

IN THE MATTER OF
8224 PHILADELPHIA ROAD, LLC
8224 PHILADELPHIA ROAD
BALTIMORE, MD 21237

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-24-024

RE: Appeal of Sewer Service Charge

* * * * *

OPINION

This matter comes before the Board of Appeals of Baltimore County (the “Board”) following appeal filed by Charles Lamasa, Esquire, on behalf of 8224 Philadelphia Road, LLC, (collectively known as “Appellant”) from the February 12, 2024 decision letter of the Director of the Department of Public Works, D’Andrea L. Walker, denying adjustments to the sewer service charge for the property located at 8224 Philadelphia Road, Baltimore, Maryland 21237 (the “Property”).

Charles Lamasa, Esquire appeared on behalf of himself as the managing partner of 8224 Philadelphia Road, LLC, which owns the Property. Assistant County Attorney, Marissa L. Merrick, appeared on behalf of Baltimore County. The Board held a preliminary motion hearing on July 9, 2024. The Board held an evidentiary hearing on August 20, 2024. Closing memoranda were submitted to the Board and a public deliberation of the matter was held on October 29, 2024.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Lamasa through the LLC appeared on behalf of the Property. The Property is within the Metropolitan District (the “District”). The District consists of the area within Baltimore County (the “County”) served by public sewer and water. The City of Baltimore (“City”) handles

the water consumption component, and the County handles the sewer component. Property owners, both residential and commercial, 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 quarterly. Previously, City workers would read the water meters to identify usage. Now, with the new smart meters, the consumption information is sent directly to the City. Although the water and sewage assessments are annotated on property tax bills, the District is self-funded; no tax dollars are used to sustain it. The sewer service charges stated on a property owner's tax bill are based on water usage for the calendar year prior. The sewer service billing cycle begins July 1 of each year and ends on June 30 the following year.

On July 1, 2023, the County issued a real property tax bill for the Property (County Ex. 8). The 2023 real property tax bill issued contained the sewer service charges of \$27,988.07 which the Appellant is now disputing. The disputed sewer service charges were based on the prior calendar year 2022 water consumption records of the City. As previously stated, the City issues water bills on a quarterly basis, while notice of the sewer service charge is provided in the County's annual Property Tax bill. Specific to this matter, when the Appellant received his 2023 property tax bill, he noticed the sewer service charge was higher than in previous years. The Appellant contacted the County's Metropolitan District Finance Office and staff provided records indicating that the water consumption increased from 2022 which resulted in an increased sewer service charge. The staff communicated that an increase in water usage or leak may have been the cause for the increased water consumption. The County asserts that it applied the standard sewage calculation according to departmental procedures and regulations. Appellant was advised by Metropolitan District Financing staff members to inspect the property for running toilets,

irregularities or underground leaks (County Ex. 7, 9, 10). The file contains several communications between the County and the Appellant. There were numerous interactions by the Appellant with the County including service calls by the County and an inspection of the meter. The County did not find any issues with the meter and on one service call verified that there was a water leak on the Property. Based on the findings of the inspector's report that the water usage was correct and there were no malfunctions in the water meter for the Property, the County, through Director Walker's decision, declined to adjust the sewer service charge. The Appellant filed a timely appeal of that decision to this Board.

DISCUSSION

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.) This section 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 was not correct or otherwise in error. (*Id.*)

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 or there was some sort of malfunction on the part of the County or the City. This Board has upheld County sewer service charges based on this presumption. The County makes its own independent assessment and then

acts accordingly: if it determines that the meter reading was correct and there were no other irregularities, then it seeks to recover the full sewer service charges.

The Appellant asked the Board to subpoena Ms. Walker. The County objected to the subpoena. The Appellant filed a Motion to Compel the testimony of Ms. Walker, the Director of the Department of Public Works at the evidentiary hearing on this matter. The County filed a Motion to Quash the subpoena. At a preliminary hearing on July 9, 2024 Appellant argued in his Motion to Compel, that Director Walker's presence was necessary at the evidentiary hearing on this matter. He opined that the basis of her decision was relevant to the case. The County argued that the facts of the case (the amount of water consumed during the time in question and whether the meter was functioning correctly) are the only relevant facts and can be presented into evidence by another employee of the Department of Public Works. Also, as was pointed out by the County at the evidentiary hearing, the Appellant will be able to cross-examine the County witness on this matter. Moreover, the hearing before the Board is *de novo*; it is not a review of the propriety of her prior decision. Therefore, whether Ms. Walker's letter was correct or incorrect, well-reasoned or flawed was irrelevant. The County indicated that there was no evidentiary deference to be accorded to her decision. Accordingly, the Board granted the Motion to Quash the subpoena of Ms. Walker filed by the Appellant.

