



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY ATTORNEY

Robert L. Taylor, City Attorney
1221 SW 4th Avenue, Suite 430
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax: (503) 823-3089

July 24, 2023

VIA EMAIL - puc.filingcenter@puc.oregon.gov

Public Utility Commission of Oregon

ATTN: Filing Center

201 High Street SE, Suite 100

P.O. Box 1088

Salem, OR 97308-1088

Re: NC 405 - In the Matter of Public Utility Commission of Oregon v. City of
Portland

Dear Filing Center:

The City of Portland respectfully submits its Response Testimony regarding
NC 405.

Sincerely,

/s/ Eric Shaffner

Eric Shaffner
Deputy City Attorney

ES/ks

CITY OF PORTLAND

COP EXHIBIT 100

RESPONSE TESTIMONY

July 24, 2023

1 **Q. What is your name, occupation, and business address?**

2 A. My name is Melanie Gualotunia. I am an Engineering Supervisor for the Bureau of
3 Environmental Services (“BES”), City of Portland. My business address is 1120 SW 5th
4 Ave, Suite 765, Portland, Oregon 97204.

5 **Q. What was your role in this matter?**

6 A. I oversee the work of the BES Nonconforming Sewer Conversion Program,¹ which works
7 with property owners and plumbing contractors to reduce the number of party sewers and
8 private sewer laterals that cross property lines or are located within the public right-of-way
9 (“the ROW”). Such pipes do not conform with the Oregon Plumbing Specialty Code, the
10 basic requirements of which, as applicable here, are essentially paraphrased by this Portland
11 City Code definition:

12 H. “Nonconforming Sewer” means a private sanitary sewer that is:

- 13 1. Not on the same public or private property as the structure or structures
14 being served by the sewer; and
15 2. Not located within a recorded sewer easement or subject to a recorded
16 covenant for easement regarding use of the sewer and meeting the
17 standards for easements specified in administrative rules.²

18 In that role and with the assistance of my staff, I communicated with Mr. Scott Donnell, the
19 property owner whose complaint to the Oregon Utility Notification Center (“the OUNC”)
20 initiated this matter, and conveyed the City’s requirements regarding his private sewer
21 lateral.

22 **Q. What were those requirements?**

23 A. My staff and I primarily asked Mr. Donnell to submit an encroachment agreement, as
24

25 ¹ See, Portland.gov, “Nonconforming Sewers,”
<https://www.portland.gov/bes/connectingsewer/nonconforming-sewers>.

26 ² Portland City Code § 17.33.020 H (available at <https://www.portland.gov/code/17/33>)
[hereinafter, “PCC”].

1 required by the Portland Bureau of Transportation when authorizing the continued presence
2 of non-City infrastructure in the ROW. The terms of that agreement, among other things,
3 require the applicant to locate the encroaching infrastructure and to register it with the
4 OUNC.³

5 **Q. What is the problem with Mr. Donnell's private sewer lateral?**

6 A. The private sewer lateral is located within a public alley behind Mr. Donnell's house and
7 travels within that ROW until it connects to the public sewer system in an adjacent street. It
8 was not installed by the City and has not been accepted by the City for maintenance purposes
9 because, since it is "[n]ot on the same public or private property as the structure or structures
10 being served by the sewer . . . ," it meets the City Code's definition of a nonconforming
11 sewer.⁴

12 **Q. Why is Mr. Donnell's private sewer lateral being allowed to remain in the ROW?**

13 A. BES sometimes allows such pipes to remain in place for a time, and the Bureau has done so
14 here since the issue first arose in 2009. Earlier this year, my group asked Mr. Donnell to
15 obtain an encroachment permit after a real estate agent inquired with BES about the sewer
16 (nonconforming sewer situations can complicate real estate transactions and title companies
17 will often refuse to provide title insurance until they are resolved).

18 **Q. How long will Mr. Donnell's private sewer lateral be allowed to remain in the ROW?**

19 A. The City has no immediate plans to require the removal of the private sewer lateral because
20 the public sewer main in the adjacent NE 28th Avenue is likely to remain the closest element
21 of the public sewer system. However, Mr. Donnell's private sewer lateral will continue to be
22 considered a nonconforming sewer under City Code. If a public sewer main that provides
23 direct sewer access to the property is installed in the future, the property owner would then
24 be required to abandon the existing private sewer lateral and make a new, conforming

25 _____
³ See City of Portland Exhibit 101 at 4.

26 ⁴ PCC, *supra* n. 2, § 17.33.020 H.

1 connection. In addition, if the City is faced with the prospect of maintaining Mr. Donnell's
2 private sewer lateral, the encroachment permit will likely be revoked⁵ and the
3 Nonconforming Sewer Conversion Program would begin issuing notices requiring the
4 replacement of the private sewer lateral.

5 **Q. What would be considered a conforming private sewer lateral in this situation?**

6 A. The property owner would either need to (1) obtain a private sewer easement to install a new
7 private sewer lateral across the property to the west, 2806 NE Ainsworth Street, which is the
8 arrangement that the City likely would have expected when it installed the public sewer main
9 there in the 1920s; or (2) extend a public sewer main within NE Ainsworth Street and then
10 connect to it via a new private sewer lateral.

11 **Q. Why was Mr. Donnell's private sewer lateral not installed in that manner?**

12 A. We don't know, but such decisions generally come down to cost or relations between
13 neighbors.

14 **Q. Does the fact that the private sewer lateral was installed within the alley behind Mr.
15 Donnell's property indicate that the City approved of its location?**

16 A. No. Developers and plumbers did not always provide the City with the routes of the private
17 sewer laterals they installed. The plumbing permit for Mr. Donnell's connection indicates
18 that the private sewer lateral was a "connection to main sewer out from alley" in 1929.⁶ (The

19 ⁵ The encroachment permit allows the City Engineer to terminate it "at any time . . . in the event
20 the public's need requires it . . ." See City of Portland Exhibit 101 at 1. The permit also
provides as follows:

21 In addition, this "Permit" will be revoked if and when re-development of the lot
22 occurs, and the "Permittee" will be required to disconnect from the private sewer
23 and extend the public sewer to the property. In addition, if the City builds a
24 public sewer extension in NE Ainsworth St before the private line is abandoned,
the "Permittee" will be required to connect to the public sewer within 180 days of
sewer completion.

