

IN THE MATTER OF:
SUSAN KARASINSKI
7242 Bridgewood Drive
Baltimore, MD 21224

Re: Appeal of Sewer Service Charges

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO: CBA-17-011

* * * * *

OPINION

This matter comes before the Board as an Appeal from a letter dated September 22, 2016, from Steven A. Walsh, Director of the Department of Public Works, denying the request of Appellant, Susan Karasinski, to reduce her Sewer Service Charge of \$11,558.21 for the billing period of July 1, 2015 to June 30, 2016. This Board held an evidentiary hearing on March 30, 2017. Ms. Karasinski was represented by Emmett H. Irwin, Esquire. Assistant County Attorney, Nancy C. West appeared on behalf of Baltimore County. For the reasons discussed in detail below, we find in favor of Ms. Karasinski.

FACTS

The County called Bobbi Rodriguez, Chief of the Metropolitan District. Ms. Rodriguez testified that the Metropolitan District is an area of the County served by public water and sewer, and that the subject property, like every other property connected to the District's sewer system, is assessed a charge to cover the costs of treatment and transportation of wastewater. Ms. Rodriguez confirmed that the charges are based on the volume of water used during the prior calendar year as reported by Baltimore City. The sewer charge rate is mandated by Executive Order and currently is \$50.85 per 1,000 cubic feet of water consumption. Baltimore City is responsible for the water meters measuring the water going into any given property and bills

accordingly. The County, however, is responsible for sewer charges for properties receiving City water but located in the County.

Ms. Rodriguez testified that in the summer of 2016, Ms. Karasinski received her annual property tax assessment which included a sewage charge of \$13,111.47 for a rental property she owned at 7242 Bridgewood Drive, Baltimore, Maryland, 21224. This bill covered usage for the calendar year 2015. This bill reflected an unusual usage of 2256 units for the period of 10/17/15 to 11/09/15 and another anomalous one month usage of 252 units. The typical usage both before and between the abnormally high readings was between 7 and 30 units with one outlier of 52 units. Ms. Karasinski complained to the City about this unusual spike in apparent water usage. As appears to be its usual practice, the City forgave the overage.

Ms. Rodriguez testified that she examined further information from the City before accepting the meter readings as accurate. This appears to be her usual practice, and is quite prudent. No one, including it appears the City itself, is willing to take the information from the City system as accurate without follow-up inquiry. The bottom line from Ms. Rodriguez was her testimony that based on the available computer information on this meter, and the various actual reads and tests done by city inspectors, the meter readings correctly calculated the actual water usage for this location for the time period in question.

The only other witness was Jennifer Ludwig, a city employee with supervisory experience in this area. As of the time of her testimony she was Acting Division Chief for the Department of Public Works. She had just transferred back to DPW after having been a senior aide to Baltimore's mayor. Ms. Ludwig's testimony was both enlightening and confusing. She did confirm that there were reported problems with City inspectors making up the numbers that are eventually put into the computer history. She also indicated that where there is a citizen

complaint about aberrant usage, DPW typically adjusts the usage amount, and the corresponding water charge, to an amount that is historically typical for that customer. This appears to be the practice without much actual investigation. In this instance, for example, the City did adjust the water bill to harmonize it with the typical usage. Implicit in her testimony is the conclusion that the City's meters and the individuals who check them were not always reliable.

According to Ms. Ludwig, in this instance there were twin meters. In other words, the meter vault contained two meters for different locations. She seemed to suggest that there was some confusion as to which meter supplied the data for the Karasinski records. Far more significantly, Ms. Ludwig testified that the meter in question was removed in July 2016. It was taken to the DPW shop where it was tested and found not to be working. The confounding aspect arose because the meter's failure was due to its not registering consumption as opposed to measuring over the actual consumption, which is, of course, the situation in Ms. Karasinski's case. In accordance with usual practice, the meter was scrapped shortly after that test. Given that the hearing was some eight or nine months after its disposal, the meter was not available for examination as part of this case. She indicated that the City was in the process of replacing the old digital meters – like the one in this case – with modern wireless meters that enable the inspector to read the meter from some distance and which then automatically inputs the data. This will greatly reduce human errors.

