



# Memo

To: Mayor and City Council

From: Jim Chandler, Assistant City Administrator and Director, Community & Economic Development

CC: Lesley Riddle, Director, Public Works

Hal Metzler, Deputy Director, Public Works

Taylor Robey, City Planner

Date: October 27, 2022

Re: WSSC Utility Easement Request – Suffragist Pointe Development Plan

Attachments: WSSC Utility Easement Documents

WSSC Utility Map

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The purpose of this memorandum is to provide the City Council with follow-up of a prior request by the Washington Suburban Sanitary Commission, via Werrlein Properties LLC, to grant a sewer and water easement and a recommendation.

## **Summary**

- The City has received a request for the granting of a sewer and water utility easement from the Washington Suburban Sanitary Commission (WSSC) via Werrlein Properties, for the utility to perform maintenance of an existing sanitary sewer, which is 12'-15' below grade.
- There is no recordation of an existing sewer and water or other public utility easement.
- WSSC has determined that if built the proposed development will need to relocate and upgrade the existing sewer line across the property. Werrlein Properties would be responsible for the construction of this new sewer.
- City Staff has reviewed the request, applicable State code pertaining to WSSC 'Right of Entry Procedures' and is recommending denial of this request.

## **Project Location Details**

The City has received a request for the granting of an easement from the Washington Suburban Sanitary Commission (WSSC) via Werrlein Properties.

Utility easements grant the rights to the easement holder, typically a utility company, to access and

control the portion of another person's land that contain or provide access to utility facilities and structures (i.e. utility poles, transformers, overhead or underground electrical lines, antennas, and sewer and water lines). Utility easements are one of the most common types of easements for private property, which generally allow public utility companies access to the property for the purpose of installing, repairing and maintaining the utilities infrastructure. These easements also restrict the rights of the property owner to make changes that affect the easement without the approval of the easement holder.

The subject existing sanitary sewer bisects land located within the northeast quadrant of Driskell Park. The easement being requested by WSSC is for the purpose of performing replacement of an existing sanitary sewer and long term maintenance of the sanitary sewer. The existing sewer network is depicted in green, with the proposed new sewer line depicted in red in Exhibit A:

**Exhibit A**



There is no recordation of an existing public utility easement within public land records and it is unclear as to why no such easement exists for this section of storm drain. WSSC has determined that the existing 13" sanitary sewer requires relocation and that replacement with a **'new 15-inch sewer main that will be**

**connecting to an existing manhole near the property line for the City of Hyattsville property and the entrance R/W line’.**

City staff has met with representatives from WSSC in order to (1) understand the need for the replacement of the pipe and (2) determine whether the pipe can be relocated as to not require an easement. Based on the City’s discussion with WSSC, it has been determined that the sanitary sewer requires relocation, and that relocation to either 40<sup>th</sup> Place, Gallatin Street or Hamilton Street is not feasible.

### **Applicable Maryland State Law**

The Maryland Public Utilities Code Sections 27-101 and 102 grants the Washington Suburban Sanitary Commission (WSSC) broad authority to make improvements or repairs to water and sewer infrastructure within public roadways, with notification to applicable political subdivisions without reference to a requirement for a public utility easement.

*(a) The Commission may:*

***(1) enter on a public roadway to install, maintain, and operate the Commission system; and***

***(2) construct a water main, sewer, or an appurtenance of a water main or sewer in a public roadway in Montgomery County and Prince George’s County, subject to the regulation and permit provisions of §§ 27–102 and 27–108 of this title.***

*(b) When the Commission disturbs a public roadway, the Commission shall:*

***(1) notify the State, county, or municipality that has authority over the public roadway of the Commission’s plans;***

***(2) repair and leave the public roadway in the same or a superior condition to that existing before the public roadway was disturbed; and***

***(3) pay all costs for returning the public roadway to the same or superior condition.***

*(c) In addition to the authority over the construction and location of underground construction in the sanitary district, the Commission may regulate the construction of an overhead line, pole, or other public utility along a public roadway in the sanitary district.*

Full sections of the applicable MD Code are available here:

<https://law.justia.com/codes/maryland/2021/public-utilities/division-ii/title-27/section-27-101/>

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### **Recommendation**

This water and sewer easement public use easement request has been reviewed by the Director and Deputy Director of Public Works and Director for Community & Economic Development, all of whom have concluded that WSSC is legally permitted to perform the replacement of the existing infrastructure without the need for the City Council to grant a public utility easement. For this reason, Staff is recommending denial of this request and authorization to notify all respective parties of the City’s decision.

