

IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

2025 MAY 30 PM 3:07

Board of Health of
Ross County, Ohio
General Health District
150 E. 2nd ST.
Chillicothe, Ohio 45601,

CASE NO.:

25 C1276

FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
JORDAN L. WHEELER

Plaintiff,

vs.

JUDGE: Schmidt

Justin Immell
3333 Owl Creek Road
Frankfort, Ohio 45628

Tara Immell
3333 Owl Creek Road
Frankfort, Ohio 45628

Defendants.

**VERIFIED COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE
RELIEF**

1. The Board of Health of the Ross County Health District is the board of health of a general health district having authority to make such orders and regulations as are necessary for the public health and the prevention, abatement and suppression of nuisances in Ross County, Ohio; and, brings this action pursuant to its power and authority as contained in Chapters 3707, 3709 and 3718 of the Ohio Revised Code.

2. This is an action in injunction to require the Defendant to comply with the order of the Plaintiff to abate the sewage nuisance and treatment system installed at 3333 Owl Creek Road, Frankfort, Ross County, Ohio, located within Twin Township.

3. Defendant(s), at all times material to this Complaint were either owners and/or controllers of the premises located at 3333 Owl Creek Road, Frankfort, Ross County, Ohio (hereinafter the "Site").

4. The Site is located at 3333 Owl Creek Road, Frankfort, Ross County, Ohio, 45628 and is parcel number 351305121000 on the Ross County, Ohio Auditor's records. A copy of the Ross County, Ohio Auditor's Parcel Record Card is attached and incorporated hereto as Exhibit 1.

5. The Site is more fully described in the attached General Warranty Deed, executed August 20, 2013 and filed for record on August 22, 2013 in the Official Records of the Ross County Recorder, Volume 446, Page 2653. A copy of said deed is attached hereto and incorporated herein for all purposes as Plaintiff's Exhibit 2.

6. The Site is located within the Ross County General Health District (hereinafter RCHD), a general health district organized under Chapter 3709 of the Ohio Revised Code.

7. Ohio Revised Code 3718.011 defines public health nuisance and in pertinent, reads:

(A) For purposes of this chapter, a sewage treatment system is causing a public health nuisance if any of the following situations occurs and, after notice by a board of health to the applicable property owner, timely repairs are not made to that system to eliminate the situation:

(1) The sewage treatment system is not operating properly due to a missing component, incorrect settings, or a mechanical or electrical failure. . . .

8. O.R.C. 3718.08, entitled Prohibitions, reads:

"No person shall violate this Chapter, any rule or order issued under it, or any condition of a registration permit issued under rules adopted under it."

9. Pursuant to Ohio Administrative Code, rule 3701-29-06(C), adopted by the Director of Health, pursuant to R.C. 3718.02, and effective January 1, 2015, all sewage and human excreta

generated from within a dwelling or building shall be conveyed to an approved sewage treatment system (STS) or a sanitary sewerage system.

10. Ohio Administrative Code, rule 3701-29-06(B), adopted by the Director Health of Health pursuant to R.C 3718.02 and effective January 1, 2015, in pertinent part, reads:

... (B) A STS or GWRS, as applicable, shall not be installed, altered, or operated without an approved permit from the board of health.

(1) A board of health shall not permit or otherwise authorize the use of a STS or GWRS that would violate the conditions of these rules or is not in compliance with paragraph (C) of rule 3701-29-02 of the Administrative Code.

(2) The STS or GWRS owner is responsible for ensuring that a STS or GWRS is maintained in proper working condition.

(3) The STS or GWRS owner shall comply with the conditions specified in an installation, alteration, and/or operation permit issued by the board of health, including, but not limited to requirements for securing a service contract and other maintenance requirements.

11. Ohio Administrative Code, rule 3701-29-06(E)(3), adopted by the Director of Health pursuant to R.C. 3718.02 and effective January 1, 2015, in pertinent part, reads:

(E) A STS or GWRS shall comply with the following performance requirements and prohibitions:

(1) Shall be maintained in proper working condition.

(2) Shall comply with the conditions specified in an installation and/or operation permit issued by the board of health.

(3) No STS or GWRS or part thereof shall create a public health nuisance, as defined in section 3718.011 of the Revised Code, or safety hazard. No STS or GWRS or part thereof shall cause an exceedance of water quality standards for surface water or drinking water.

