

IN THE MATTER OF
TODD NEWNAM - APPELLANT
1665 MUSSULA ROAD
BALTIMORE, MD 21286

RE: Appeal of Sewer Service Charge

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-18-020

* * * * *

OPINION

This matter comes before the Board of Appeals following appeal by Petitioner Todd Newnam¹ of the December 11, 2017 letter decision by the County Director of the Department of Public Works, Steven A. Walsh, denying adjustments to the Metro Service Charge for Mr. Newnam's property located at 1665 Mussula Road, Baltimore, Maryland 21286.

Factual Background

Mr. Newnam purchased the subject property, 1665 Mussula Road, ("Property") in 2007. The Property is not owner-occupied, and rather, Mr. Newnam has consistently rented the Property. The Property is an interior-unit townhouse located in Towson, and, therefore, within the Metropolitan District. (County Ex. 1; Ex. 2). The Metropolitan District consists of the area within the County served by public sewer and water. The City of Baltimore handles the water consumption component and the County handles the sewer component. Property owners within the District are billed for their water and sewer usage, with the sewer charges reflected on County property tax bills. Water bills, reflecting consumption, come from the City and are sent to County property owners every three months. Previously, City workers would read the water meters to identify usage. Now, with the new smart meters, the consumption information is sent to the City.

¹ Mr. Newnam has been erroneously identified at "Todd Newman" in various notices, letters and other documents related to this matter.

Though included on property tax bills, the Metropolitan District is self-funded; no tax dollars are used to sustain it. The sewer charges stated on a property owner's tax bill are based on water usage for the calendar year prior. The sewer billing cycle begins July 1 of each year and ends on June 30.

Specific to this matter, when Mr. Newnam received his 2016 Property tax bill,² he noticed the sewer charge was "extremely high." In January 2017, Mr. Newnam sent an email to County Councilman Wade Kach (County District 3) complaining of high water and sewer bills (though erroneously identified as "stormwater."). On January 19, 2017, Stephen Hinkel, Chief of Administrative Services for the County Dept. of Public Works, emailed Joanne Kozak, Legislative Assistant for Councilman Kach, Mr. Walsh, and Bobbie Rodriguez, Baltimore County Chief of the Metropolitan District, with a report following Mr. Hinkel's account review. (County Exhibit No. 12). Mr. Hinkel stated that the City records indicate that water meter readings were correct and that the usage was attributable to overuse, not a meter leak. Mr. Hinkel suggested that Mr. Newnam have a plumber inspect the Property and that Mr. Newnam speak to his renters about water usage.

Mr. Newnam's 2017 Property tax bill sewer assessment,³ \$5,020.75, was also substantial, resulting in a September 5, 2017 written request to Mr. Walsh to adjust the charge. Mr. Newnam again identified a leaky water meter as a cause for the excess water consumption. Mr. Newnam provided various documents to the County in support of his request, including:

- (1) the City's adjustment of water charges in 2016;

² The 2016 sewer charges are not part of this appeal, but water consumption records and other evidence during that time frame are relevant to this matter.

³ In 2017, the County issued erroneous property tax bills to numerous property owners, which may have included Mr. Newnam. Corrected property tax bills were subsequently sent out and therefore, Mr. Newnam's 2017 Property tax bill is dated August 1, 2017.

(2) a Department of Public Works Service Request Notice dated August 31, 2016 indicating “Repair completed. Water service restored,” further identifying replacement of the meter washers; a Department of Public Works Service Request Notice dated March 20, 2017 (copy illegible);

(3) an October 1, 2016 invoice from Falco Plumbing & Heating identifying a leak at the shower faucet and installation of a new faucet;

(4) a February 6, 2017 letter from Quality First Home Inspections to Avery Properties,⁴ regarding an inspection at the Property in which the inspector found no leaks at the Property;

(5) a February 8, 2017 email from Ollee Schubert, Maintenance Supervisor I for the Baltimore City Department of Public Works stating that the Property meter vault was dry and the gutter was dry, but noted recent water main repairs on the street;

(6) a February 12, 2017 invoice from Falco Plumbing & Heating revealing replacement of a “filling valve on the 2nd floor leaking toilet;”

(7) February 2017 weather data taken from the weather station in Washington DC; and

(8) various photographs from February and March 2017.

