

IN THE MATTER OF:
TIMOTHY LITZAU
127 Wilgate Road
Owings Mills, MD 21117

Re: Appeal of Sewer Service Charges

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO: CBA-17-010

* * * * *

OPINION

This matter comes before the Board as an Appeal from a letter dated September 27, 2016, from Steven A. Walsh, Director of the Department of Public Works denying the request of Appellant, Timothy Litzau, to reduce his Sewer Service Charge of \$5,751.14 for the period of July 1, 2016 to June 30, 2017. The Board held an evidentiary hearing on December 8, 2016. Eric Lamb, Esquire, represented Appellant Litzau. Assistant County Attorney, Nancy West, appeared on behalf of Baltimore County.

FACTS

On or about April 29, 2016 Appellant, Timothy Litzau, purchased from the Secretary of Veterans Affairs the property located at 127 Wilgate Road in Baltimore County (the "Property"). The Property was listed as a distress sale, and Appellant was aware it required extensive renovation. At the time of purchase the water was turned off. Appellant stated he intended to completely renovate the Property and then re-sell it. (Baltimore County Ex. 11)

Mr. Litzau's mother, Denise Litzau, handled the settlement of the Property. Ms. Litzau testified she is a licensed settlement agent, has been in the settlement business since 1990, and has conducted thousands of transactions in Baltimore and surrounding counties. As part of the settlement process for the Property, Ms. Litzau obtained a "Lien Sheet" from Baltimore County.

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The Lien Sheet gives a purchaser notice as to the any unpaid taxes or charges associated with a property. Per Ms. Litzau, the Lien Sheet for the Property, dated April 19, 2016, showed a Sewer Service fee of \$326.88 as of the date of issue; it did not show any delinquency or any other sewer service charge. (Appellant Ex. 2). In July 2016, after he purchased the Property, Appellant received a FY 2016/2017 County tax bill. (County Ex. 4). That tax bill showed a Sewer Service charge of \$5,751.14, a radical increase over the previous year's charge as set forth on the Lien Sheet. Upon investigation and by way of comparison, Appellant discovered that the Sewer Service charge was \$161.87 in 2013, and \$110.54 in both 2014 and 2015. (County Ex. 1).

By letter dated September 21, 2016, Appellant wrote to Steven Walsh, the Director of Baltimore County's Department of Public Works ("DPW"). (County Ex. 1). Attaching substantiating documentation, Appellant recounted the events and the drastic increase in the sewer service charge and requested adjustment or removal of \$5,424,26 in sewer charges because it "was a charge accumulated by the prior owner and not revealed to [Appellant] by the prior owner or Baltimore County prior to [his] purchasing the property in April of 2016." *Id.* In response, Mr. Walsh noted that the sewer service charge for the tax year 2016/17 was "calculated based on the water consumption records" Baltimore City provided to DPW for calendar year 2015, that a review of the City's water records indicates the water was consumed, that actual meter readings were taken by city staff during 2015 to confirm the data, and that a photo of the water meter's dial further confirms consumption of the water. He concluded that no adjustment would be made because all indications were that "the water on this property was discharged to the County's sewers at cost that is paid for by all users of the County's sewer system." (County Ex. 12).

At the hearing, Ms. Bobbie Rodriguez, Chief of the County's Metropolitan District Financing Office confirmed this conclusion. 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 and the disposition of its by-products." (County Ex. 6). The Baltimore County website states, and Ms. Rodriguez confirmed, that the charges are "based on the volume of water consumed during the prior calendar year as reported by Baltimore City." (County Ex. 6). The charge is mandated by Executive Order and currently is based on a "volumetric rate of \$50.85 per 1,000 cubic feet of water consumption during the preceding calendar year." (County Exs. 3, 5.)

Ms. Rodriguez testified she is familiar with Appellant's concerns and the investigation of the issues underlying this appeal. Her investigation of Baltimore City water records showed, for example, an actual meter reading of 3571 on the Property on July 7, 2012 indicating consumption of 7 units.¹ (County Ex. 8C). Subsequent readings indicated a relatively stable rate of consumption: on October 9, 2013, the meter reading was 3606 with 4 units of consumption; on February 3, 2014, the meter reading was 3613 with 7 units of consumption. (County Exs. 8C, D). On April 7, 2015, however, the meter reading jumped to 4232, with 612 consumption units. (County Ex. 8B). On July 1, 2015, the meter indicated another jump, with a reading of 4751 and 519 units of consumption. (County Ex. 8A). Ms. Rodriguez stated she had no reason to doubt the accuracy of these readings. Further, in her experience she has found that persons evicted from a foreclosed home such as in this situation will turn water on and it is left on until the bank reclaims the property, resulting in a huge water bill.