14. The operation of the STS located at the Site also violates Section 3701-29-06 (C), of the Ohio Administrative Code.

15. On June 20, 2024, Plaintiff issued an Order of the Board of Health and Referral to Prosecution ("The Order").

20. The Board of Health of the Ross County Health District further passed Resolution # 43-24 which stated that the nuisance condition still exists and is in violation of Ohio Revised Code 3718.011 and Ohio Administrative Code 3701-29-06 (E) (3).

21. Resolution #43-24 further ordered Defendant to abate, on or before July 22, 2024, the following nuisance conditions:

1. Sand filter is holding effluent. Remove all debris from the sand filter and replace the sand and gravel with approximately 1,800 pounds of #57 washed gravel on the bottom and 3,000 pounds of #9 grit on top.

2. Ensure there is a 12"X12" splash pad under the inlet pipe in the sand filter.

22. A copy of said Order is attached hereto and incorporated herein as Exhibit 3.

23. On dates as yet ascertained by Plaintiff, but prior to February 6, 2024, Defendant has maintained a sewage nuisance on the Site. Since February, 2024 and continuing to the present, Defendants have failed to remedy the situation.

FIRST CLAIM

24. The allegations of paragraphs one (1) through twenty-three (23) of Plaintiff's complaint are hereby incorporated into the First Claim of this complaint as if fully restated herein.

25. Ohio Revised Code Section 3709.21 authorizes a general health district to make orders and regulations necessary for the public health and to prevent, abate and suppress nuisances within its jurisdiction.

26. The June 20, 2024 public health order issued by the Ross County General Health District was issued pursuant to Ohio Revised Code Section 3709.21.

27. Despite having been ordered by the June 20, 2024 public health order to abate the sewage nuisance, the Defendants have failed to abate.

28. Ohio Revised Code Section 3709.211 provides that when an order of the board of health of a general health district made pursuant to Section 3709.21 of the Ohio Revised Code is not complied with in whole or in part, the board may petition the court of common pleas for injunctive or other appropriate relief requiring all persons to whom such order of the board is directed to comply with such order.

29. The actions described in the paragraphs above constitute a violation of valid orders and regulations of the Board of Health of the Ross County General Health District for which Plaintiff is entitled to injunctive relief to abate the said public nuisance at the Site.

SECOND CLAIM

30. The allegations of paragraphs one (1) through twenty-nine (29) of Plaintiff's complaint are hereby incorporated into the Second Claim as if fully restated herein.

31. Ohio Revised Code Section 3707.01(B) The board of health of a city or general health district shall abate and remove all nuisances within its jurisdiction. It may, by order, compel the owners, agents, assignees, occupants, or tenants of any lot, property, building, or structure to abate and remove any nuisance therein, and prosecute such persons for neglect or refusal to obey such orders.

32. The Site owned by Defendants was found to be a public health nuisance, by the June 20, 2024 public health order.

33. Despite having been ordered by the June 20, 2024 public health order of the Ross County General Health District to abate the nuisance at the Site, Defendants have failed to abate the nuisance in direct violation of the public health order.

34. Ohio Revised Code Section 3707.21 provides that when an order of the board of health of a general health district made pursuant to Section 3707.01 of the Ohio Revised Code is not complied with in whole or in part, the board may petition the court of common pleas for an injunction requiring all persons to whom such order of the board is directed to comply with such order.

35. The actions described in the paragraphs above constitute a violation of valid orders and regulations of the Ross County General Health District for which Plaintiff is entitled to injunctive relief to abate the nuisance at the Site.

THIRD CLAIM

36. The allegations of paragraph one (1) through thirty-five (35) of Plaintiff's complaint are hereby incorporated into the Third Claim of this complaint as if fully rewritten herein.

37. Ohio Revised Code section 3718.10 provides that the prosecuting attorney of the county where a violation has occurred or is occurring shall prosecute to termination or bring an action in injunction or other appropriate relief against any person who is violating or has violated this chapter, or any rule or order issued under it.

38. ORC 3718.10 further states that upon a finding that a person has intentionally violated that chapter, a rule adopted, or order issued under it, the court may assess a civil penalty of not more than \$100 for each day of violation against the person.

FOURTH CLAIM

39. The allegations of paragraph one (1) through thirty-eight (38) of Plaintiff's complaint are hereby incorporated into the Third Claim of this complaint as if fully rewritten herein.

40. The actions described in the paragraphs above have caused an unreasonable interference with the health, welfare and safety of the neighboring public and constitute a common law public nuisance, for which Defendants are subject to injunctive relief prohibiting the creation and continuance of said nuisance.