25 *Id.*

26 ⁶ City of Portland Exhibit 102. The plumbing permit from 1960 that appears in Exhibit A to the
encroachment permit was for a repair of the private sewer lateral. City of Portland Exhibit 101 at
6.

1 house was built in 1930.) It does not provide information about the location of the remaining
2 length of pipe. The plumbing permit only indicates that the end of the private sewer lateral
3 was correctly connected to the public wye.

4 **Q. Why does the encroachment permit require the property owner to locate the**
5 **encroaching infrastructure?**

6 A. All infrastructure in the ROW risks damage by excavators who do not know of the
7 infrastructure's existence. As I explained to Mr. Donnell in February 2022:

8 The encroachment process is designed to acknowledge the City is not requiring
9 you to abandon your line until a public sewer becomes available and that [you]
10 are aware of your line's status and location and can make sure it is clearly marked
11 if there is ever any utility work completed. This is intended to protect your service
12 and keep it from being damaged. . . .⁷

13 **Q. In his staff testimony, Mr. Kevin Hennessy testified as follows:**

14 **A system that relies on utility customers to locate underground facilities in**
15 **public ROWs is not going to be effective at protecting excavators, the general**
16 **public, or buried facilities from damages caused by excavation activities.**

17 **Many wastewater service customers, which includes renters, will have no**
18 **knowledge whatsoever of the facilities used to provide them with wastewater**
19 **services. And, customers of City wastewater services are unlikely to know**
20 **how to locate underground facilities in a ROW or have the necessary**
21 **equipment to perform a locate.⁸**

22 **Does the City expect property owners to locate their private laterals on their own?**

23 A. Not necessarily. The map the City requires a property owner to provide along with an
24 _____

25 ⁷ See letter to Dawn Uchiyama, Interim Director, Bureau of Environmental Services, from Kevin
26 Hennessy, Chief of Pipeline Safety, Oregon Public Utility Commission, at 16 (July 18, 2022) (on
file with the Public Utility Commission of Oregon).

⁸ Staff Exhibit 100 at 10, ll. 27-29, and 11, ll. 1-5.

1 encroachment permit should enable them to mark their private lateral themselves. However,
2 the map would also enable a plumber or contractor hired by the property owner to locate the
3 private sewer lateral more easily. In order to make that clear to property owners and to
4 provide them with enough assistance to understand the process, my group provides two
5 documents to them: (1) A list of “licensed contractors who have indicated they provide
6 sewer connection services in the Portland metro-area;”⁹ and (2) guidelines for performing
7 and providing the results of a sewer inspection video that is required before the City will
8 allow a nonconforming private sewer lateral to remain in place.¹⁰

9 **Q. As quoted above, Mr. Hennessy appears to be concerned that the City is asking tenants**
10 **to locate the private sewer laterals for the properties they lease. Is that true?**

11 A. No. We send notifications of requirements and deadlines to the owners of those properties
12 using mailing addresses available in county records.

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⁹⁹ City of Portland Exhibit 103 at 1.

25 ¹⁰ *Id.* at 2. See City of Portland Administrative Rule ENB-4.27, Section 5.D.2.d, available at
26 <https://www.portland.gov/policies/environment-built/sewer-stormwater-erosion-control/enb-427-nonconforming-sewer-conversion>.

CITY OF PORTLAND

COP EXHIBIT 101

RESPONSE TESTIMONY

July 24, 2023

RECORDING COVER SHEET (Please Print or Type) this cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon, ORS 205.234, and does NOT affect the instrument.

AFTER RECORDING RETURN TO:

Scott Donnell
2818 NE Ainsworth St
Portland, OR 97211

SEND TAX STATEMENTS TO:

_ Scott Donnell
2818 NE Ainsworth St
Portland, OR 97211

Multnomah County Official Records
E Murray, Deputy Clerk

2022-052027



\$111.00

05/20/2022 11:34:10 AM

PERM-PERMIT
\$40.00 \$11.00 \$60.00

Pgs=8 Stn=85 ATTC

TITLE(S) OF THE TRANSACTION(S) ORS 205.234(a)

_ I don't know what that means. The permit says "REVOCABLE PERMIT TO USE DEDICATED STREET AREAS"

DIRECT PARTY(S) -- (i.e., DEEDS: Seller/Grantor; MORTGAGES: Borrower/Grantor; LIENS; Creditor/Plaintiff)

ORS 205.125(1) (b) and 205.160

_ Scott Donnell

INDIRECT PARTY(S) -- (i.e., DEEDS: Buyer/Grantee; MORTGAGES: Beneficiary/Lender; LIENS: Debtor/Defendant)

ORS 205.125(1) (a) and 205.160

_ none

TRUE AND ACTUAL CONSIDERATION-- (Amount in dollars or other) ORS 93.030(5)

\$ _ I don't know what that means.

JUDGMENT AMOUNT-- (obligation imposed by the order or warrant) ORS 205.125(1) (c)

\$ _ I don't know what that means.

If this instrument is being Re-Recorded, complete the following statement, in accordance with

ORS 205.244:

"RERECORDED AT THE REQUEST OF _____
TO CORRECT _____

PREVIOUSLY RECORDED IN BOOK/PAGE/FEE NUMBER _____

**THIS PERMIT DOES NOT BECOME EFFECTIVE UNTIL
PBOT HAS RECEIVED THE RECORDED COPY AND
HAS CHANGED THE STATUS TO ISSUED**

FOR COUNTY RECORDERS USE ONLY

EMAIL PDF TO: Encroachments@portlandoregon.gov



**CITY OF PORTLAND, OREGON
BUREAU OF TRANSPORTATION

ENGINEERING AND DEVELOPMENT SERVICES**

Permit No.: 21-097574-TR

Application Date: 10/15/2021

REVOCABLE PERMIT TO USE DEDICATED STREET AREAS

SCOTT DONNELL – (the “Owner”) applied for a revocable permit (this “Permit”) in accordance with the provisions of the City Charter and Title 17, Public Improvements of the Code of the City of Portland (the “City”) for use of the public Right-of-Way adjacent to 2818 NE AINSWORTH ST, PORTLAND, OR 97211 and fronting the south property line, located approximately 3’ within the public right-of-way for the construction and use of a non conforming sewer connection (the “Encroachment”).

