



DEPARTMENT OF ENVIRONMENTAL SERVICES  
Water, Sewer and Streets Bureau  
4200 28<sup>th</sup> Street South, Arlington, VA 22206  
TEL 703-228-6570 FAX 703-228-6585 [www.arlingtonva.us](http://www.arlingtonva.us)

October 31, 2013



The County will hold a meeting on **Wednesday November 13, 2013 from 7:00 p.m. to 8:30 p.m. at Key Elementary School, 2300 Key Blvd, in the library**, to discuss the private sanitary sewer that runs along the back of your property line. This line is in failing condition and is beyond repair. This is due to the age of the line, its state of deterioration and the physical obstructions that make replacement of this line impractical. It cannot be expected to continue to provide reliable service and the consequences of a failed sewer line would make your home uninhabitable.

The sewer line, built approximately 85 years ago as part of the properties' development in the 900 blocks of North Daniel Street and North Danville Street, is a private line and is failing. The County has periodically cleared the line of blockages so the properties served by it could continue to have sewer service. This cannot continue, however, because of the extent of deterioration and because the County has no rights to operate or maintain this line. The determination that this line is private was made after extensive research by our Real Estate Bureau for easements and other documentation. As a result, you and other residents who are connected to this line will need to take the appropriate action necessary to construct a lateral connecting your home to the existing County-owned sanitary sewers located in both North Daniel Street and North Danville Street.

We strongly encourage you to attend the November 13th meeting where County staff will provide an overview of this situation, the current risks, and the steps required for you to construct a new lateral connecting your home to the County's line in the street in front of your home. Because the relocation of laterals poses unique challenges for each property, County staff is willing to schedule individual follow-on meetings with the affected homeowners to answer additional questions.

If you are unable to attend, require special assistance or have immediate questions, please feel free to contact me at 703-228-6539 or [DHundelt@arlingtonva.us](mailto:DHundelt@arlingtonva.us).

Sincerely,

A handwritten signature in blue ink, appearing to read "Dave Hundelt", written over a horizontal line.

Dave Hundelt  
Chief Operating Engineer



August 15, 2014

I am writing to you about the current situation regarding your home and its connection to the County's sanitary sewer system. The County Board has been briefed on this matter on several occasions by the County Manager and the County Attorney, and this letter has been written at the Board's direction.

The following outlines for you the current situation, what needs to be done, and how the County can help. Your home would be considered uninhabitable under the State's Building Code if it is not connected to a functioning sewer line. As I am sure you are aware, you and a number of your neighbors are in imminent danger of not being connected to a functioning sewer line and, thus, risk having to vacate your homes. We want to make sure you understand both the seriousness of your situation and the County's desire to help as much as it can within the law.

The Current Situation: As outlined in an October 31, 2013, letter to you from the County's Department of Environmental Services, you and many of the homes in the 900 block of North Daniel and North Danville Streets are connected to a terra cotta sewer line that traverses the backyard lot lines of properties along the block. The County has determined that this line, which is not within any public easement and runs under multiple structures, landscaping and trees, is a private common lateral built many years ago and is not owned by the County. While it has been suggested this line may be owned by the County, the County's research, and that provided by neighbors, fails to reveal any conveyance of the line to, or any acceptance of it by, the County. The periodic maintenance and other steps taken by the County to delay the line's eventual failure and the public health emergency that would result, are not evidence that the line is publicly owned. In fact, the lack of any access and maintenance easement or other right on the part of the County to enter on what is private property to repair the line, which is essential to and customary for publicly maintained utility lines, underscores the absence of any public ownership interest in the line. Further, the County's construction of public sewer lines in Daniel and Danville streets without also abandoning the sewer

line in your back yards, which typically would have been done when an old public line is replaced with new lines, indicates the private nature of the line.

By all indications of its physical condition, the terra cotta line will likely fail in the near future. **Because of the likelihood of the line's imminent failure, it is important to move ahead in an orderly fashion, rather than on an emergency basis, to ensure continued sewer service for the affected homes and their ongoing habitability under the Statewide Building Code.**

**Options for Protecting Your Home:** In order to avoid this impending public health situation and to protect your home, we believe there are two courses of action available, however only one option is likely to be feasible for you.