The defense also submitted a letter from a plumber who examined the Bridgewood Drive facility after the exceptional usage was noted. According to his letter, he found nothing abnormal within the premises. Interestingly, he also noted that the meter seemed to be not registering water consumption as opposed to overstating that consumption.

DISCUSSION

Section 20-5-105 of the Baltimore County Code provides, in effect, that the meter readouts in these cases are presumptively correct. This statutory presumption places the burden on the property owner of proving that the meter reading lacks integrity. This Board has routinely and comfortably upheld County sewer charges based on this presumption even where the City had, without explanation, forgiven the abnormally high reading. The County makes its own independent assessment and then acts accordingly: if it determines that the meter reading was correct, then it seeks to recover the full sewer charges even where the City has adjusted away the overage.

All of these cases turn on one central question: was the meter functioning properly. The statutory presumption substantially impacts that calculus. So does the meter's work order history and testing. In this case, the one over-arching and incontrovertible fact is that the meter was not functioning at the time it was replaced. Additionally, while it is true that the final test showed little or no consumption, the simple fact remains that this meter was not accurately measuring water usage. The "hows and whys" of meter failure is not a part of this case. Perhaps a meter over reads before complete failure. Perhaps its inner mechanisms rust or deteriorate over time and result in widely erratic readings. Additionally, where it is clear that the meter was faulty, matters which might be insignificant in other cases, take on more importance. That the City forgave the overage actually has some probative value. That there is reason to believe that flawed or faulty information is sometimes entered into the computer history generates some concern. While normally a hearsay letter from a plumber stating that no internal plumbing problem was present carries little weight, here it contributes to the overall assessment, particularly where that letter, tellingly, confirms the very defect in the meter that we know was found to exist by DPW.

The plumber's assessment as to the presence or absence of a problem within the home is buttressed by his reporting this unusual and clearly established fact that had not been independently established at the time. Finally, because of questioning by the Board, it was only in the midst of the hearing that it was learned that the meter was found to be malfunctioning at the time it was replaced. Had Ms. Rodriguez had access to this information, it may have reduced her confidence in the reliability of the information from the City.

In this matter, the Board knows and so finds that the meter was malfunctioning. This clearly and convincingly rebuts the statutory presumption. Moreover, the Board finds by a preponderance of the evidence that the sewer charges are not accurate and cannot be the basis for monetary recovery from the property owner.

CONCLUSION

In light of the evidence presented, the Board finds that the Sewer Service Charge in the amount of \$11,558.21 assessed by the Baltimore County Department of Public Works for 7242 Bridgewood Drive, Baltimore, Maryland, 21224 is REVERSED.

ORDER

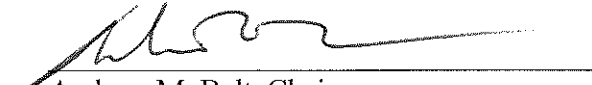
THEREFORE, IT IS THIS 28th day of September, 2017 by the Board of Appeals of Baltimore County

ORDERED that the Sewer Service Charge in the amount of \$11,558.21 assessed by the Baltimore County Department of Public Works for 7242 Bridgewood Drive, Baltimore, Maryland, 21224, is **REVERSED**;

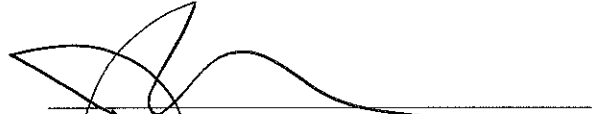
AND IT IS FURTHER ORDERED that the County shall refund any portion of that sewer charge that exceeds the amount of water usage as determined by the City of Baltimore when it adjusted the water usage bill.

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. Belt, Chairman



Jason S. Garber



Joseph L. Evans



Board of Appeals of Baltimore County

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September 28, 2017

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Re: *In the Matter of: Susan Karasinski*
Case No.: CBA-17-011

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Haz".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

C: Susan Karasinski
Stephen R. Hinkel/DPW
Bobbie J. Rodriguez, Chief of Metropolitan District Financing/DPW
Steven A. Walsh, P.E., Director/DPW
Michael E. Field, County Attorney/Office of Law