More specifically: The Encroachment authorized under this Permit is to be located adjacent and parallel to the above described property as indicated in the attached Exhibit ‘A’.

**The Encroachment authorized above shall encumber:
IRVINGTON PK, BLOCK 32, LOT 3&4 (R190229, 1N1E13CC -02100)
As last recorded in QUIT CLAIM DEED – 2016156347**

DEFINITIONS

Permittee: Owner of the encumbered property described above.

Right-of-way: Centerline of asphalt paved, concrete paved, gravel, dirt, or unimproved roadway to the adjacent property line including curbs, stormwater devices and sidewalks.

CONDITIONS

- (1) This “Permit” is for the use of the Right-of-Way only and shall not exempt the “Permittee” from obtaining any license or permit required by the City Code or Ordinances for any act to be performed under this “Permit”, nor shall this “Permit” waive the provisions of any City Code, Ordinance, or the City Charter, except as herein stated.
- (2) This “Permit” is revocable by the City Engineer at any time in the in the event the public’s need requires it, or the “Permittee” fails to comply with the conditions of this “Permit,” and no expenditure of money hereunder, lapse of time, or other act or thing shall operate as an estoppel against the City, or be held to give the Permittee any vested or other right. Upon the revocation by the City Engineer, at the City Engineer’s discretion the, within 30 days the “Permittee” shall remove the “Encroachment” from the Right-of-Way and restore the Right-of-Way as directed by the City Engineer. In addition, this “Permit” will be revoked if and when re-development of the lot occurs, and the “Permittee” will be required to disconnect from the private sewer and extend the public sewer to the property. In addition, if the City builds a public sewer extension in NE Ainsworth St before the private line is abandoned, the “Permittee” will be required to connect to the public sewer within 180 days of sewer completion.

- (3) This "Permit" shall not become effective until the "Permittee" or the "Permittee's" contractor have provided proof of bond and license and an insurance policy which has been approved by the City Attorney, naming the City as additional named insured. This insurance is to remain in effect throughout all phases of construction performed under this "Permit." Submit information to Transportation Street Systems Management (503-823-7142), insurance@portlandoregon.gov.
- (4) This "Permit" is a burden upon the adjacent property described above and runs with the land.
- (5) To protect underground facilities, the "Permittee" shall comply with the requirements of OAR 952-001-0010 through OAR 952-001-0090 and must incorporate applicable erosion control measures referenced in chapter 17.38.050 of the City Code.
- (6) The "Permittee" or "Permittee's" contractor shall be responsible for obtaining an approved temporary street use permit to implement the traffic plan for the work zone covered under this "Permit." Submit your proposed street use plan for review to cpac@portlandoregon.gov five days prior to proposed work date. Work that requires closure of a street or lane shall not commence unless an approved traffic control plan and permit to implement the plan have been obtained. For questions about a permit to implement a traffic control plan contact 503.823.7365.
- (7) The "Permittee" shall be liable to any person who is injured or otherwise suffers damage by reason of the "Permittee's" failure to keep the "Encroachment" and/or surrounding area located in the portion of the Right-of-Way covered by this "Permit" in safe condition and good repair or properly secured. Furthermore, "Permittee" shall be liable to the "City," it's officers, agents and employees, for any judgment or expense incurred or paid by the "City," it's officers, agents or employees, by reason of the existence of any structure in the right-of-way covered by this "Permit."
- (8) No work shall be permitted in the right-of-way until plans for the "Encroachment" have been submitted and approved by the City Engineer. It is understood by "Permittee" that such plan approval shall not work as an estoppel nor shall it be construed as a defense to the "Permittee's" guarantee to reimburse the "City" for damage or destruction of utilities or private property.
- (9) The "Permittee" guarantees the cost of any repairs or replacement of private or public utilities or private property damaged or destroyed caused in whole or in part by activities associated with installing or maintenance of the "Encroachment." The "Permittee" further agrees to guarantee all costs by the "City" in ascertaining the extent of damage or destruction to utilities or private property. The "Permittee" recognizes and agrees that the "City" cannot guarantee the accuracy of location of utilities in the street, and that the information used by the "City" and furnished the "Permittee" in approving the plans may be incorrect; and the "Permittee" further agrees to be responsible for any and all damage caused by the construction, maintenance or use of the "Encroachment," although such damage or destruction may have resulted in whole or in part because of the "City's" mis-location or misinformation in relation to the utilities.
- (10) The "Permittee" must provide notification of proposed work schedule and request inspection for the permitted activity; contact Right-of-Way Inspection at 503.823.7002 opt #1 a minimum of two business days prior to beginning work and before 6am the day of inspection. Inspection is not available on weekends and City holidays.
- (11) Repair, maintenance and installation of existing or future utility facilities in the right-of-way may require the "Permittee" or associated utility provider to reconstruct, excavate, move or remove the "Encroachment" authorized by this "Permit" at the "Permittee's" expense. Utility service providers and municipalities performing work in the "Encroachment" area will not be required to incur an expense for the closure and reconstruction of surfaces that exceed the cost of repair to provide the current City Standard. The "Permittee" shall be responsible for cost of repairs exceeding the cost of the current City Standard, or existing condition (whichever is less), and assuring that the work is performed to match the City Engineer approved design.
- 2) No modification shall be made to any installation authorized under this "Permit" without prior approval from the City Engineer. Failure to maintain the "Encroachment" in conformance with the approved plans. No repair to or modification of the "Encroachment" without obtaining prior approval from the City Engineer shall cause immediate revocation of this "Permit" without further action by the City Engineer. Within 30 days of revocation, the "Permittee" shall remove the "Encroachment" from the right-of-way area and restore the street area to the satisfaction of the City Engineer.