1. The failing line could be replaced with a new, public line, but this is not likely to be practical. It would require the grant by all property owners of a 20 foot wide public sewer easement to the County, and the removal by all property owners of any structures, landscaping, trees, and other encumbrances in the easement area. We do not believe this is a practical or preferable course of action because of the significant disruption to each property served by the new line, the cost, and the potential that not all neighbors would be willing to grant an easement since not all of the neighbors are connected to the terra cotta line.

2. The preferred and likely only viable option is that each affected home could connect to the existing public sewer lines located in Daniel and Danville Streets. This would require each homeowner to install private laterals running from their homes to the public line in the street. The cost of private laterals is always a cost of the property owner and the County is legally prohibited from using taxpayer or rate payer funds for improvements to private property. Other jurisdictions in Virginia that have dealt with this situation have done so in a similar way. However, consistent with our past conversations, the County recognizes that funding the cost of a private lateral to serve a home may be challenging for some homeowners and therefore is prepared to offer a means to manage this cost as detailed below.

**How the County Can Help:** If you and your neighbors are supportive of this latter course of action, the County proposes to move forward in the following manner:

- The County Board is prepared to adopt an ordinance establishing a service district that encompasses all homes that are connecting to the public sewer line in either Daniel or Danville Street. In order to do this, the Board would like to receive a petition or other indication of support from the affected property owners before creating the service district. Once established, the service district would offer each homeowner who must install a private lateral the opportunity to finance the cost of the work on their property up to a specified maximum amount to be determined before establishment of the district. Some may prefer to finance the cost directly themselves. If you choose to participate in the district, you would pay back the district over a period of years with

annually. If the payment is included as a charge on your real estate tax bill, it may be deductible from your Federal income taxes, subject to confirmation by your tax advisor. There may be variations on this general approach that might better address specific concerns you raise, and the County is prepared to discuss them with you.

- Prior to your deciding whether to request the County Board to establish the service district, County staff will be available to meet with all property owners together, to discuss how the proposed course of action would be implemented. At these meetings, the County's professional staff can assess the extent of work that would be needed for each property, and to discuss ways to obtain a qualified plumbing contractor or contractors who have experience constructing and completing lateral connections to sewer lines. There would likely be advantages in using the same contractor and this option should be examined by the homeowners collectively.

The County believes it is important to address this issue as soon as possible. Indeed, we believe there is a serious risk of having your home condemned due to a failed and irreparable sewer line. Please respond no later than September 15, 2014, to let me know whether you are willing to proceed as proposed. Thereafter, a group meeting can be arranged at the earliest possible date.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Schwartz". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Mark Schwartz, Deputy County Manager

Cc: County Board  
County Manager  
County Attorney  
Director, Environmental Services

September 12, 2014

Office of the County Manager  
2100 Clarendon Boulevard  
Suite 302  
Arlington, Virginia 22201  
Attention: Mr. Mark Schwartz, Deputy County Manager

Re: North Danville and North Daniel Streets sewer system

Dear Mr. Schwartz,

This letter is in response to your letter dated August 15, 2014 to Kiran Ahuja and other property owners along North Danville and North Daniel Streets.

I believe little history in regard to this matter is appropriate. The Danville/Daniel Street Block was originally subdivided in October 1910, as Section 2 Moore's Addition to Clarendon Alexandria County, Virginia. The lots in this area were sold and developed with one of the amenities offered the existence of sanitary sewer services rather than outdoor plumbing. Most of the sewers in this area were constructed by the Clarendon Community Sewerage Corporation, which began operation in 1921. Other sewer systems, including one that served parts of East and Central Arlington and Fort Myer, were also constructed during this time.

On April 26, 1930, a Sanitary Sewer District coterminous with the County was created by the Arlington Circuit Court at the request of the County Board of Supervisors. It was followed up with a bond referendum in the fall of 1930 in the amount of \$2,173,089. This bond issue failed to pass at that time.