¹ Ms. Rodriguez stated that a consumption unit equals approximately 750 gallons of water.

Per Ms. Rodriguez, Baltimore City records also contain a work order requested by a prior owner of the Property based upon the “high reading” in April 2015. (County Ex. 9). City workers inspected the property and meter; the meter read 4476, and there were no leaks or underground repairs. The inspection also indicated the water was on and moving through the meter. Records also showed that from October 10, 2015 through April 26, 2016 there was no further increase in water consumption. (County Ex. 8A). It thus appeared from the records that the problems started after January 10, 2015 and continued through sometime between July 1, 2015 and October 2015.

Ms. Rodriguez also noted that the increased water that the meter recorded as consumed in April and July 2015 was tantamount to 200,000 more gallons than an Olympic sized swimming pool. She opined that if this huge amount of water did *not* go into the sewer, it would have caused a tremendous amount of damage in the house, would have gone everywhere, and/or the surrounding ground would have been saturated and marshy. The absence of such evidence further confirmed her conclusion that the water went into the sewer and was not dispersed externally through leakage or otherwise. She stated further that while DPW does adjust some sewer charges, it requires evidence that the problem occurred outside, from the home vault and out to the street, or if inside, that the water did not go to the sewer. Such proof includes plumbing bills, or receipts for repairs.

Mr. Stephen Hinkel also testified on the County’s behalf. Mr. Hinkel has worked for the County for 42 years, is chief of administrative services for DPW, and drafted many of the County’s policies and Executive Orders regarding sewer service charges. Mr. Hinkel was involved in the dispute regarding this Property as well as thousands of others wherein property owners seek an adjustment of sewer service charges. According to Mr. Hinkel, depending on the equities of the situation, DPW policy permits adjustment of a sewer service charge if it is “well

beyond” the normal sewer charge for that property, and there is some indication that the water on the subject property was not discharged to the County’s sewers. He also testified, however, that as a matter of long-term policy, the Department is less likely to adjust the charge if the property is a commercial one or owned for investment purposes rather than owner-occupied. Mr. Hinkel noted that City water records and verified meter readings indicate the water for this investment property was consumed, and there was no proof that the water was not discharged to the sewers. DPW thus refused to adjust the charge even though Mr. Hinkel acknowledged that the sewer charge was indeed “well beyond” the typical range for the Property.² (See County Ex. 12).

Appellant Litzau again testified as part of his case in chief. He stated that when he bought the Property, there was mold, floors were swollen, and the home needed such items as new windows, roof and baseboards. He proffered pictures taken in May 2016, shortly after purchase, which he stated showed broken pipes and delamination of the plywood and other evidence of water damage. (App. Ex. 1 A-E). Although admittedly not an expert on this matter or a holder of a plumber’s license, Appellant opined based on his extensive experience remodeling homes that the broken pipes indicated that water could not have run into the higher-level sewer line. No plumber or other true expert in this field testified on Appellant’s behalf.

There was further testimony on both parties’ behalf regarding allocation of responsibility for the discrepancy between the sewer service charges shown on the official lien sheet and that ultimately charged Appellant. Appellant’s settlement agent Denise Litzau said she relied on the

² Mr. Hinkel did say that if Mr. Litzau had been an owner-occupant, the bill would probably be reduced to about \$800. Thus, arguably, the County's position may hinge less on the raw factual conclusion that the water went into the sewer and more on the County's longstanding practice to provide equitable relief only to non-commercial owners. If this is indeed the County's position in this case, it is nonetheless an acceptable exercise of discretion by the County.

lien sheet and that in her previous decades of experience had not run into this type of problem. Ms. Litzau stated that if the lien sheet had showed the delinquency, she would have had the seller pay the outstanding charges. Ashleigh Woolery, a DPW employee testified, however, that the County gets “read-only” water charge notifications from Baltimore City on a quarterly basis and that these charges only become official approximately two months after the quarter ends, around March 1. She further testified that DPW typically has final consumption numbers, but not rates in April, and as a matter of practice does not put these numbers in writing.