WHEREFORE, Plaintiff specifically requests that this Court:

- (A) Issue a preliminary and permanent injunction pursuant to the provisions of the Ohio Revised Code, Section 3707.021, Section 3709.211, Section 3718.10 and/or any other appropriate laws, prohibiting Defendant from adding to or further exacerbating the unsanitary and unsafe health conditions at the Site.
- (B) Issue a preliminary, permanent and mandatory injunction, pursuant to Ohio Revised Code Section 3707.021, Section 3709.211, Section 3718.10 and/or any other appropriate laws, ordering Defendants to abate and correct the unsanitary and unsafe health conditions and violations at the Site cited in Ross County, General Health District June 20, 2024 public health order.
- (C) Retain jurisdiction of the Site for the purpose of making necessary orders in the future to carry out this Court's judgment.
- (D) Impose civil penalties not to exceed \$100 per day of violation.

- (E) Order Defendants to pay all costs of this action and to pay Plaintiff any fees and/or costs it incurred herein by virtue of having to commence and prosecute this action.
- (F) Grant any other relief as may be justified under the circumstances and equities of this case.



Gabriel McCoard (0078966)
Assistant Prosecuting Attorney
Ross County, Ohio
33 W. Main St., Ste. 200
Chillicothe, Ohio 45601
740-702-3115
prosecutor@rosscountyohio.gov

INSTRUCTIONS FOR SERVICE

You are instructed to make Certified Mail Service, Return Receipt Requested, and personal service upon the Defendant at the address stated.



Gabriel McCoard
Assistant Prosecuting Attorney

IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

Board of Health of
Ross County, Ohio

CASE NO.:

Plaintiff,

JUDGE:

vs.

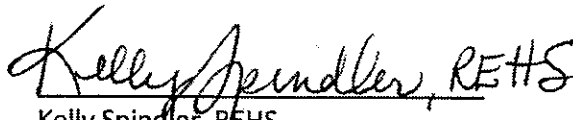
Justin Immell, Et. Al.

Defendants

AFFIDAVIT OF PLAINTIFF

STATE OF OHIO, COUNTY OF ROSS, SS:

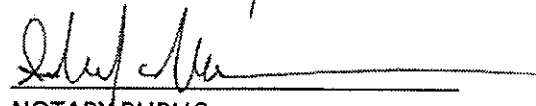
Kelly Spindler, Director of Environmental Health for the Ross County General Health
District, being first duly cautioned and sworn, states that the facts as set forth in the above
Complaint are true and correct.


Kelly Spindler, REHS
Director of Environmental Health

Sworn to and subscribed in my presence this 29 day of May, 2025



Gabriel Jordan McCoard, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.


NOTARY PUBLIC


Parcel # 351305121000

Map #: 83

5/20/2025



Jeff Lehner
County Auditor
Ross County, Ohio
auditor.rosscountyohio.gov

MOST RECENT PHOTO		LEGAL	
		OWNER	IMMELL, JUSTIN M & TARA E JTLE
		ADDRESS	3333 OWL CREEK RD OH
		DESCRIPTION	3333 OWL CREEK RD
		SCHOOL DIST	PAINT VALLEY LSD
		TAX DIST	35
		ACREAGE	6.0900
		VALUATION	
		APPRAISED	ASSESSED
		LAND	\$33,260.00 \$11,640.00
		IMPROVEMENTS	\$197,470.00 \$69,110.00
		CAUV	\$0.00 \$0.00
		TOTAL	\$230,730.00 \$80,750.00
351305121000		07/25/2018	

TAXES		SPECIAL ASSESSMENTS	
TAXABLE VALUE	\$80,750.00	COUNT	0
ROLLBACKS	Owner Occupied & Non-Business	DELINQUENT / BALANCE	\$0.00 / \$0.00
HALF (1ST / 2ND)	\$1,419.75 / \$1,419.75	TOTAL / BALANCE	\$0.00 / \$0.00
YEAR (TOTAL / BALANCE)	\$2,839.50 / \$1,419.75		

MOST RECENT SALES				
DATE	BUYER	SELLER	PRICE	VALIDITY
8/22/2013	IMMELL, JUSTIN M & TARA E JTLE	MCALLISTER, PAUL D & MIC	\$148,000.00	True
9/30/2002	MCALLISTER, PAUL D & MIC		\$180,000.00	True

