

**TOWNSHIP
OF
LOWER MERION**

MONTGOMERY COUNTY



DEPARTMENT OF BUILDING AND PLANNING

75 E. Lancaster Ave.
Ardmore, PA 19003-2376
Telephone: (610) 645-6200
FAX: (610) 649-9598

February 8, 2017

James A & James M & John H Doherty
4414 82nd Street
Suite 212-159
Lubbock, TX 79424

James Doherty
519 W Montgomery Avenue
Apartment # 2
Haverford, PA 19041

RE: 256 W Montgomery Avenue Apartments 6 & 12
Haverford, PA

Dear Messrs. Doherty:

The Township was recently notified of a plumbing leak at the referenced property. An inspection was performed on January 27th to verify the plumbing problem and any damage resulting from this leak. The inspection confirmed that the water supply to the toilet and shower to apartment 12 was turned off and that there was evidence of a water leak from the upstairs apartment into the bathroom of apartment 6 directly below. Ms. Doherty was verbally notified of these violations and the requirement to correct them.

I have since received two letter from Ms. Doherty in response to our verbal order to make the repairs. The letters do not indicate when, if ever, the plumbing problems will be corrected. In her letter of January 30, 2017 she included a copy of the Township plumbing permit application indicating that the plumbing contractor would be "determined". As of this date the Township is not in receipt of a plumbing permit application signed by a master plumber who is licensed with Lower Merion Township as a Master Plumber that explains the type of work to be performed with the plumbing permit application fee.

The most current letter dated February 2, 2017 informed me of a PA Supreme Court case *Bruno v Erie Insurance Company* case. However, nothing in the letter addresses the issue at 256 W Montgomery Avenue and the steps you intend to take to correct the plumbing problem. The initial call regarding the toilet not working because of lack of water was received on January 26, 2017 yet the Township has not been informed of corrective measures.

Based on the information we have received today you are in violation of Lower Merion Township Code Chapter 92-1, 2009 International Property Maintenance Code Section 504.1,

256 W Montgomery Avenue
Haverford, PA

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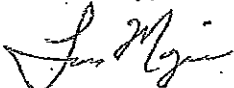
504.3, 505.1, and 503.3. You have five (5) days to correct the violation. Your failure to comply with this notice within the time frame specified may subject you to a complaint being filed with the local district justice seeking fines of up to a \$1,000 per day until the violation is corrected as authorized under Lower Merion Township Code Chapter 92-2, Section 106.4.

If you have concerns for the tenants wellbeing and health while the plumbing issue is being repaired, you should consider moving the tenants to another unit in your building or to another property until the required repairs are completed.

If you do not agree that these actions are required, you may make a written appeal, within ten (10) days of this notice, to the Building & Planning Committee of the Board of Commissioners. You shall have the right to appear and be heard, if such right is requested in the written appeal. The cost for this appeal is \$200.00, due at time of application. This appeal is authorized under Chapter 92-2, Section M.

Please provide an e-mail address or fax number for future corresponds.

Sincerely,



Louis Maguire
Housing Officer

LM:mk

Mary Lou Doherty, Esquire, 20568
Pro Se and Attorney for owners of 256 W. Montgomery Avenue
P.O. Box 12
Haverford, Pa. 19041 610-853 3870

APPEAL OF OWNERS AND OR AGENT OF 256 W. MONTGOMERY AVENUE
TO BUILDING AND PLANNING COMMITTEE
OF THE BOARD OF COMMISSIONERS,
LOWER MERION TOWNSHIP

1. Pursuant to Section 111.1 adopted by Lower Merion Township as part of Chapter 92, Property Maintenance, Mary Lou Doherty, Esquire, hereby takes the following appeal and requests the right to appear and be heard on behalf of persons directly affected by the letter of Housing Officer Louis Maguire dated February 8, 2017.
2. On or before June 16, 2010, the 2009 International Property Maintenance Code (hereinafter known as "IPMC"), explicitly provided in Section 107 Notices and Orders the following in Subsection 107.2 Form:

"Such notice prescribed in Section 107.1 shall be in accordance with all of the following:

 1. Be in writing,
 2. Include a description of the real estate sufficient for identification,
 3. Include a statement of the violation or violations and why the notice was being issued,
 4. Include a **correction order** allowing a **reasonable time** to make the **repair and improvement required to bring the dwelling unit or structure into compliance** with the provisions of this code.
 5. **Inform the property owner of the right to appeal.**" (Emphasis added.)

