districts (ECSDs) as the Hearing Officer per an Agreement dated May 8, 2013.

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VII. PRESENT: Matthew J. Kibler, Esq., Hearing Officer from Feldman Kieffer, LLP
Angela M. Horton, P.E., Coordinator Sewer Construction Projects,
representing all ECSDs
Richard Rehac, Sewer District Manager, representing ECSDs 1, 4, & 5
Steven Canestrari, Sewer District Manager, representing ECSDs 3 & 6
William Strzeszynski, Sewer District Manager, representing ECSD 2
Patrick Breier, Assistant Sewer District Manager, representing ECSD 2
Beth M. Pfalzer, Data Processing Control Clerk, representing all ECSDs
Gregory Mittner, representing 40 Barbados, Cheektowaga, NY ECSD 1
Marc Massaco, representing 5742 Apollo Dr, Lakeview, NY ECSD 3
Arthur Kuczanski, representing 1151 Borden Rd, Depew, NY ECSD 1

VIII. TESTIMONY:

A. 5345 Genesee Rd, Bowmansville, NY 14026, (Thomas Orel) – Failure to permit inspection.

Ms. Horton submitted into evidence the following documents:

1. A map demonstrating that 5345 Genesee Rd, Bowmansville, NY 14026, is located within ECSD 4.
2. A printout from the Erie County Department of Real Property Tax Service dated May 2015, demonstrating that that 5345 Genesee Rd, Bowmansville, NY 14026 is owned by Thomas Orel since December 1, 2005.
3. Initial Inspection Request, via U.S. mail, dated August 1, 2014.
4. Second Inspection Request, via U.S. mail, dated September 11, 2014.
5. Third Inspection Request, via U.S. mail, dated October 27, 2014.
6. Final Inspection Request, via U.S. certified mail, dated March 18, 2015. Said U.S. certified mail has not been returned to ECSD offices. USPS website indicates notices have been left for the homeowner.
7. Notice of Hearing, via U.S. first-class mail and certified mail, dated April 20, 2015. Said U.S. certified mail was signed on delivery by T. Orel on April 23, 2015. Said letter advised Thomas Orel of an Enforcement Hearing to be held on May 20, 2015, between 1:30 p.m. and 3:30 p.m. at the Erie County Southtowns AWTF, S-3690 Lake Shore Road, Buffalo, New York 14219.
8. A DSM database tracking form summarizing property & owner information, inspection letters sent, and comments pertaining to the property.

The inspection has not been completed as per the Rules and Regulations for Erie County Sewer Districts, adopted March 26, 2009.

All remained present at the Enforcement Hearing until 3:30 p.m. At which time, it was determined that Thomas Orel failed to appear as requested in the Notice of Hearing letter dated April 20, 2015.

IX. FINDINGS:

Considering all evidence presented and testimony heard concerning the premises at 5345 Genesee Rd, Bowmansville, NY 14026, owned Thomas Orel, as Hearing Officer, I find that:

1. The subject premises is located within ECSD 4;
2. That the property owner was given proper Inspection Notices on four occasions pursuant to Section 1001 of the Rules and Regulations for Erie County Sewer Districts;
3. That the property owner was given proper Notice of Hearing for Failure to Permit Inspection pursuant to Section 1103(a) of the Rules and Regulations for Erie County Sewer Districts;
4. That a public sanitary sewer is and was available to the building on the property to be inspected;
5. That there is a building on the property which is intended to be used for human occupancy; and
6. That based on Respondent property owner's failure to appear at the Enforcement Hearing, as requested, a violation of Sections 1001 and 1101 of the Rules and Regulations for Erie County Sewer Districts does therefore exist.

X. RECOMMENDATIONS:

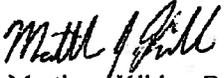
As Hearing Officer, duly appointed pursuant to Section 1103(b) of the Rules and Regulations for Erie County Sewer Districts, I do hereby recommend to the ECSD 4 BOM that:

1. The BOM concur with the findings presented herein;
2. That a "premium assessment" of \$100 be levied for non-compliance;
3. That the Respondent property owner be given 30 days within which to comply. If compliance is made before the 30-day period concludes, the fine may be suspended;
4. If Respondent property owner remains in violation of the duty of permit Initial Inspection, a fine of \$100 shall be levied per month pursuant to Section 1104 - Penalties - of the Rules and Regulations for Erie County Sewer Districts with a maximum penalty of \$10,000;
5. In the event that access is denied or otherwise prevented, the BOM may seek a warrant from a court of competent jurisdiction to enter the subject premises to conduct an Initial Inspection pursuant to Section 1001 of the Rules and Regulations for Erie County Sewer Districts; and
6. Pursuing a warrant to enter these premises shall not limit the application of other remedies under the Rules and Regulations for Erie County Sewer Districts.

I trust that the BOM will concur with the Findings and Recommendations as presented herein. If any questions or further information is required, please do not hesitate to contact me at 716-852-5875.

Thank you for the opportunity to serve on your behalf as Hearing Officer.

Very truly yours,


Matthew Kibler, Esq.

cc: Kristen Walder, Esq., Assistant County Attorney
J. Fiegl / A. Horton / B. Pfalzer / 4.2.2.I&I
R. Rehac / B. Rehac