



## Board of Appeals of Baltimore County

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June 17, 2016

Michael E. Field, County Attorney  
Nancy C. West, Assistant County Attorney  
Baltimore County Office of Law  
The Historic Courthouse  
400 Washington Avenue  
Towson, Maryland 21204

James W. Mohler  
403 Frederick Road Ltd. Partnership  
2 West Rolling Crossroads, Suite 203  
Catonsville, Maryland 21228

Re: In the Matter of: *403 Frederick Road Ltd. Partnership*  
Case No: CBA-16-029

Dear Messrs. Field, West and Mohler:

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  
Administrator

KLC/tam  
Enclosure  
Multiple Original Cover Letters

c: Stephen R. Hinkel/DPW  
Bobbie Rodriguez, Metropolitan District Financing/DPW  
Steven A. Walsh, P.E., Director/DPW

IN THE MATTER OF:	*	BEFORE THE
403 Frederick Road Limited Partnership	*	BOARD OF APPEALS
2 West Rolling Crossroads	*	OF
Catonsville, MD 21228	*	BALTIMORE COUNTY
Re: Appeal of Sewer Service Charges	*	CBA- 16-029

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**OPINION**

The above-captioned matter involves an appeal by 403 Frederick Road Limited Partnership of a December 15, 2015 decision by Edward C. Adams, Jr., Director of the Department of Public Works for Baltimore County, Maryland regarding the imposition of sewer service charges. Mr. Adams imposed the charges against the Limited Partnership’s property located at 403 Frederick Road in the Catonsville section of Baltimore County. The Board held a hearing on this matter on April 12, 2016. James Mohler, a principal of the Limited Partnership, appeared *pro se* on the Appellant’s behalf. Nancy West, Esquire, Assistant County Attorney, appeared on behalf of Baltimore County.

**BACKGROUND**

Appellant owns the property located at 403 Frederick Road in Baltimore County (“the Property”). The Property houses a financial services business, a laundry/cleaners, and a convenience store. (*See Property Photo, County Ex. 2.*) On or about July 3, 2015, Appellant received a property tax bill against the Property showing a sewer service charge of \$14,461.50 covering the period from July 1, 2015 to June 30, 2016. (*See County Ex. 7.*)

The Property is located in a geographical area of Baltimore County known as the Metropolitan District. Ms. Bobbie Rodriguez is the Chief of the Metropolitan District and has been

with the Department of Public Works for approximately ten years. According to Ms. Rodriguez, the County levies a sewer service charge upon every property in the Metropolitan District which has a connection with the District's water and sewer system. The sewer service charge is assessed to recover the cost of treatment and transportation of wastewater and its by-products, and is based on the amount of water used by the prior calendar year as reported by Baltimore City's water department. The Property is subject to these charges. Ms. Rodriguez testified that the charges for the tax year beginning July 1, 2015, as well as the collection and processing procedures for these charges are set forth in an Executive Order dated March 23, 2015. (*See County Ex. 4.*)

Ms. Rodriguez became familiar with the Property when she received a series of emails in November 2015 from Appellant complaining about the amount of the sewer service charge applicable to the Property. (*See County Ex. 1.*) Appellant contended that Baltimore City erred in its assessment of water charges and therefore the corresponding sewer service charges should be reduced.<sup>1</sup> Appellant provided Ms. Rodriguez with a copy of a 2014 Baltimore City water bill indicating a credit adjustment for the Property's water consumption in the amount of \$2,552.07. (*See County Ex. 1.*) Appellant also provided a copy of a November 12, 2014 letter from Marino Plumbing regarding its inspection of the Property's plumbing following Appellant's complaint of a high water bill. (*Id.*)

According to the Marino letter, the plumber checked first for outside leaks but did not see or hear any leaks. The plumber then inspected the financial services company and the convenience store and also did not find any leaks or problems. However, his inspection of the interior of the laundry indicated that the business used "a substantial amount of water." He saw "a lot of water near the boiler on the floor" and observed that the water meter "was spinning very fast. . . ." He

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<sup>1</sup> Ms. Rodriguez testified that the financial services company and the laundry share a water meter, while the convenience store is metered separately.