DISCUSSION

Section 20-5-110 of the Baltimore County Code (“BCC”) provides that, upon request, the Director of DPW shall investigate the merits of wastewater user charges. After the investigation and any requested hearing, the Director is to notify the person requesting review of the action taken and, if the Director determines the charges were erroneously, mistakenly, or illegally charged or collected, the charges must be either abated or refunded. To even consider an adjustment of sewer charges, the governing Executive Order requires that the applicant must “provide detailed documentation that less than 100% of their non-public and/or public water usage is discharged to the sanitary sewer...” (County Ex. 3 at Section III.A.2.c).

Here, the DPW investigated the charges, reviewed the evidence, and concluded that the charges were appropriate given that all indications pointed to a problem at the Property itself. In such a situation, Department policy has been to uphold the sewer service charges, particularly for investment property, when available evidence indicates that the water did go into the system and did get treated, thereby validating the user charge.

BCC 20-5-105(1) states as follows:

In all cases, it shall be presumed that every user discharges one hundred (100) percent of their waste consumption into the system; and it shall be the obligation of

the user to establish, to the satisfaction of the Engineer, that they have discharged less than one hundred (100) percent of their water consumption.

BCC §20-5-105(2) also makes clear that

In all cases where a person acquires all their water from the Baltimore City water supply system, the records of water consumption, as provided by Baltimore City, shall be used to determine the volume of water consumption. The records of Baltimore City reflecting water consumption shall be presumed to be correct; and the person disputing those records shall have the obligation to establish, to the Engineer's satisfaction, the amount of water consumed.

Appellant bears the burden of proving the amount of water consumed and that less than 100% of the Property's water usage was discharged to the sanitary sewer system. Appellant must demonstrate there was something awry that caused the water to go somewhere other than into the sewer.

At the hearing, the County acknowledged that the sewer charge at issue was atypical for the Property and unusually high. However, the County also introduced evidence that no defects were found in Appellant's water meter, and that an actual inspection in April 2015 failed to uncover any indicia of leaks or underground issues. While Appellant maintains that he is not responsible for the charges and that his work on the house indicates the "consumed water" never made it to the sewer system, the County requires more. Appellant Litzau was not able to meet his burden.

As stated on the County website and informational pamphlets, sewer service charges reflected on a tax bill for a fiscal year are based on a rate for water consumed on the property during the prior calendar year, as reported by Baltimore City. Appellant's July 2016 tax bill thus reflects a charge for water that the City reports was consumed on the property during calendar year 2015, regardless of what appeared in the April 2016 Lien Sheet. That the DPW may be more lenient to applicants for adjustment if they occupy their homes is a matter of long-standing

DPW policy to which the Board gives "considerable weight." People's Counsel for Balt. County v. Elm St. Dev., Inc., 172 Md. App. 690, 701 (2007). In all, the Director's decision is supported by competent, material and substantial evidence.

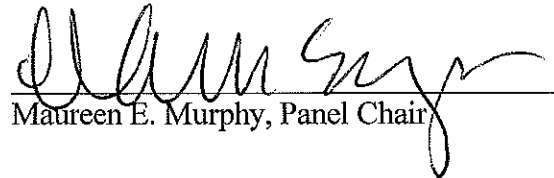
ORDER

THEREFORE, IT IS THIS 22nd day of February, 2017 by the Board of Appeals of Baltimore County

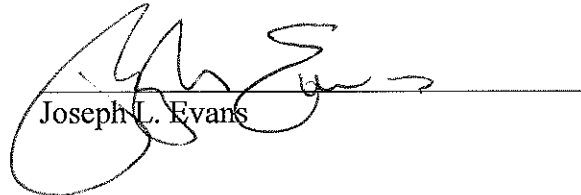
ORDERED that the Sewer Service Charge in the amount of \$5,751.14 assessed by the Baltimore County Department of Public Works for 127 Wilgate Road, Baltimore Maryland 21117 for the period July 1, 2016 to June 30, 2017 is **AFFIRMED**.

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**


Maureen E. Murphy, Panel Chair


Meryl W. Rosen


Joseph L. Evans



Board of Appeals of Baltimore County

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February 22, 2017

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Re: *In the Matter of: Timothy M. Litzau*
Case No.: CBA-17-010

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-Ham".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Timothy M. Litzau
Stephen R. Hinkel/DPW
Bobbie Rodriguez, Chief/Metropolitan District Financing/DPW
Steven A. Walsh, P.E., Director/DPW
Michael E. Field, County Attorney/Office of Law