3. Further, on or before June 16, 2010, the 2009 International Property Maintenance Code, provided in Section 107 Notices and Orders the following in Subsection 107.3 Method of Service:

“Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally,
2. Sent by certified mail or first class mail addressed to the last known address or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.”

4. Although the Board of Commissioners explicitly deleted the foregoing statewide Sections 107.2 and 107.3; nevertheless, afterwards the Board of Commissioners proceeded to adopt a version of its own, known as Section 106.2 Notice of Violation.

5. The provisions of Lower Merion’s revised Section 106.2 Notice of violation adopted by its Board of Commissioners provide in pertinent part as follows:

“Whenever the Code Official observes an apparent or actual violation or has reasonable grounds to believe there is a violation of a provision of this Code or other codes or ordinances **under the Code Official’s jurisdiction**, the Code Official shall prepare a **written notice of violation**. This notice may be by citation or may be a **notice describing the condition deemed unsafe and specifying time limits for the required repairs or improvements to be made to**

render the building structure or premises safe and secure. ...If the Code Official elects to proceed by written notice, the written notice of violation of this Code shall be served upon the owner, a duly authorized agent or upon the occupant or other person responsible for the conditions under violation...or by affixing a copy thereof in a conspicuous place at the entrance door or avenue of access...and such procedure shall be deemed the equivalent of **personal service."**
(Emphasis added.) .

6. As a consequence, Lower Merion's Board of Commissioners not only incorporated in its version of Section 106.2 Notice of Violation, the substance of the statewide Sections 107.2 and 107.3 pertaining to giving "written notice of violation", but also raised: "the Code Official's jurisdiction" as well as stating specific requirements for determining "personal service".
7. Thus, on or before January 27, 2017, Robert Duncan, who acts as Director of Building Regulations for Lower Merion Township and is responsible for administering, inspecting, and enforcing the 2009 IPMC as adopted by the Board of Commissioners as well as each statewide building code including the statewide plumbing code, as adopted by the State legislature, should have reviewed Chapter 92 Housing Property Maintenance, especially, to determine if his subordinate, Louis Maguire, was complying with its provisions relating to giving "written notice of violation" and if Louis Maguire had the requisite "Code Official's jurisdiction" to administer, inspect, and enforce the specific provisions of 2009 IPMC, which he was then seeking to administer, inspect, and enforce.

8. If Robert Duncan had done so, he would have known that Housing Officer Louis Maguire's verbal notices made on or before February 8, 2017 did not comply with the provisions of Section 106.2 Notice of Violation which explicitly provided for written notice.
9. And if Robert Duncan had done so, he would have known that the 2009 IPMC contained Chapter 8 Referenced Standards, which specifically referenced Section 505.1 which Housing Officer Louis Maguire was specifically seeking to enforce through his verbal notices. (See list of alleged violations beginning at the bottom of page 1 and continuing onto the top of page 2 of the February 8, 2017, Letter signed by Louis Maguire).
10. Thus, if Robert Duncan had been properly supervising Housing Officer Louis Maguire on or about January 27, 2017, he would have known among other things, especially in light of the reference to statewide codes in Section 505.1 that Housing Officer, Lou Maguire, lacked jurisdiction to act as the Code Official in this matter, inasmuch as he was not certified by the Pennsylvania Department of Labor and Industry to administer, inspect, and enforce statewide codes pertaining to plumbing systems in multi-unit buildings and Robert Duncan would have instructed Louis Maguire not to proceed.
11. However, even though on or before February 8, 2017, Robert Duncan knew or should have known that by purporting to issue verbal notices of violation pertaining to plumbing systems in the apartment building at 256 W. Montgomery Avenue, Housing Officer Lou Maguire was not complying with the explicit provisions of Chapter 92, especially Section 106.2 Notice of Violation, and by purporting to

administer, inspect and enforce especially Section 505.1, Louis Maguire was acting in disregard of statewide certification requirements applicable to persons acting as Code Officials; nevertheless, Robert Duncan acquiesced in the ongoing activities of Housing Officer Louis Maguire.