LAND						IMPROVEMENTS		
CODE	FRONTAGE	DEPTH	ACREAGE	SQFT	VALUE	DESCRIPTION	BUILT	DIMS
SM	0	0	5.0900	0	\$17,640.00	Shed	1998	16x12
HS	0	0	1.0000	0	\$15,620.00			

RESIDENTIAL			
Building	BUILT 1991	Baths (Full / Half)	2 / 0
Sq Ft	2,100	Rooms (Bedroom/Total)	0 / 5
Basement (Finished/Total)	0 sqft / 1,400 sqft	Stories	1H
Air Conditioned	2100 sqft	Unheated	0 sqft
External Wall	Stucco	Fireplaces	0



SD
2pg
28
KL
SW

TRANSFERRED

AUG 22 2013

Thomas M. Spengel, Jr.
AUDITOR ROSS COUNTY, OHIO

This Conveyance has been examined and the
Grantor has complied with Section 319.222 of
the Revised Code.

FEE \$ 148.00 912

EXEMPT

Thomas M. Spengel, Jr., County Auditor



BK: 446 PG: 2653

201300007336
Filed for Record in
ROSS COUNTY, OH
KATHY DUNN, RECORDER
08-22-2013 At 01:09 PM.
SD 28.00
OR Volume 446 Page 2653 - 2654

Return Document to: Title First Agency, Inc., 250 E. Broad Street - Lower Level, Columbus, Ohio 43215
Order No: 1547091

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS; That Paul D. McAllister and Michelle A. McAllister, Husband and Wife, of Ross County, State of Ohio for Ten Dollars (\$10.00) and other good and valuable consideration paid, grants with general warranty covenants, to Justin M. Immell and Tara E. Immell, Husband and Wife, for their joint lives, remainder to the survivor of them, the following Real Property:

Situate in VMS #9482, Twin Township, Ross County, Ohio and being a part of the tract conveyed to Richard P. and S. Marjorie Johnson by William Ray and Alice Marie Solis by Warranty Deed dated May 1, 1975 and recorded in Volume 398, page 696 Ross County Deed Records and also a part of Tract 10 conveying the one-half interest of Richard P. Johnson to Richard P. Johnson, Jr. by Certificate of Transfer dated June 24, 1976 and recorded in Volume 407, Page 685 Ross County Deed Records.

Beginning at a point in the centerline of Owl Creek Road (County Road 109), said point being in the NE corner of Roger A. and Carol D. Bayse (Volume 492, Page 534);

Thence with the centerline of Owl Creek Road and the north line of Bayse, N. 76 deg. 16' 32" W., 131.24 feet to a point;

Thence continuing with the centerline of Owl Creek Road and the north line of Bayse, N. 79 deg. 15' 31" W., 68.92 feet to a point;

Thence with a new line through the tract of which this is a part, passing an iron pin set at 20.00 feet, N. 14 deg. 28' 05" E., 1353.15 feet to a set iron pin;

Thence with the south line of Nellie Ann Storts (Volume 465, page 361), S. 63 deg. 07' 56" E., 204.78 feet to an iron pin set in a chestnut oak stump;

Thence with the west line of Delbert W. and Mildred Kinnamon (Volume 293, Page 317) passing an iron pin set at 1282.99 feet, S. 14 deg. 28' 05" W., 1302.99 feet to the point of beginning, containing 6.09 acres.

Bearings are based upon a solar azimuth shot at 18:46:05.18 Coordinated Universal Time on March 9, 1989. Calculations are based upon the hour angle method of computation.

All iron pins are capped, 5/8" diameter, 30" long, reinforcing steel bars.

As surveyed by Richard P. Johnson, Jr., Registered Surveyor 6822 on July 22, 1991.

Parcel No. 35-1305121-000

Known as: 3333 Owl Creek Road, Frankfort, Ohio 45628



13-5-121

TITLE FIRST

DESCRIPTIONS IDENTIFIED FOR TAX MAP
TRANSFER ONLY, ROSS CO. ENGINEER
BY [Signature]



BK: 446 PG: 2654

Tax Mailing Justin M. and Tara E. Immell
Address: 3333 Owl Creek Road
Frankfort, OH 45628

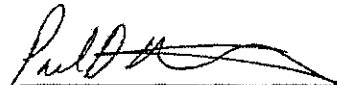
Subject to conditions, restrictions and easements, if any, contained in prior instruments of record.

Except taxes and assessments, if any, now a lien and thereafter due and payable.

Prior Instrument Reference: Volume 220, Page 2362 of the Official Records of Ross County, Ohio.

Executed this 20th day of August, 2013.

