

IN THE MATTER OF
RASHAUN AND PAIGE LEWIS
10908 BASKERVILLE ROAD
REISTERSTOWN, MARYLAND 21136

RE: Appeal of Sewer Service Charge

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: CBA-24-001

* * * * *

OPINION

This matter comes before the Board of Appeals of Baltimore County as an appeal of a May 19, 2023, letter from the Director of the Department of Public Works and Transportation (“DPWT”), denying a request to reduce a sewer charge of \$8,479.94 for the period between July 1, 2022 and June 30, 2023.

Appearing on behalf of Baltimore County was Katherine Loverde, Assistant County Attorney and Thomas Flagg, Chief of Metropolitan District Financing at DPWT. Paige Lewis participated *pro se*.

A virtual public hearing was held on November 8, 2023.

FACTUAL BACKGROUND

The sole witness for Baltimore County was Mr. Flagg who explained that the billing process for the use of the sewer system is based on records of water consumption as provided by Baltimore City. Those records are “*presumed*” to be correct (emphasis added). Under Baltimore County Code (“BCC”) §20-105, it is “*presumed*” that 100% of water consumption is discharged into the sewer system, (emphasis added). Mr. Flagg explained that the sewer system is self-supporting and relies on sewer fees to sustain it.

Mr. Flagg documented the water billing history to the subject property based on data harvested from Baltimore City's records. Mr. Flagg explained that in refuting the presumptions, the property owner bears the burden to produce evidence that water going through the meter did not enter the sewer system. Mr. Flagg testified that by producing plumber's bills, a property owner is essentially admitting the existence of a problem and that doing so is against that owner's interest.

The Board does not believe that was the case here, and found the property owner Ms. Lewis to be entirely credible.

Mr. Flagg also provided testimony that the existing water meter is functioning properly with no leaks. In addition, Mr. Flagg provided a chronology of the water meter readings and the elapsed time between the reading of the meter and the customer receiving a bill for sewer charges, noting that the sewer and water charges are based on a calendar year while the billing is on the tax bill, which is rendered based on the County's fiscal year, thus creating a lag. Delays were exacerbated in 2020 and 2021 by virtue of the COVID pandemic.

Despite sporadic high water readings in 2020 and 2021, the sewer charges first appeared on the customer's tax bill in July, 2022, long after the alleged high water usage had been resolved. The first indication to the customer would have been a "high consumption" letter from Baltimore County to the Lewis' in July of 2022.

During the COVID emergency Baltimore City did not read Baltimore County water meters or issue water bills between March, 2020 and November of that year. Subsequently, Baltimore County hired a third party contractor to have water meters read until the end of April, 2021.

Coincidentally the alleged usage increases at the property overlapped the periods during which there were no readings, third party readings and presumably resumption of readings by Baltimore City. None of this was apparent to the homeowner. Sewer charges are billed based on the calendar year, but bill on the July 1 of the following year. Thus, the Lewis's first learned of the charges nearly 18 months after allegedly accruing. It is noteworthy that this homeowner, once aware of the high water usage took action, both with Baltimore City (which adjusted her water bill) and with Baltimore County (which would not adjust her sewer charges).

The testimony before the Board indicates there was a meter reading once between December 2020 and late January, 2021 (for the 3rd quarter of FY 2021); not read for the 4th quarter of FY 2021; not read for the 1st quarter of FY 2022; then read for the 2nd quarter of FY 2022 in December of 2021.

Ms. Lewis testified that she, her husband and young son have lived in the property since 2020. She was adamant that there was no leak or other circumstance that caused the higher water meter readings. No condition existed for which a plumber would have been called to remedy. She could not produce evidence to prove a negative.

The Board believes that Mr. Flagg and his department have acted responsibly and strictly in accordance with BCC §20-5-103 & 105, and diligently executed their duties as prescribed in the Code. He was able to present the basis for the County's refusal to reduce the charges in a manner that the Board members could easily follow.

However, the Board was equally persuaded by Ms. Lewis that her water usage did not increase by the volumes that Baltimore City's data would have us believe. The presumption built into the law leave the Board with doubt as to the handling and accuracy of the water usage numbers: interruptions to regular readings and billings; failure to bill for over six months; meter

readings not being made and then, when resumed, being made intermittently by the City, then a third party contractor and then again by the City; the City's failure to effectively communicate with the property owner at a time when it would have been helpful (or at all for that matter); and the nearly 18 month lag time from charges being incurred and a bill being sent. The entire chain of events puts an increased, if not impossible, burden on the property owner, and lacks basic fairness.

The Board finds that the accumulated uncertainties in this case are a sufficient basis on which to reduce the outstanding sewer charges from \$8,479.94 to \$2,000.00, allowing payment to be made over a period of 24 months.

In doing so, we do not suggest any fault with DPWT which manages a vast utility network. It is the structure of the system, the presumptions and reliance on Baltimore City methodology and data, the interplay of fiscal and calendar year data, and the impact of the COVID emergency on these that lead us to our decision, which is limited to the facts at this property.

In reaching this decision, we urge the Lewis' to take advantage of the programs noted in Mr. Flagg's letter of May 1, 2023: the Hardship Installment Payment Program; the Homeowner's Tax Credit Program, or other assistance available through Maryland Access Point.

ORDER

THEREFORE, IT IS, this 21st day of December, 2023, by the Board of Appeals of Baltimore County,

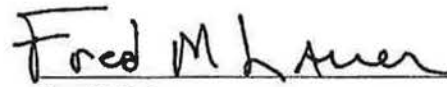
ORDERED that the May 19, 2023 decision letter from D'Andrea L. Walker, Director of the Department of Public Works and Transportation, refusing to grant a reduction in the sewer service charge of \$8,479.94, be and is hereby modified, and further

ORDERED, that a charge of \$2,000.00 be imposed in lieu thereof.

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**


Deborah Dopkin, Panel Chair


Fred M. Lauer


Bryan T. Pennington



Board of Appeals of Baltimore County

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December 21, 2023

Katherine Loverde, Assistant County Attorney
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Rashaun and Paige Lewis
10908 Baskerville Road
Reisterstown, Maryland 21136

RE: In the Matter of: *Rashaun and Paige Lewis*
Case No.: CBA-24-001

Dear Messrs. Loverde and Lewis:

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
Legal Administrative Secretary

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Thomas Flagg, Chief/Metropolitan District Financing/DPWT
D'Andrea L. Walker, Director/DPWT
James R. Benjamin, Jr., County Attorney/Office of Law