

IN THE MATTER OF:
MORRIS A. AND EILEEN S. WISE
STEVENSON VILLAGE
CONDOMINIUM
33 STONEHENGE CIRCLE, UNIT 4
BALTIMORE, MD 21208

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY

Re: Appeal of Sewer Service Charges

* Case No.: CBA-24-015

* * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals (the “Board”) as an appeal from a letter dated October 17, 2023, from D’Andrea L. Walker, Director of the Department of Public Works, denying the request of Appellant, Morris Wise, to correct the Sewer Service Charges for the 312 Stevenson Village Condominium owners, for Real Property tax bill dated July 1, 2023. This Board held an evidentiary hearing on March 6, 2024. Ms. Julie Stein, property manager, appeared *pro se*, representing Mr. and Ms. Wise as well as 312 Stevenson Village Condominium owners. Assistant County Attorney, Patricia McAllister and Assistant County Attorney, Katherine Loverde appeared on behalf of Baltimore County. For the reasons discussed in detail below, we affirm the decision of Baltimore County.

FACTS

Testifying for Baltimore County was Michael Swygert, acting Chief of Metropolitan District Finance, Department of Public Works and Transportation (“DPWT”). Mr. Swygert 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 County’s sewer system, is assessed a charge to cover the costs of treatment and transportation of wastewater. Section 307 of the Baltimore County Charter and Article 20 of the Baltimore County Code establishes

the Metropolitan District as it relates to rate setting for water and sewer services. The Baltimore County Executive, through an Executive Order, establishes the water and sewer charges for the county and the methods utilized to calculate said charges. The assumption is that the same amount of water is going in as is coming out.

When a residence does not have an individual water meter, the residence is billed pursuant to Schedule D of the above referenced Executive Order. In Schedule D of the Executive Order, the fixture rates are established based on the number of fixture unit values a residence has. A fixture unit value is a value assigned to a single fixture or a group of fixtures. Based on the total number of units in a residence, that specific resident falls into a fixture range category. That category determines the rate the residence owner pays.

If a property has a water meter, the annual sewer service charges are based on the total water consumption for the previous year. In a condominium, the individual units do not have water meters, therefore, owners are charged for sewer service charges based on the number of water fixtures within their units. These fixture unit values are established by the plumbing code in effect at the time the plumbing permits for the construction of the condominiums were issued. This fixture method has been utilized since the 1970s.

In this case, a dispute of sewer service charges was filed by Mr. Morris Wise, President of the Stevenson Village Condominiums. (Exhibit 4.). In his dispute, Mr. Wise asked that the bills issued for July 1, 2023, “be corrected based on the legally mandated proper fixture unit values that were applied to the Annen Woods Condominiums in their recent settlement with the County and that the overcharges be refunded to our unit owners.”

In response to Mr. Wise’s dispute, D’Andrea L. Walker, Director of the Department of Public Works and Transportation, issued a decision letter on October 17, 2023, denying Mr.

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Wise's requested relief. (Exhibit 5). In her letter, Director Walker stated that the sewer service charges are determined in accordance with the rates, classifications, and procedures established by order of the County Executive. As such, she concluded that the sewer service charges were properly calculated. In addressing the Annen Woods settlement, she stated, "Any settlement agreement that was reached relative to a lawsuit, relates only to the parties involved in the lawsuit."

Mr. Wise appealed Director Walker's decision to the Board of Appeals. Along with the appeal, Mr. Wise included a copy of the settlement agreement between Annen Woods and Baltimore County. Mr. Wise, nor any other resident of Stevenson Village, was a participant in the Annen Woods case.

In the Annen Woods case, they sought to change their billing from fixture-based billing to consumption-based billing, based on the master meter for the condominiums. The settlement reached between the County and Annen Woods changed the plumbing code fixture unit value from the amounts on their permit application to the plumbing code values as of 2015.

After the Annen Woods settlement, the County conducted a cost-of-service study comparing fixture-based billing and consumption-based billing and determined they were approximately the same. In other words, changing from fixture based to consumption based doesn't change anything.

During cross-examination, Mr. Swygert emphasized that altering Stevenson Village's sewer service charges to align with fixture unit values in the 2015 plumbing code doesn't guarantee annual cost savings for all owners. He clarified that the cost-of-service dictates the revenue collection for each customer class. Simply adjusting the number of fixtures per property

doesn't alter the cost of service. In fact, such a change could potentially lead to both an increase in the rate per fixture unit and a rise in bills for not only Stevenson Village but all ratepayers.

Edward J. Donahue, III, was accepted as an expert, and provided expert testimony concerning municipal water and sewer utilities, supporting Mr. Swyger's stance. He highlighted Baltimore County's sewer utility, the Metropolitan District, as a self-supporting enterprise fund. This means it covers its service costs through property taxes and user charges. Mr. Donahue stated that using fixture values makes reasonable and consistent effort to identify the cost of serving a group of costumers and allocating those costs among the costumers on a reasonable basis that does not discriminate against any of the customers of that group of costumers. He also affirmed that the county's method of calculating water and sewer charges for condominiums aligns with the American Water Works Association's Manual M1. This manual sets industry standards for revenue requirements, cost allocation, and rate design.