The City’s water consumption records are kept on a computer system and the County Dept. of Public Works has access to view, but not change, information in the system. County Exhibit No. 3, the printouts of the City water consumption records for this Property, reveal significant volatility rather than consistent water consumption. As set forth therein, between March 2015 and March 2018, the water consumption records reveal the following usage:

March 16, 2015	7 units
July 15, 2015	704 units
November 2, 2015	175 units
March 7, 2016	16 units

⁴ Avery Properties is a company owned/managed by Mr. Newnam. The Property at issue here is owned by Mr. Newnam directly.

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March 14, 2016	212 units ⁵
May 31, 2016	326 units
November 26, 2016	205 units
March 7, 2017	97 units
May 25, 2017	17 units
August 17, 2017	17 units
December 6, 2017	16 units
March 9, 2018	12 units.

In his written response on December 11, 2017, Mr. Walsh confirmed a February 2017 water leak at the meter, but determined it would not have significantly impacted water consumption. Mr. Walsh stated that “the high consumption occurred before and after the installation of the new [smart] meter.” Mr. Walsh conveyed a partial reduction of the sewer assessment, reducing it from \$5,020.75 to \$3,345.06. As communicated, the reduction appears to be connected to Mr. Newnam’s specific complaints about the water leak(s) and related sewer charges. However, the reduction appears more properly attributable to the errors made by the County in connection with the generation of the 2017 property tax bills, which has no bearing on this matter. Mr. Newnam appeals the December 11, 2017 decision to not fully reduce the sewer charges. The charges relating to the sewer usage at issue amounts to \$3,208.07.

A hearing was held on June 6, 2018. Nancy West, Esquire, Assistant County Attorney, appeared on behalf of Baltimore County and Mr. Newnam proceeded *pro se*.

Bobbie Rodriguez, Chief of the Metropolitan District, testified on behalf of the County. Ms. Rodriguez testified that when adjustments are requested, the County looks at the City consumption records, repair and work records, as well as other issues associated with the account. She testified that the sewer charge rate is authorized by and specified in a County Executive Order.

Aside from the records identified above, Ms. Rodriguez reviewed various work orders. On August 13, 2015 (Work Order No. 3033920, County Exhibit No. 4), a City meter inspector

⁵ The old meter was replaced by a new smart meter on March 14, 2016.

determined that there were no leaks, no evidence of any repair work at the meter, and that the Property was occupied. In October 2015, excess usage triggered a computer-generated work order to read the meter (W.O. No. 3078465, County Exhibit No. 5). Another work order was issued on October 19, 2015 (W.O. No. 3078723, County Exhibit No. 6). That work order also references yet another work order, No. 3078467. Ms. Rodriguez testified she reviewed the work orders associated with the account and could not shed light on the discrepancy in work order numbers. On August 18, 2016, the City conducted another water meter investigation at the Property and found no leaks. (W.O. No. 330818; County Exhibit No. 8). As noted above, on August 31, 2016, the City Department of Public Works inspected again, found a leak, and repaired the meter by replacing its washers. (County Exhibit No. 9).

There is no evidence in the record specifically identifying whether the washers were replaced were located on street side of the meter or the house side of the meter. If on the street side, any leak would not be captured by the meter. Conversely, if on the house side, the meter would register that as consumption attributable to the Property. Nevertheless, the City, as set forth in a February 1, 2017 email from Maria DeChellis, chief of the City's billing office, to Mr. Hinkel, concluded the repair was on the house side ("I see no reason to believe that the washers were on the outlet riser and thereby impacting consumption."), a position then adopted by the County. (County Exhibit No. 11).

On January 24, 2017, the City inspected the Property water meter again and found no leaks at the meter. (W.O. No. 381312, County Exhibit No. 13). On March 20, 2017, the City conducted a "turn off test," in which the City turns off water to the Property to see if the meter still registers consumption. (W.O. No. 394850, County Exhibit No. 15). The meter did not register any consumption, and therefore, it was concluded that there were no leaks at the meter.

Mr. Hinkel also testified, providing some insight on the emails in the evidentiary record for which he was the author or an addressee. Mr. Hinkel concluded that, given the account history, the usage was from the Property's tenants, with shower and toilet repairs serving as contributing factors.

The County introduced evidence regarding the sewer rate determination. The reference to one "unit" is equivalent to 748 gallons. As identified by Ashleigh Worley, an employee of the County Department of Public Works, the sewer service charge of \$3,208.07 was calculated by taking the consumption (582) and multiplying that by the rate (5.5121). (County Exhibit No. 20).