- (13) Failure to maintain the "Encroachment," failure to repair or replace any portion of the "Encroachment," or failure to maintain the Right-of-Way adjacent to the "Encroachment" immediately upon notification from the City Engineer, shall be cause for the City Engineer to declare the "Encroachment" a nuisance, initiate proceedings through the Code Hearings Officer, file civil suit or take any other action necessary to insure the "Permittee," transferee or assignee performs the required repairs to the Right-of-Way.
- (14) Upon order of the City Engineer, "Permittee" shall immediately stop work and repair any damage to the street areas or utilities or private property as directed.
- (15) The "Permittee" is required as a condition of this "Permit" to contact and register the property and the location of all below grade utilities which are associated with the encroachments authorized under this "Permit", with the Oregon Utility Notification Center (OUNC, phone #811 or email at ORdatabase@occinc.com). Additionally, it shall be the "Permittee's" responsibility to locate all utilities by means of survey or by potholing in order to assure that the assumed depths that have been indicated on plans are accurate and that public and city operated utilities are safeguarded against any damage due to construction activities. All laterals from sewer or water mains which could be impacted by construction activity are to be identified and capped prior to commencement of work which may damage them.
- (16) The "Permittee" shall provide proof of the 811 registration by submitting evidence of registration to the BES Nonconforming Sewer Program at nonconforming@portlandoregon.gov prior to commencing work.
- (17) The "Permittee" shall, a minimum of two working days prior to beginning work on the private sewer / storm line, notify PBOT Utilities Construction and Inspection (503-823-7002) of the proposed work schedule for the installation, and arrange for a site consultation with the inspector prior to commencing work.
- (18) The "Owner" shall be responsible for all maintenance of the sewer / storm line authorized under this "Permit." BES may perform emergency maintenance of the sewer / storm line, as necessary at the "Permittee's" expense
- (19) The "Permittee" shall pay a onetime "Permit" fee of \$575.00 required by Section 17.24.020 of the City Code. This "Permit" does not become effective until the fee is paid in full.
- (20) The "Permittee" shall file this original certified copy of this "Permit" with Multnomah County's Division of Assessment, Recording and Taxation once it is deemed completed to the satisfaction of Bureau of Transportation City Engineer, or City Engineer Representative. Upon Recording this "Permit", the "Permittee" shall provide a copy of the recorded permit to the Bureau of Transportation (as directed).

<p>Insurance Required: YES</p> <p>Permit Fee: \$575.00 <small>per City Code Sect 17.24.020</small></p> <p>Structural Review Fee: \$N/A</p> <p>Appeal Fee: \$N/A</p> <p>Total Permit Fee: \$575.00</p> <p>Paid Under Permit: 21-097574-TR</p> <p>IVR #: 4738653</p>	<p align="center">- BUREAU OF TRANSPORTATION - CITY ENGINEER OR REPRESENTATIVE</p> <p align="center"><i>Kyle Livengood</i> <small>Digitally signed by Kyle Livengood Date: 2022.02.09 15:40:32 -08'00'</small></p> <hr/> <p align="center">- BUREAU OF ENVIRONMENTAL SERVICES - CITY ENGINEER OR REPRESENTATIVE</p> <p align="center"><i>Melanie Gualotunia</i> 2/8/22</p>
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<p>OWNER: SCOTT DONNELL</p> <p>PRINT: <u>Scott Donnell</u></p> <p>SIGN: <u><i>[Signature]</i></u></p>	<p align="center">OWNER ADDRESS:</p> <p align="center">2818 NE AINSWORTH ST. PORTLAND, OR 97211</p>
--	---

Acknowledgment


State of Oregon

County of Multnomah

This instrument was acknowledged before me on March 25th 20 22

by Scott Donnell
(PRINTED NAME OF ABOVE PERMITTEE SIGNATORY)

SCOTT DONNELL



OFFICIAL STAMP
JOSHUA L BRUCE
NOTARY PUBLIC - OREGON
COMMISSION NO. 978098
MY COMMISSION EXPIRES AUGUST 30, 2022

Notary Public: *[Signature]*

My Commission Expires: _____

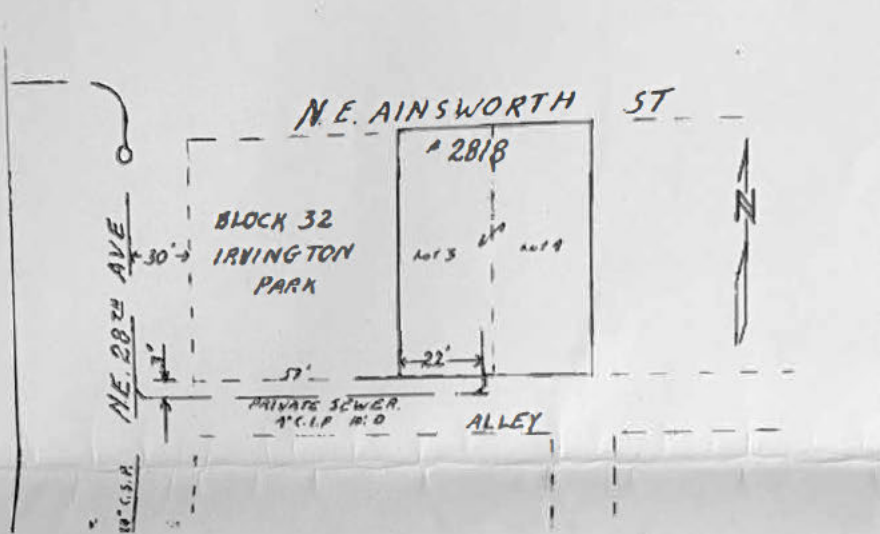


Image C:

2433	CITY OF PORTLAND, OREGON DEPARTMENT OF PUBLIC WORKS BUREAU OF MAINTENANCE SEWER BRANCH		Part. No. 76624
FORM 271-1 (11-58)			Date 9-9-60 19
Location	2818 N. E. AINSWORTH ST.		
Between			
Addition	IRVINGTON PARK	Lot 3 & 4	Blk. 32
Applicant	REX L. WALKER PLBG.CO.		
Remarks	HOOKED ONTO EXISTING WYE IN MAIN SEWER ON NE 28th 3' S OF NORTH LINE OF ALLEY, 4" C.I.P. 10' D. INTO PROP. 22' EAST OF WEST LINE. PLBG. CUT 2 X 112 CONCRETE		
Inspected	9-16-60 19	By	EK
Book	7	Page	218 New Repair <input checked="" type="checkbox"/>
Other House on Branch			