also noted that the laundry owner stated that the business uses recycled water. However, in light of the water consumption concerns, the plumber recommended that the recycling system get checked to ensure it was operating properly, as improper recycling of the water could be the cause of the problem. (*Id.*)

On November 10, 2015, representatives of the Metropolitan District responded to Appellant, stating that since the plumber's statement indicated there are no leaks, "we are unable to adjust this account." (*See County Ex. 1.*) Three days later, Jessica Connors, of Public Works, emailed Appellant that she reviewed the Property's account using Baltimore City records and determined that all meter reads were "actual reads" and that the "supporting work orders verify the meter readings." She further stated that she "reviewed the plumbers [sic] bill and it says there were no plumbing leaks found so therefore all the water was treated by the Baltimore County sewer system." Ms. Connors therefore concluded that the "County doesn't have the authority to adjust this sewer service charge." (*Id.*)

On December 15, 2015, Department of Public Works Director, Edward C. Adams, Jr., sent a follow-up letter to Appellant. He reiterated that Baltimore City water records showed "actual" readings of the meter, that city work orders "confirmed the dial readings of the meter," that the plumber's letter stated that the meter was spinning fast (indicating water use), and that the plumber questioned whether the laundry's recycling system was operating properly. (*See County Ex. 3.*) He therefore supported Ms. Connors' conclusion and refusal to decrease the charge, stating that "[a]fter a thorough review, it is clear that the water used during calendar year 2014 was returned to the County's sewer system. The cost of treating this sewer cannot be passed along to the other ratepayers in Baltimore County."<sup>2</sup> On January 8, 2016, Appellant filed its Appeal of this decision.

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<sup>2</sup> Mr. Adams also noted that it appeared that Appellant had addressed an internal water problem with the three businesses as recent water readings were normal. (*See County Exs. 3, 12.*)

In her testimony, Ms. Rodriguez confirmed that the county only adjusts sewer service charges if there exists evidence of outside, underground leaks in a pipe. This type of leak often is evidenced by ground saturation, bubbling up of water, or a sinkhole. Further, according to Ms. Rodriguez, once the water gets to the interior of a structure, it becomes a property owner's responsibility, part of routine maintenance and upkeep. Ms. Rodriguez also confirmed that although the Property's records indicated a jump in consumption in 2014, subsequent actual, independent readings of the meter confirmed the validity of the bills and that there were no leaks. *(See County Exs. 8-14.)* As to Baltimore City's previous adjustment of Appellant's water bill, Ms. Rodriguez testified she believed the City's credit was wrong given the circumstances, that the city was lax about such adjustments, and that there existed different policies for the city and the county. Ms. Rodriguez also agreed with Director Adams' assessment that consumption of water at the property had declined tremendously in 2015. She posited that one cause of that drop was an internal change in consumption, or repair of internal problems.

Mr. James Mohler testified on Appellant's behalf. He believes the problem is with the meters and that the County was basing its conclusion on a flawed system. He indicated further that no one can prove whether the water did or did not go through the system.

#### DISCUSSION

Section 20-5-110 of the Baltimore County Code provides that, upon request, the Director of Public Works 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. Here, the Director did not so find. Rather, he investigated the charges and reviewed the evidence and concluded that the charges were

appropriate given that there was no leak in the underground pipes and 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 because the evidence indicates that the water did go into the system and did get treated, thereby validating the user charge. While Appellant has raised the issue of the meter not operating properly, there is no evidence to support that assumption in this case.

Because the Director's decision is supported by competent, material and substantial evidence, this Board hereby affirms that decision.

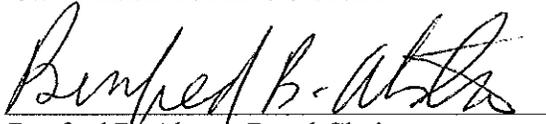
**ORDER**

**THEREFORE, IT IS THIS** 17<sup>th</sup> day of June, 2016 by the Board of Appeals of Baltimore County

**ORDERED** that the December 15, 2015 letter and findings by Edward C. Adams, Jr. regarding the Property be, and 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**

  
Benfred B. Alston, Panel Chairman

  
Meryl W. Rosen

  
James H. West