On August 19, 2024, Appellant filed a Motion in Limine to prohibit or limit the testimony of Lauren Buckler, Acting Director of the Baltimore County Department of Public Works and Transportation. Prior to the start of the evidentiary hearing on August 20, 2024, the Board ruled Appellant's Motion in Limine moot after the County indicated they were not calling Ms. Buckler to testify.

At the evidentiary hearing of August 20, 2024, the County presented 21 exhibits and one witness. The Appellant presented 27 exhibits and 7 witnesses. Mr. Michael Swygert, Chief of the Metropolitan District Finance Office, testified on behalf of the County. Mr. Swygert verified the water consumption for the Property in fiscal year 2022 (County Ex. 6) and the tax bill for that same time including sewer service charges (County Ex.8). It was clear through the testimony and the exhibits presented by the County that the cause for the increase in water usage was a leak within the Property. This leak caused an increase in water usage. The water from the leak went into the sewer system and mixed with sewage, all of which needs to be treated. The testimony regarding the water usage and meter correctness was not disputed.

Appellant argues that the water leaking from the refrigeration unit was not contaminated and was clean water, and as such, should somehow not be considered. He further argues that this non-contaminated water usage was not contemplated by the legislative enactment of the laws governing the County's power to charge for sewer services. The Board acknowledges that this leaked water may be uncontaminated (though there was un rebutted testimony from Michael Hallman, one of Appellant's own witnesses, that cooling water could be contaminated). Nonetheless, this is still water that was used by the Property and water that needs to be treated as it comeslingles with other water and disposal maters in the sewer system. There was no evidence presented by the Appellant that there was a malfunctioning of the County's water meter, the system, nor that the water usage was incorrect. The Board reasons that without contrary evidence as to the amount of water consumption or a malfunction of some sort in the County system, the presumption as to the correctness of the City water records stands, and the subsequent sewage charges are upheld. The fact remains that the uncontaminated water, whether from a refrigeration unit or overflow from a drinking glass of water, is mixed with sewage and needs to be treated.

All water going into the system needs treatment. This is the system set up by the County. As Mr. Swygert testified, there is no way the system can distinguish so-called “clean” water going into the sewer from regular wastewater. That same point was stated unequivocally by Michael Hallman, Chief of Wastewater Management for the City of Baltimore, who was called as a witness by Appellant. Mr. Hallman testified that whether it is distilled water poured down a drain by a homeowner or water used to cool a refrigerator unit there is no way that the system can distinguish those discharges from the influx into the sewer system of water used in a dishwasher or toilet. As stated above, the Board is not authorized to change, alter or waive any provisions of the Wastewater Regulations Title. Until another way of measuring sewage use is determined, everyone must comply with the system and formula established in the County laws and procedure.

CONCLUSION

In light of the evidence presented, the witnesses, exhibits, and memoranda; this Board affirms the decision dated February 12, 2024 by the Director of the Department of Public Works, D’Andrea L. Walker, to uphold the County’s sewer service charge assessment.

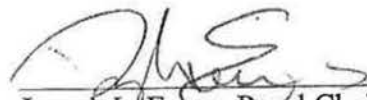
ORDER

THEREFORE, IT IS THIS 8th day of January, 2025, by the Board of Appeals of Baltimore County, hereby:

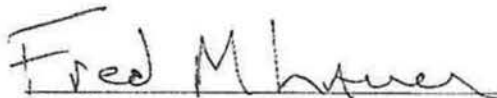
ORDERED that the February 12, 2024 decision letter of the Director of Public Works, D'Andrea L. Walker, is hereby **AFFIRMED**.

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**



Joseph I. Evans, Panel Chair



Fred M. Lauer



Bryan T. Pennington



Board of Appeals of Baltimore County

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January 8, 2025

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Charles Lamasa, Esquire
8224 Philadelphia Road, LLC
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Baltimore, Maryland 21201

RE: In the Matter of: *8224 Philadelphia Road, LLC*
Case No.: CBA-24-024

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".

Krysundra "Sunny" Cannington
Executive Secretary

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Michael Swygert, Chief of Metropolitan District Financing/DPW&T
Lauren T. Buckler, Director/DPW&T
James R. Benjamin, Jr., County Attorney/Office of Law