EXHIBIT A

CITY OF PORTLAND

COP EXHIBIT 102

RESPONSE TESTIMONY

July 24, 2023

Form W 271

CITY OF PORTLAND, OREGON
DEPARTMENT OF PUBLIC WORKS
BUREAU OF MAINTENANCE

Permit No. 30244
Date 6-31-29

Location 2818 ^{NE} ~~277~~ ~~Commercial~~ St
Between NE ~~Commercial~~ St ^{NE} 8th Ave
Addition ~~Trimmings Plk~~ Lot 3-4 Blk. 32
Applicant E.C. Roloff
Remarks Connection to main sewer out from alley

Book 7 Page 318 Date 6/5 29
Inspected By Geo Stark

CITY OF PORTLAND

COP EXHIBIT 103

RESPONSE TESTIMONY

July 24, 2023

2023 Sewer Contractor List
FINDING A CONTRACTOR
FOR YOUR SEWER CONNECTION
Current as of June 1, 2023

The purpose of this list is to assist our customers in locating licensed contractors who have indicated they provide sewer connection services in the Portland metro-area. By providing this list to our customers, the City of Portland does not imply that it endorses, guarantees, or warrants the contractors listed here or their work.

This is not a complete list of all contractors who perform this work. These contractors were licensed and bonded at the time this list was produced and attended training on the standards and requirements of Sewer Connections and Short Sewer Extensions. For additional contractors, you may also wish to perform an internet search for Sewer Contractors or Plumbers or check other sources.

Selection of a contractor to work at your property requires careful attention. Oregon Homebuilder Law, ORS Chapter 701, requires all construction contractors, including self-employed individuals, partnerships and corporations, to be registered with the State of Oregon Construction Contractors Board (CCB) before they advertise, bid on, perform construction, remodeling, or repair work of any kind. All licensed contractors are also required to include their CCB registration number on all of their printed materials, advertising, bid sheets, contracts, business cards, company vehicles, and signs. If you wish to verify a contractor's CCB registration, please call the Construction Contractors Board at 503-378-4621. They can provide current information about registration and any claims filed against a contractor. You may also wish to call the Better Business Bureau for information at 503-226-3981. Finally, we suggest that you consider soliciting bids from at least three different contractors.

A-Z Excavation
1410 SE 88th Ave
Portland, OR 97216
(503) 254-8720
atozexcaavation@yahoo.com
CCB# 129568

Alpha Environmental LLC*
11080 SW Allen Blvd, Ste 100
Beaverton, OR 97005
(503) 292-5346
www.alphaenvironmental.net
info@alphaenvironmental.net
CCB# 152125
Plumbing Lic.# PB1612

American Drain Cleaning
12303 SE 80th Ave
Portland, OR 97222
(503) 265-9593
paulamericandrain@gmail.com
CCB# 168294

Apollo Drain & Rooter Service Inc.*
853 NE Harlow Rd
Troutdale, OR 97060
(503) 739-9887
www.apollodrain.com
dispatch@apollodrain.com
CCB# 49418
Plumbing Lic.# 26-533PB

Black Rock Underground LLC*
267 NE 34th PI
Hillsboro, OR 97124
(503) 747-9312
cmoore@blackrockunderground.com
www.blackrockunderground.com
CCB# 196119
Plumbing Lic.# PB1455

Clog Busters LLC*
2900 SW Cornelius Pass Rd #549
Hillsboro, OR 97123
(503) 680-8947
(503) 730-9776
tom@clogbustersllc.com
www.clogbustersllc.com
CCB# 200212
Plumbing Lic.# 1383

Dan Riehl Excavating, Inc
24801 SE Hoffmeister Rd
Damascus, OR 97089
(503) 658-8180
riehtdan@yahoo.com
CCB# 135300

Duke Construction & Excavation
17860 SE Foster Rd
Damascus, OR 97089
(503) 492-0530
john@dukeconst.com
www.dukeconst.com
CCB# 127933
Plumbing Lic.# 3-580PB

Environmental Works*
22820 NE Sandy Blvd
Fairview, OR 97024
(503) 719-6715
info@eworksnw.com
www.eworksnw.com
CCB# 185781

Hollenbach & Hurd, Inc.
3430-A SW 209th Ave
Aloha, OR 97007
(503) 591-5987
Handh20@juno.com
CCB# 121807
Plumbing Lic.# 34421PB

Interlaken, Inc.*
PO Box 2010
Fairview, OR 97024
(503) 674-7460
kendall@interlaken-inc.com
www.wedigportland.com
CCB# 160018

**J Dodge Construction
dba Rose City Sewer**
3052 NE Irving St
Portland, OR 97232
(503) 720-7938
craig@jdodge.com
CCB# 161963

Landis & Landis Construction LLC
PO Box 50
Marylhurst, OR 97036
(503) 466-9043
tjlandis@llconstruction.com
CCB# 148742
Plumbing Lic.# PB308

Lenz Construction
PO Box 95
Corbett, OR 97019
(503) 695-5163
(503) 201-6007 (cell)
lenzconstruction@hotmail.com
CCB# 213790
Plumbing Lic.# PB1855

Lovett Excavating, Inc.*
PO Box 86280
Portland, OR 97286
(503) 737-8423
office@lovettservices.com
www.lovettservices.com
CCB# 125507
Plumbing Lic.# 26-773PB

Mr. Rooter Plumbing*
PO Box 507
Gladstone, OR 97027
(503) 653-5301
jeremyw@mrrooterportland.com
www.portland.mrrooter.com
CCB# 138941
Plumbing Lic.# 3-434PB

NW Home Services LLC*
6941 SE Bixel Way
Milwaukie, OR 97267
(503) 722-9599
nwhomeservice@comcast.net
www.nwhomeservices.net
CCB# 172358
Plumbing Lic.# PB216

Pipe Repair Services
PO Box 5603
Portland, OR 97228
(503) 701-9625 (cell)
piperepairs@gmail.com
CCB# 168991
Plumbing Lic.# PB1038

PGC Construction LLC
PO Box 220179
Milwaukie, OR 97267
(503) 653-7473
pgcllcpipe@gmail.com
www.pgcllc.net
CCB# 171429
Plumbing Lic.# 3-504PB