12. Moreover, if Robert Duncan had been properly supervising Housing Officer Lou Maguire prior to February 8, 2017, he would have known of the practical difficulties involved in carrying out the verbal directives of Housing Officer Lou Maguire.

13. On or before February 8, 2017, Robert Duncan should have known that the 2009 IMPC, Section 105 Approval, Subsection 105.1 provides in relevant part:

“[w]henver there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications”.

14. And prior to February 8, 2017, Robert Duncan should have recognized as a result of the “practical difficulties” involved in carrying out Lou Maguire’s verbal Orders; he should not disregard the provisions of Section 105.1 Modification and continue to acquiesce in Housing Officer Louis Maguire purporting to carry out provisions of the 2009 IPMC in disregard of making modifications to Louis Maguire’s verbal orders that would lessen occupants’ exposure to bodily harm.

15. Moreover, if Robert Duncan had been properly supervising Housing Officer Louis Maguire and had reviewed a draft of the Letter of Louis Maguire before he signed it on February 8, 2017, Robert Duncan would have known Louis Maguire should not have signed and sent his letter of February 8, 2017 without at least a.) describing the condition deemed unsafe, b.) modifying the **time limits**, and c.) **specifying the**

required repairs or improvements so as to preclude exposing occupants to risk of harm.

16. However, Robert Duncan has not taken affirmative action to properly supervise Housing Officer Louis Maguire and has instead acquiesced in his disregarding statewide laws and regulations pertaining to certification of Code Officials to administer, inspect, and enforce plumbing codes and in his disregarding provisions of Chapter 92 pertaining to written notice.
17. Moreover, Robert Duncan did not take any affirmative action to modify the orders of Louis Maguire even though he knew they were “impractical” and exposed the occupants to risk of harm.
18. Further and importantly, Robert Duncan has not taken any affirmative action to properly serve the so-called enforcement letter of February 8, 2017 even though the letter conspicuously shows on its face that Housing Officer Louis Maguire did not comply with the provisions of Chapter 92, pertaining to Notice of Violation.
19. Finally, in his Letter of February 8, 2017, contrary to Chapter 167 Fees, Section A167-1 Schedule of Fees, sub Section Chapter 92, Housing- Property Maintenance adopted 1-19-2014 by Ord. No. 4036, Housing Officer Louis Maguire baldly asserts in his Letter of February 8, 2017, the cost of taking an appeal is \$200.00.
20. Thus, as a result of the foregoing failures of Robert Duncan to properly supervise Housing Officer Louis Maguire and of Lower Merion Township to properly train Louis Maguire, the owners of 256 W. Montgomery Ave. have been prejudiced in this matter and forced to defend allegations of violating verbal orders as well as the so-

called written notice of February 8, 2017, all of which should have been modified to lessen exposing the health, life and fire safety of the tenants to risk of harm.

21. As a result of the foregoing, Lower Merion's Code Official Robert Duncan and its Housing Officer Lou Maguire have caused the Owners of 256 W. Montgomery Avenue to incur unnecessary expense to defend themselves including taking this appeal, and to suffer unnecessary loss and damage to their reputations.

WHEREFORE, it is respectfully requested the foregoing Letter of February 8th, 2017 be stricken and the unauthorized practices of Lower Merion Township's officials be discontinued.

AFFIDAVIT

The foregoing averments are verified as having been made based upon my knowledge, information, and belief subject to the penalties of unsworn statements to public authorities.

Respectfully submitted,

Mary Lou Doherty, Esquire

I confirm receipt of the foregoing on February 13, 2017 together with a check for \$200, paid under protest.

Lower Merion Township Secretary