

IN THE MATTER OF:
JUAN RAMON VIEGO
417 Ruby Avenue
Halethorpe, Maryland 21227

Petitioner

RE: DECISION OF DEPARTMENT OF
PUBLIC WORKS /SEWER ASSESSMENT

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO.: CBA-11-005

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OPINION

This case comes as a result of Petitioner, Juan Viego filing a Petition appealing the September 17, 2010 letter of Edward C. Adams, Director of the Department of Public Works, reducing the sewer service from \$418.67 to \$157.92 for the 2010-2011 tax bill for 417 Ruby Avenue in Baltimore County. A bearing was held before the Board on January 11, 2011. The County was represented by Nancy C. West, Assistant County Attorney, and Michael Field, County Attorney. Petitioner was *pro se*.

BACKGROUND

As stated in the July 1, 2010 Executive Order of the Baltimore County Executive regarding Metropolitan District Charges, the County Executive is empowered to make and fix an annual charge upon every property having a connection with the water and sewer system in the Metropolitan District, such charges to be known as annual water distribution charges and sewer service charges in the manner set forth in Article 20 (Metropolitan District).

TESTIMONY AND EVIDENCE

After receiving his tax bill referencing his sewer service charges of \$70.00 for 2010, Mr. Viego testified that he contacted the Baltimore County Department of Public works to dispute his Sewer Service Charge for 4717 Ruby Avenue. He further testified that after having a phone conversation with a Department Of Public works employee, his charge was then increased by \$348.67. After further conversation with staff at the Department of Public Works and correspondence to Director of Public

Works, Edward C. Adams, on August 30, 2010, Mr. Viego received a letter from Mr. Adams stating the following:

"I have reviewed your account with our Metropolitan Financing and Petitions Office. Your sewer service was increased based on inconsistent low meter readings and a note in the city's system that the meter may not be registering. I recommended that you contact Baltimore City at 410 396-0170, to have your meter checked. The sewer service charge has been decreased from \$418.67 to \$157.92 for the 2010 tax bill. The adjusted sewer service charge was based on the average historical water consumption. County Executive Order dated July 1, 2010 states "in instances when a meter malfunctions, there is a lack of meter readings, erroneous readings or when users fail to submit necessary data, the Director of Public Works may, in his sole discretion, estimate consumption based on prior history. Where adequate history is not available, the charge shall be based on the fixture rate."

Testimony was heard from Baltimore County Employees, Bobbie Rodriguez and Stephen Hinkel regarding their investigation of Mr. Viego's past water consumption and his previous Sewer Service Charges. Mr. Hinkel testified that per his experience the minimum quarterly consumption of a residence is 40 units per year. Forty (40) units would generate a Sewer Service Charge of \$157.92 (See County Exh. 1). Consequently, Mr. Viego was billed \$157.92 for his sewer service charge as reflected in Mr. Adams' August 30, 2010 correspondence.

Additional testimony was received from Mr. Viego regarding his personal water usage, as well as meter readings taken by him personally, after Baltimore City had replaced his meter. Though no witnesses appeared from Baltimore City, the parties agreed that a new meter had been installed for 4717 Ruby Avenue in October of 2010. No testimony was received stating that the previous meter was dysfunctional.

Mr. Viego testified that he vigilantly conserved water and was rarely home, due his work and school schedule. Mr. Viego also testified that he often showered at the gym.

In documents provided by the County and Mr. Viego; judging from the meter readings taken from May of 2017 to November of 2010, the readings for Mr. Viego's residence never exceeded 426 and were as low as 416. As evidenced by Appellant's Exhibit 9, Mr. Viego took a photograph on January 1, 2011

of his water meter that reflected his consumption since his meter was replaced by Baltimore City in October of 2010. This reading reflected that Mr. Viego's consumption has not greatly deviated from his consumption habits prior to the meter being replaced.

DECISION

The County's argument that Mr. Viego's extraordinarily low water meter readings are highly irregular, is well taken. It is clear from these readings that something is either dysfunctional with the meter reading equipment at 4717 Ruby Avenue or that Mr. Viego's efforts at water consumption are far beyond the norm. As is clearly stated in the County Executive Order of the Baltimore County Executive dated July 1, 2010 :

“in instances when a meter malfunctions, there is a lack of meter readings, erroneous readings or when users fail to submit necessary data, the Director of Public Works may, in his sole discretion, estimate consumption based on prior history. Where adequate history is not available, the charge shall be based on the fixture rate.”

This Executive Order of the Baltimore County Executive gives the Director of Publics Works wide discretion in adjusting Sewer Service Charges; however, that discretion is not without qualification. The specific instances in which the Director Of Public Works can intervene in such a situation are clearly enumerated.

In this case, it is clear that there is no lack of meter readings and that Mr. Viego has not failed to submit the necessary data. While a few readings from Mr. Viego's residence, viewed in isolation, may seem erroneous, the fact that they are consistent for the past several years detracts from their erroneous nature. The County has implied that due to the fact that the meter for 4717 Ruby Avenue was replaced in October of 2010, it must have been malfunctioning. Unfortunately, there has been no evidence presented to the Board that the prior meter actually malfunctioned. Conversely, the evidence submitted to the Board seems to intimate that the new meter is now taking readings at Mr. Viego's residence that are consistent with readings taken from the former meter.

While recognizing the Director of Public Works' discretion in instances such as the case at bar,

this Board is not satisfied that a contingency as stated in County Executive Order of the Baltimore County Executive dated July 1, 2010, allowing such discretion to take effect, has occurred. Consequently, this Board finds that the original Sewer Service Charge of \$70.00 on Mr. Viego's 2010 Tax Bill is the appropriate charge for Sewer Service Charge for 4717 Ruby Avenue.

ORDER

THEREFORE, IT IS THIS 1st day of April, 2011 by the Board of Appeals of Baltimore County

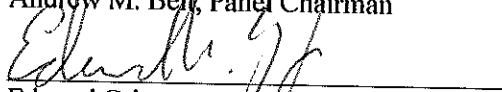
ORDERED that the decision of the Department of Public Works of Baltimore County in which the County reduced the sewer service from \$418.67 to \$157.92 for the 2010-2011 tax bill for 417 Ruby Avenue in Baltimore County is hereby **REVERSED**; and it is further


ORDERED that the Petitioner's request that his original Sewer Service Charge of \$70.00 be reinstated is **GRANTED** .

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Andrew M. Bell, Panel Chairman


Edward Crizer


Robert Witt