By the early 1930's, before there was a County sewer system, there were 35 miles of the community sewer serving approximately 5000 people primarily in the eastern part of the county in areas close to Fort Myer. On November 21, 1933, the voters of Arlington approved a \$2,500,000 bond issue to establish a countywide sewer system that incorporated the community sewer systems into the County system and provided for new construction of new facilities as part of that bond issue. The County issued a statement at the time of the sewer bond proposal on what it would cost the taxpayer in that the document. It was clearly stated that the \$1.25 front



foot lateral charge would not be assessed against owners who already had laterals. The County's acceptance of the existing sewer system was based on wholesale purchases or takeovers in bankruptcy of existing community sewer systems. There was never a dedication of easements to the County in individual blocks or lots which would be the case today. The County simply took over the assets and liabilities of community systems, including the sanitary sewer lines of the community's sewer companies. This is why the County cannot find evidence that they ever received a dedication of the sewer line between Daniel and Danville Street. Effectively the County purchased the whole system, which included the individual lines, when they took over the Community sewer system.

Support for this position is found in the attached statement on "sewer projection showing information and estimates of the proposed sewer system for Arlington, Virginia, October 31, 1933", issued from the office of the County Board of Arlington, Virginia. Attached to that document is the map showing the proposed sewer system and showing the present Danville and Daniel sewer line. We've attached a blown up copy of a portion of the line that relates to the property in question that clearly shows that the line between Danville and Daniel Streets as an existing line. In 1933, you will note that the other lines in the area are located within the streets, but this particular line as well as a few others in the area are not. This line is also shown as part of the existing sewer system on a plat prepared by the engineering Department of Arlington County and issued by the Arlington County Board. Similarly, when the County initially adopted its Comprehensive Master Plan for the County in September 1961, part of that plan was the Master Plan for The Sanitary Sewer System in Arlington County, Virginia, (see attached letter of September 28, 1961 from Richard Ames, Secretary of the Arlington County Planning Commission, to Priscilla Ferrari, Clerk of the County Board). The resolution is certified by both Leo Urbanski, Chair of the Arlington County Board and J. Fuller Groom, Chairman of the Planning Commission. This plan was adopted as part of the Master Plan for Arlington County. Attached to that document is a plat, which was adopted as part of the Master plan for Arlington County, showing sanitary sewers in the County as of 1961, the date of adoption. Again, the sanitary sewer in the block between Daniel and Danville Street is shown in its current location. Similarly, in 1971 the Board adopted as set out in the staff report to the Planning Commission dated May 13, 1971 a master Plan for the Sanitary Sewerage System dated March 1971, which again showed the Danville/Daniel lateral in question as part of the county sewer system.

Additionally, the owners of the Danville/Daniel properties have work orders from Arlington County dating back to 1941, confirming that Arlington County has historically treated this sewer system as part of the county system. The property owners also have County water/sewer bills dating back even further showing that the residents of this area have been paying the County for the upkeep and maintenance of this Sanitary Sewer Line.

Your letter says that there is no evidence that reveals any conveyance of the line to the County. The property owner's position is very clear that the County took over the Community Sewer Systems in whole. There was never a conveyance of individual lines. There was a conveyance of the assets and obligations from the private sewer systems. This information is available to the County as the purchaser of these systems. We believe it is the obligation of the County to disclose its purchase agreement with the private sewer systems in Arlington County. The County's direct evidence as shown on the 1931 maps, the 1951 and 1961 maps, and the



1971 maps shows conclusively that the Danville/Daniel sewer line was part of the County system. Apparently, no one in the County has been able to find a copy of the document when they took over the community sewer systems, however the lack of available evidence that is solely in the County's files is not the same as claiming an event did not happen particularly when the evidence is overwhelming that the sewer lines were determined to be part of the County sewer systems at various times throughout the County's history and remain so today. In short, the absence of evidence is not evidence of absence. Indeed, the abundant documentary evidence here shows that the Danville/Daniel sewer line is part of the County system, and therefore the County's responsibility to maintain, repair and replace as necessary.

Based on the evidence outlined above, we request that the County reconsider its position regarding the ownership of the Danville/Daniel sewer line. We would appreciate if the County could provide its response by October 1, 2014.

Sincerely,

BEAN KINNEY & KORMAN, PC

A handwritten signature in blue ink, appearing to read 'Jonathan C. Kinney', is written over the printed name. The signature is stylized with a large initial 'J' and a long horizontal stroke.

Jonathan C. Kinney

JCK:kes

cc: Stephen A. MacIsaac, Arlington County Attorney