Reynolds Sewers, Inc
17031 SE Stark St
Portland, OR 97236
(503) 913-2328
reynoldssewers@gmail.com
CCB# 210923

Rick McBee Excavating
12950 SE Powell Blvd
Portland, OR 97236
(503) 349-0300
rick@mcbeebiz.com
www.rickmcbree.com
CCB# 67509
Plumbing Lic.# PB865

River City Environmental
P.O Box 30087
Portland, OR 97294
(503) 252-6144
pat.speer@rivercityusa.com
www.rivercityusa.com
CCB# 148742
Plumbing Lic.# PB308

Root Excavation*
10824 SE Oak St #322
Milwaukie, OR 97222
(503) 656-6610
rootexmail@gmail.com
CCB# 134498
Plumbing Lic.# 3-433PB

Royal Flush Plumbing
PO Box 507
Beavercreek, OR 97004
(503) 657-3919
Royalflushplumbing1@msn.com
www.royalflushco.com
CCB# 181482
Plumbing Lic.# 3-423PB

Sanitech, LLC*
PO Box 47
Molalla, OR 97038
(503) 213-4775
(503) 803-1207 (cell)
sanitech@molalla.net
www.sanitechmolalla.com
CCB# 196519
Plumbing Lic.# PB1182

Sierra Excavation
PO Box 30642
Portland, OR 97294
(503) 492-9242
(503) 522-2449 (cell)
Sierraexcavation@gmail.com
CCB# 190493
Plumbing Lic.# PB868

Superior Underground
6400 SE 101st Ave, Unit 3
Portland, OR 97266
(503) 744-6905
(503) 750-0020 (cell)
superiorundergroundllc@gmail.com
CCB# 219110

Teds Excavating LLC
PO Box 243
Corbett, OR 97019
(503) 695-2128
Barney97019@yahoo.com
CCB# 162924
Plumbing Lic.# PB436

Ted Rudiger Excavation, Inc.
16235 Tracey Lee Ct
Oregon City, OR 97045
(503) 887-8089
tlrudiger@yahoo.com
www.tedrudiger.com
CCB# 162133
Plumbing Lic.# PAC201

Ted McBee Boring & Exc, Inc.*
PO Box 301415
(503) 251-0505
tedmcbbeeinc@cascadeaccess.com
CCB# 110314
Plumbing Lic.# PB169

Contractors Providing Sewer Scoping Services Only

Accurate Sewer Inspections*

PO Box 82546
Portland, OR 97282
(503) 329-3221
mike@accuratepdx.com

Todd Scopes*

1701 Broadway #197
Vancouver, WA 98663
(360) 487-0761
toddscopes@gmail.com

Soil Solutions*

3540 SE 28th Ave
Portland, OR 97202
(503) 234-2118
info@soilsolutionsenvironmental.com
www.soilsolutionsenvironmental.com
CCB# 138344

ProDrain and Rooter Service*

3300 NW 185th Ave #213
Portland, OR 97229
(503) 533-0430
www.prodrainpdx.com



CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Room 1000, Portland, Oregon 97204 ■ Nick Fish, Commissioner ■ Michael Jordan, Director

Sewer Video Guidelines

Each sewer video inspection submitted to the City for review must include a link to the video inspection, a written report, photographs of the painted location of the sewer on the ground surface, and a map/diagram showing the location of the sewer line in a downloadable format emailed to nonconforming@portlandoregon.gov with the property address included in the subject line.

The recorded sewer video inspection must meet the following guidelines:

Identification - All video inspections shall clearly identify the site address, date of inspection and the video contractor's contact information. Visual verification of site/surroundings is required before initiating the inspection. Inspections starting and ending in a pipe only may be rejected.

Prior to Beginning the Inspection - Please clearly identify/describe the point of entry and location using cardinal directions (i.e. "Southeast corner of the basement")

Introduction of Water into the System - Prior to initiating the video inspection, water shall be introduced into the building sewer. The water flow shall be stopped prior to reversing from the main to the point of entry.

Length of Inspection - The video inspection shall record the entire distance from the building served to the City main and reverse back to the point of origin unless there is a break in line that prohibits this.

Image Quality - The image of the video inspection shall be clear, unobstructed, and fully illuminated for the entire length of the sewer. Videos which move too quickly may be rejected.

Voice Narration - A clear and precise voice narration is required. The narrator shall identify all observations during inspection including location, transitions, wye connections, physical defects, pooling, root intrusions and other obstructions.

Footage Counter - A footage counter is required to be displayed for the entire length of the sewer video inspection.

Locate Markings – Surface markings are required where the sewer exits the structure, crosses utilities, property lines and the curb, as well as observed wye connections, defects and the connection point to the city main.

Suspected Party Connection – If a suspected party connection is observed, run water from the suspected connected property to confirm the connection to the private system.

Locate Photo Guidelines:

Provide photos of the locate markings where the sewer line exits the structure, crosses utilities, property lines and the curb, as well as observed wye connections, defects and the connection point to the city main. Please include clear reference points in the background so that the location of the photo is understood by the reviewer.

Map Guidelines:

The map needs to include sewer distance from structures, water meter, fences, property lines, etc. Please indicate the points and depths where the sewer line exits the structure, crosses utilities, property lines, observed wye connections, the curb, defects, as well as the connection point to the city main. The map needs to make a clear indication of which property the connection to the main is fronting.

BES Project Outreach:

If the property is included in outreach for an upcoming BES sewer extension project, a proposed branch location map may have been mailed to the owner to review and approve or edit. If the property owner has received a branch location map, please be sure to review the proposed location and assist the property owner with determining whether the proposed location and depth is suitable, or whether edits should be made. For questions regarding branch location maps, please contact Tina Wilson at 503-865-6186.



The Bureau of Environmental Services is committed to providing meaningful access. To request translation, interpretation, modifications, accommodations, or other auxiliary aids, please contact the Nonconforming Sewer Department at 503-823-7869 or Oregon Relay Service 711.