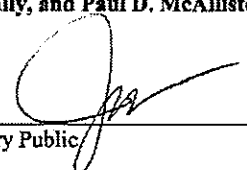
201300007336
TITLE FIRST AGENCY
BOX


Paul D. McAllister
Michelle A. McAllister by Paul D. McAllister, her attorney in fact

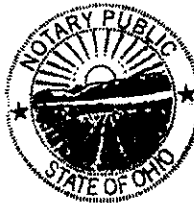
Michelle A. McAllister by Paul D.
McAllister, her attorney in fact as
recorded in Vol. 446 Page 2650
R.C.O.R

State of Ohio, Ross County, SS:

The foregoing instrument was acknowledged before me this 20th day of August, 2013 by Paul D. McAllister, Individually, and Paul D. McAllister as attorney in fact for Michelle A. McAllister.


Notary Public

This instrument prepared by:
Paul C. Thompson, Esq.
2641 W. Market St.
Fairlawn, OH 44333



JULIA S. RIEZ, Notary Public
In and for the State of Ohio
My Commission Expires Aug. 23, 2015

Return Document to: Title First Agency, Inc., 250 E. Broad Street - Lower Level, Columbus, Ohio 43215



ENVIRONMENTAL HEALTH
150 E. Second St.
Chillicothe, OH. 45601
Phone: 740.775.1158 Fax: 740.779-9615

ORDER OF THE BOARD OF HEALTH AND REFERRAL TO PROSECUTION

June 25, 2024

Justin Immell
3333 Owl Creek Road
Frankfort, OH 45628

RE: SEWAGE NUISANCE
3333 Owl Creek Road
Frankfort, OH 45628

Dear Mr. Immell:

The Ross County Health District Environmental Division has given you several notices of violation regarding the sewage nuisance complaint on your property at the address listed above, parcel # 351305121000. As of this date, the nuisance condition still exists, and the property continues to be in violation of Ohio Revised Code section 3718.011(A)(1) and Ohio Administrative Code section 3701-29-06(E)(3).

On June 20, 2024, the Ross County Health District Board of Health passed Resolution #43-24 ORDERING you to abate and remove the following nuisance conditions:

1. Sand filter is holding effluent. Remove all debris from the sand filter and replace the sand and gravel with approximately 1,800 pounds of #57 washed gravel on the bottom and 3,000 pounds of #9 grit sand on top.
2. Ensure there is a 12"X12" splash pad under the inlet pipe in the sand filter.

You must comply with this order by July 22, 2024. A re-inspection of the property will be performed to verify compliance on or thereafter that date. Failure to comply with this order by this date will result in this case being referred to the Ross County Prosecuting Attorney for further action.

This Order may be appealed to the Board of Health by requesting a hearing within seven (7) days of receipt of the Order. The request for a hearing shall be delivered to the Board of Health in writing and addressed to the attention of the Health Commissioner.

If you have any questions, please contact Kelly Spindler, REHS, Director of Environmental Health Monday-Friday, 8 a.m. to 4:30 p.m. at 740-775-1158.

Sincerely,

Kelly Spindler, BA, REHS
Director of Environmental Health

Certified Mail # 9589 0710 5270 0932 0785 32

Background Information: The Director of Environmental Health and Investigating Environmental Health Technician have reviewed the sewage nuisance on the property owned by Justin Immell, 3333 Owl Creek Road, Frankfort, OH 45628, Twin Township, Parcel # 351305121000.

The conditions that exist are in violation of ORC 3718.011 (A)(1) which states:

(A) For purposes of this chapter, a sewage treatment system is causing a public health nuisance if any of the following situations occur and, after notice by a board of health to the applicable property owner, timely repairs are not made to that system to eliminate the situation:

- (1) The sewage treatment system is not operating properly due to a missing component, incorrect settings, or a mechanical or electrical failure.

and OAC 3701-29-06 (E)(3) which states in part:

No STS or GWRS or part thereof shall create a public health nuisance, as defined in section 3718.011 of the Revised Code or safety hazard for the sewage nuisance.

RESOLUTION # 43-24

THE ROSS COUNTY BOARD OF HEALTH, based upon the evidence given, has determined that a violation of the codes listed above exists and hereby issues a public health order to abate the nuisance by July 22, 2024. If the order is not complied with within the time given, it will be forwarded to the Ross County Prosecutor's office for further action.

MOTION BY: Dianna Gray and seconded by Brandy Spaulding. All ayes, motion passed.