Furthermore, Donahue emphasized the need for fair cost allocation among customers to maintain revenue consistency. Any decrease in one group's bills would necessitate increases for others, unless external subsidies intervene. Baltimore County's approach, used in various jurisdictions, stands as an acceptable method for cost allocation.

Regarding fixture unit values, Donahue argued that using values from the time of development is practical and preferable over constant adjustments. Labeling the charges as "overcharges" misleads, as they were initially calculated correctly. Retroactively reducing bills for one group would demand increased bills for others, maintaining the utility's self-sufficiency as required by law.

Donahue concluded that Baltimore County's method is fair, equitable, and compliant with industry standards.

Mr. Kenneth Kinsey testified on behalf of the Appellant. He is a professional engineer and land surveyor, but he was not presented as an expert witness. Mr. Kinsey performed the calculations for sewer service charges for Annen Woods and Stevenson Village. He contends that the County is inconsistent in how it charges condominium units. He noted that some units with the same number of fixtures are charged different rates. Mr. Kinsey believes that the County should not use the fixture unit values from when the building was originally constructed, sometimes over 40 years ago. Instead, these values should be updated. He argues that it is grossly unfair to use a 40-year-old fee structure for condominium owners while other property owners are charged based on metered usage. He requests that the fixture unit values be assigned according to the current law.

Miriam Weinryb also testified on behalf of the Appellant. She resides in the Stevenson Village Condominiums and agrees with Mr. Kinsey that plumbing fixture units should be based on current law. She described her unit as having 13 fixture units, yet she is billed at the rate for units with 15.5 to 25 units, rather than the rate for units with 0.5 to 15 units. She mentioned that other units within Stevenson Village are in the same situation. During cross-examination, Ms. Weinryb acknowledged that the fixture unit values she referred to are based on current law, not the plumbing code in effect when the permits were issued. She reiterated her understanding that while the fixture units were originally based on the plumbing code in effect at the time, they should now be based on current plumbing code values.

DISCUSSION

The Board must weigh the Appellant's arguments for updating the fixture unit values against the established legal and regulatory framework. The Appellant's position that the current system leads to inequities has merit, particularly given the potential discrepancies in charges for

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units with similar fixture counts. The argument for adopting current plumbing code values is aimed at ensuring that charges reflect contemporary standards and usage patterns.

However, the Board must also consider the County's position, as presented by Mr. Swygert and supported by Mr. Donahue's expert testimony. The County's method of using fixture unit values from the time of development is consistent with longstanding practices and industry standards. This approach ensures stability and predictability in cost allocation, which is crucial for the financial sustainability of the Metropolitan District. Changing the billing methodology could disrupt this balance and necessitate significant adjustments to the rate structure.

The Annen Woods settlement, while relevant, does not provide a binding precedent for other cases. It was a specific legal agreement between the parties involved and does not mandate a broader application of its terms to all condominium units in the County. Furthermore, the cost-of-service study conducted by the County indicated that transitioning from fixture-based billing to consumption-based billing would not significantly alter the overall costs for the condominiums.

The Board of Appeals acknowledges the validity of the concerns raised by the Appellant regarding the fairness and consistency of the sewer service charges. However, the authority to mandate changes to the billing practices and update fixture unit values lies with the County's legislative and executive bodies, not with this Board. The testimony and evidence presented by the county demonstrate that the current method of using fixture unit values from the time of development is legally and operationally sound.

Therefore, the Board of Appeals concludes that it does not have the power to compel the County to modify its current billing practices. The appeal is hereby denied. The Appellant is

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advised to pursue this matter through the appropriate legislative channels within Baltimore County to seek any desired changes.

ORDER

THEREFORE, IT IS THIS 3rd day of July, 2024 by the Board of Appeals of Baltimore County, hereby

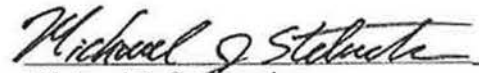
ORDERED that the Sewer Service Charges assessed by the Baltimore County Department of Public Works for Stevenson Village Condominiums located at 3205 Old Post Drive, Pikesville, Maryland, 21208 for sewer usage on the Real Property tax bill dated July 1, 2023, is **AFFIRMED**.

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**



Sharonne R. Bonardi, Panel Chair



Michael J. Stelmack



Bryan T. Pennington



Board of Appeals of Baltimore County

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July 3, 2024

Morris A. and Eileen S. Wise
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RE: In the Matter of: *Stevenson Village Condominium*
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Dear Messrs. Wise, Stein, Loverde and McAllister:

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, appearing to read "Sunny Cannington".

Krysundra "Sunny" Cannington
Executive Secretary

KLC/taz
Enclosure
Multiple Original Cover Letters

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