Traducción o interpretación | Chiakun mak me chiakun fos | Chuyển Ngữ hoặc Phiên Dịch | 翻译或传译 | 翻訳または通訳
Письменный или устный перевод | Traducere sau Interpretare | Письмовий або усний переклад | Turjumida ama Fasiraadda
الترجمة التحريرية أو الشفهية | ການແປພາສາ ຫຼື ການອະທິບາຍ | अनुवाद तथा दोभाषे सेवा

☎ Nonconforming Sewer Department, 503-823-7869

CITY OF PORTLAND

COP EXHIBIT 200

RESPONSE TESTIMONY

July 24, 2023

1 **Q. What is your name, occupation, and business address?**

2 A. My name is Paul Suto. I am the Chief Engineer of the Bureau of Environmental Services
3 (“BES”), City of Portland. My business address is 1120 SW 5th Avenue, Suite 765, Portland,
4 OR 97204.

5 **Q. How long have you been with the City and in which roles?**

6 A. I have been with the City since 2008 as Engineering Supervisor and Engineering Manager
7 before taking on my current role in 2021.

8 **Q. Are you familiar with the City’s Code provisions and policy directives pertaining to**
9 **nonconforming private sewer laterals and to the construction, operation, and**
10 **maintenance of the public sewer system?**

11 A. Yes.

12 **Q. In his staff testimony, Mr. Kevin Hennessy testified as follows:**

13 **BES explained its position that it is not required to perform locates on**
14 **“nonconforming” private sewer facilities located in City ROWs such as the**
15 **Property Owner’s, except in a specific circumstance. According to BES, it**
16 **must perform locates for privately-owned sewer facilities in City ROWs if**
17 **the sewer facilities have been “accepted” as part of the City’s wastewater**
18 **system pursuant to the process outlined in City Code. . . .¹**

19 **Is that an accurate statement of the City’s position with regard to nonconforming**
20 **private sewer laterals?**

21 A. Not entirely. If a sewer facility is “accepted” by the City, it is no longer privately owned. It
22 becomes part of the public sewer system and will be maintained with ratepayer funds from
23 then on.

24 **Q. Mr. Hennessy quoted from the legislative history of the Oregon Utility Notification**
25 **Center’s rules to explain the change from the use of “owner” to “operator” when**

26 ¹ Staff Exhibit 100 at 8, ll. 2-7.

1 referring to the obligations applicable to locating underground facilities. That history
2 includes the following passage:

3 [T]he sewer service laterals are normally installed from the sewer main in the
4 street to the building. The city or service district requires the occupant to
5 install a lateral, to their specifications from the main to the building. The city
6 or service district then asserts that the lateral is owned by the building
7 occupant. However, the owner of the lateral has no administrative or
8 operational control over the lateral in the right-of-way. It is controlled and
9 operated by the city or sewer district. . . .²

10 What do you understand the term “sewer service laterals” to mean in that passage?

11 A. It appears to refer to the entirety of the pipe that runs from the tee or the wye (which is
12 connected to the public sewer main) to the building on the property. However, I understand
13 “sewer service lateral” to refer only to the publicly-owned portion, which runs from the tee or
14 wye to the property line, typically represented by the curb. It is also referred to as a “public
15 sewer lateral” or a “branch.”³

16 Q. The official quoted in the legislative history went on to say that “[t]he city or service
17 district then asserts that the lateral is owned by the building occupant.” Is that true for
18 the City of Portland?

19 A. To my knowledge, the City has never asserted that a sewer service lateral constructed by the
20 City is owned by anyone other than the City. That is made clear in the Code provisions
21 establishing the limits of the City’s maintenance responsibility:

22 The City maintains City sewer and drainage improvements that are located in City

23 _____
24 ² *Id.* at 9, ll. 23-29 (quoting *In the Matter of the Adoption of OAR 952-001-0090*, UNC 1, Oregon
Utility Notification Center Order No. 97-001 (April 9, 1997)).

25 ³ See, e.g., City of Portland Administrative Rule ENB-4.17, §3.H, available at
26 [https://www.portland.gov/policies/environment-built/sewer-stormwater-erosion-control/enb-417-
administrative-rules-sewer](https://www.portland.gov/policies/environment-built/sewer-stormwater-erosion-control/enb-417-administrative-rules-sewer) (“Public Sewer Lateral’ means the City-maintained portion of a
sewer lateral, sometimes referred to as a ‘City Branch’ or ‘Branch Sewer.’”).

1 rights-of-way and that are described as part of the City public sewer, storm sewer
2 and drainage system. However, the City only maintains laterals as follows:

3 a. For a City-paved street with curbs, the City will maintain a lateral from
4 the sewer main to the street-side curb face nearest the property being
5 served. . . .

6 f. Those portions of a lateral not addressed by Subsections 17.32.070
7 B.1.a. through d. are the responsibility of the property owner receiving
8 service through the lateral. . . .⁴

9 **Q. Do you think the legislative history quoted above describes the type of connection**
10 **between Mr. Donnell’s property and the public sewer main in NE 28th Avenue?**

11 A. No. The “sewer service lateral”—the publicly-owned section of pipe—was built in 1921, is
12 14 feet long, and is located entirely within the NE 28th Avenue right-of-way.⁵ It is one of
13 two sewer service laterals that were extended from the public sewer main to the western
14 property line of 2806 NE Ainsworth Street.⁶ The northernmost of those sewer service
15 laterals was intended to serve the property at 2806 NE Ainsworth Street and the other was
16 intended to serve Mr. Donnell’s property at 2818 NE Ainsworth Street. The City maintains
17 both of those sewer service laterals and will continue to do so. The remainder of the pipe
18 that connects to the southernmost sewer service lateral runs through the alley behind Mr.
19 Donnell’s property, was not constructed by the City, has not been “accepted” by the City, and
20 will not be maintained by the City.

21 **Q. Other language in the legislative history excerpt does appear to describe typical sewer**
22 **service laterals, though. Do you agree?**

23 A. Yes. For example, the official quoted in the legislative history said, “The operator of the

24 ⁴ Portland City Code § 17.32.070 B.1 (*available at* <https://www.portland.gov/code/17/32/070>)
[hereinafter, “PCC”].

25 ⁵ See PortlandMaps.com, Sewer Service Lateral SSL AHU933,
https://www.portlandmaps.com/detail/sewer/AHU933/284054_did/.

26 ⁶ See Defendant’s Answer, Ex. A.