Mr. Newnam did not dispute the formula or calculation. Mr. Newnam disputed the cause for the high water consumption registered by the meter. Mr. Newnam explained he has been trying to get to the bottom of the problem since receiving his 2016 Property tax bill, and has documented repair work at the meter, at the water main, numerous inspections of the meter and inspections inside his Property.

Decision

Pursuant to Baltimore County Code ("BCC") §20-5-128(a), for an appeal to the Board of Appeals, "the Board shall determine whether or not the determination, decision, order, or notice, which is the subject of review, is proper or correct." The Board may reverse, affirm (in whole or in part), modify the determination, decision, order, or notice appealed from. *Id.* The Board is not authorized to waive, set aside, or change any provision of the Wastewater Regulation title of the County Code. *Id.* BCC §20-5-105 presumes that every user discharges 100% of their waste consumption into the sewer system and further presumes that the City water consumption records are correct. The person disputing the records has the obligation to establish the amount of water consumed. *Id.*

Mr. Newnam, though certainly displaying significant diligence in trying to identify the issue, erroneously concluded that the leaks were connected to the water meter and to water main work. As set forth by the County witnesses, if there are leaks that are on the street side of the meter, any spillage is not registered by the meter and therefore, not attributed to the Property. Therefore, even assuming that there were such leaks, Mr. Newnam's sewer charge does not capture that volume as consumption charged to the Property. Within the relevant time frame, leaks at the Property's shower and toilet were discovered and repaired. The volume and duration attributed to each leak is unknown. There is no evidence as to the tenants' water consumption. Without contrary evidence as to the water consumption, the presumption as to the correctness of the City water records stands.

Having said that, the work orders between August 18 and August 31, 2016 reveal that a leak was discovered at the meter that required replacement of the washers. The City concluded that the leak had to be house side, an optimistic and favorable assumption, one that harmonizes with its charges as opposed to actual evidence, such as speaking to the workers that did the work and could, as memory allows, identify whether the leak was on the street or house side of the meter. Because the evidence reflects a leak at the water meter without any evidence, as opposed to charitable assumption, that indicates whether the leak occurred on the house side or street side, the presumption that inures to the County's benefit disappears and the issue stands in equipoise.

Therefore, the County cannot substantiate the charge for the limited time period between August 18 and August 31, 2016, necessitating modification of the amount charged to Mr. Newnam.

There were 205 units of water consumed between the readings taken on May 31, 2016 and November 26, 2016 (179 days), for an average of 1.145 units/day. (County Exhibit No. 3(b)). Accordingly, using the formula the County provided (and as explained), the charge for

consumption within that time amounts to \$82.05 and therefore, the Board reduces the total charge from \$3,208.07 to \$3,126.02.

Conclusion

In light of the evidence presented, this Board affirms the December 11, 2017 decision reached by Steven A. Walsh, Director of the Department of Public Works, but modifies the amount of the charge, reducing it from \$3,208.07 to \$3,126.02.

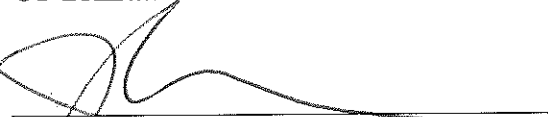
ORDER

THEREFORE, ON THIS 31st day of October, 2018, by the Board of Appeals of Baltimore County, it is hereby:

ORDERED that the December 11, 2017 Decision Letter is hereby **AFFIRMED**, but **MODIFIED** to reduce the amount from \$3,208.07 to \$3,126.02.

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*.

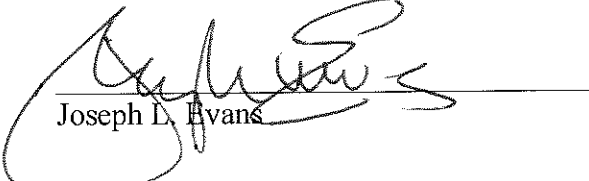
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Jason S. Garber, Chairman



Deborah C. Dopkin



Joseph D. Evans



Board of Appeals of Baltimore County

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October 31, 2018

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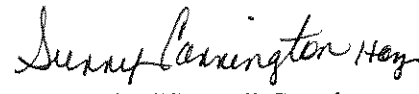
Re: *In the Matter of: Todd Newnam*
Case No.: CBA-18-020

Dear Ms. West and Mr. Newnam:

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,


Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: 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