1 sewer main (city or service district) would have the best knowledge of where the lateral
2 would be (they installed it or controlled the installation) and they would have the expertise
3 and equipment to perform the locate.”⁷ That accurately describes a public sewer lateral or
4 branch that was installed to the nearest property line along with the public sewer main.

5 **Q. The official quoted in the legislative history excerpt goes on to warn that, “if the**
6 **responsibility for marking remained with the ‘Owner,’ every person in the state of**
7 **Oregon with any kind of service lateral in a right-of-way, would be required to join the**
8 **[Oregon Utility Notification] Center. Hundreds of thousands of homeowners would**
9 **then be forced to join the Center, which would be counter-productive.” Is that a fair**
10 **prediction with regard to the type of private sewer lateral that connects Mr. Donnell’s**
11 **property to the public sewer system?**

12 A. No. In Portland, a sewer service lateral, as the City understands that term to refer to a public
13 lateral or branch, will always be operated, maintained, and, when requested, located by the
14 City. The roughly 106 feet of pipe connecting Mr. Donnell’s property to the sewer service
15 lateral in NE 28th Avenue, by contrast, is a private sewer lateral, regardless of its location
16 within a public right-of-way. The only difference between Mr. Donnell’s connection and the
17 vast majority of residential sewer configurations is that Mr. Donnell’s private sewer lateral is
18 not located on his property. But, to my knowledge, installing a private sewer lateral within a
19 public right-of-way does not convert it into public infrastructure.

20 **Q. The Public Utility Commission does not appear to be suggesting that the City is**
21 **responsible for maintenance of Mr. Donnell’s private sewer lateral. Why won’t the**
22 **City agree to locate the pipe?**

23 A. BES, as the City’s sewer and stormwater utility, is funded by ratepayer money. The use of
24
25

26 ⁷ Staff Exhibit 100 at 10, ll. 5-8.

1 that money is restricted by the City's Charter⁸ and by state law.⁹ BES does not spend
2 ratepayer funds on infrastructure that is not part of the public sewer system. Mr. Donnell's
3 private sewer lateral discharges into the public sewer system via the sewer service lateral in
4 NE 28th Avenue but it is not part of the public sewer system. In addition, BES generally
5 avoids doing anything that could give the impression that it is responsible for private
6 infrastructure. This seems especially important here, since the Public Utility Commission's
7 position appears to be that, "[c]ontrary to any argument BES may make, the wastewater
8 system operated by BES includes underground facilities that connect its main sewer lines to
9 customer premises, even if the facilities are privately owned."¹⁰ It's not clear to me how any
10 outside entity can determine the composition of the City's public sewer system.

21 ⁸ Portland City Charter § 11-302, available at <https://www.portland.gov/charter/11/3/302>
22 ("Proceeds of such charges shall be placed in the Sewage Disposal Fund, and may be expended
for any matter connected with the sewer or sewage disposal or treatment system of the City, and
bonded debt and debt service related thereto.").

23 ⁹ ORS 454.375(1) ("Before any property owner is required to pay for construction of or
24 connection to treatment works constructed pursuant to ORS 454.275 to 454.380, the local
governing body shall file with the Environmental Quality Commission documentation that
25 connection charges and user charges levied for sewer service are based upon the cost of
providing sewer service, according to reasonable cost-of-service sewer utility ratemaking
principles. . . .").

26 ¹⁰ Staff Exhibit 100 at 11, ll. 17-19.

CITY OF PORTLAND

COP EXHIBIT 300

RESPONSE TESTIMONY

July 24, 2023

1 **Q. What is your name, occupation, and business address?**

2 A. My name is Lynda Hofmann. I am a Maintenance Supervisor for the Bureau of
3 Transportation (“PBOT”), City of Portland. My business address is 2929 N Kerby Avenue in
4 Portland.

5 **Q. What was your role in this matter?**

6 A. During the events that led to the Public Utility Commission’s complaint against the City, I
7 held the position of Utility Locates Supervisor, overseeing the PBOT group responsible for
8 performing utility locates for City infrastructure.

9 **Q. Are you familiar with the Oregon Utility Notification Center’s (“the OUNC”)
10 requirements pertaining to utility locates, including its Standards Manual?**

11 A. Yes.

12 **Q. In his staff testimony, Mr. Kevin Hennessy testified as follows:**

13 **Upon receipt of the Excavator’s Notification, the OUNC assigned Ticket**
14 **number 21334979 and notified [the City] of the locate request the same day,**
15 **conveying specific instructions of the request. [The City] did not respond to**
16 **the locate request within two business days as required under OAR 952-001-**
17 **0070, or any time thereafter.¹**

18 **Is it true that the City did not respond to the locate request?**

19 A. I’m not sure what is meant by “respond.” When the City receives a locate request, it is
20 required to do one of the following:

21 (a) Mark within 24 inches of the outside lateral dimensions of both sides of all its
22 locatable underground facilities within the area of proposed excavation. . . .

23 (b) Provide marks to the excavator of the unlocatable underground facilities in the
24 area of proposed excavation, using the best information available including as-
25 constructed drawings or other facility records that are maintained by the facility

26 ¹ Staff Exhibit 100 at 6, ll. 19-22.

1 operator; or

2 (c) Notify the excavator that the operator does not have any underground facilities
3 in the area of the proposed excavation. . . .²

4 In this case, and as explained in my declaration,³ a member of my staff marked the City’s
5 locatable facilities within the proposed excavation area, as communicated to the City by the
6 OUNC.

7 **Q. Did the City provide any kind of notification to the excavator? If not, why not?**

8 A. No. As discussed above, the rules do not require notification to the excavator unless (1) no
9 locatable utilities were marked and (2) no marks were provided to the excavator indicating
10 the likely presence of unlocatable utilities. In this case, the utility locator located all
11 locatable City-owned and -maintained utilities within the excavation area, including the City-
12 owned and -maintained sewer service lateral that serves Scott Donnell’s property.

13 **Q. Were any locatable City utilities present in the alley behind Mr. Donnell’s property at
14 2818 NE Ainsworth Street?**

15 A. No.

25 _____
26 ² OAR 952-001-0070(1).

³ Declaration of Lynda Hofmann in Support of Defendant City of Portland’s Answer.