

PENGUIN RANDOM HOUSE, LLC

Petitioner

v.

MAYOR AND COMMON COUNCIL  
FOR THE CITY OF WESTMINSTER

Respondent

\* IN THE  
\* MARYLAND TAX COURT  
\*  
\* Case No. 18-MI-00-0346  
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**MEMORANDUM AND ORDER**

In the present case, the Petitioner, Penguin Random House, LLC (“Random House” or Petitioner”), has appealed assessments against its property by Respondent, Mayor and Common Council for the City of Westminster (“Westminster”). Respondent denied Petitioner’s request for a refund of water and sewer benefit assessments.

Random House owns and operates a book distribution business and warehouse in Carroll County, Maryland. Although the property is not located within the limits of Westminster, it is serviced by water and sewer owned and operated by Westminster. During the summer of 2017, Random House submitted a plan to Carroll County for expansion of the warehouse to add 189,865 square feet to the existing facilities and to add one restroom. Random House submitted an application to Westminster for water and sewer allocation in which Random House explained that it expected to have twenty (20) employees at the new facility, and that each employee would generate a water demand of fifteen (15) gallons per day. As a result, Random House estimated the

total water and sewer allocation to be three hundred (300) gallons per day. Westminster approved the application on June 27, 2017, and the site plan was approved in September 2017. Upon application for building permits, Westminster issued an invoice for the water and sewer benefits assessment in the amount of \$199,498.80 based upon the square footage of the warehouse expansion (\$99,793.40 for water and \$99,705.40 for sewer). The assessments were paid by Random House in order to commence construction of the warehouse expansion. Petitioner timely filed a request for refund.

The water and sewer benefit assessments charged to Random House in connection with its warehouse expansion were calculated in accordance with the rates set in Ordinance 795. That Ordinance was adopted by Westminster on or about November 24, 2009. Petitioner argues that the purpose and rationale for utility special assessments are to collection fees in order to offset the respective utility improvements and possible worker improvements that are precipitated by growth. The charges for water and sewer benefit assessment fees are charged to customers who join the water and sewer system. The assessment fees are intended to recover the capital cost of capacity constituted to serve new customers. Subsection (a)(4) of the Westminster City Code Section A175-3 sets forth the schedule of fees for sewer benefits. As applied to Random House's 189,865 square foot warehouse expansion, the sewer assessment is calculated as follows:

Square Footage	Sewer Rate	Sewer Assessment
2,000	-	\$5,496.00
3,000	\$1.02 per square foot	\$3,060.00
5,000	\$0.84 per square foot	\$4,200.00
20,000	\$0.67 per square foot	\$13,400.00
159,890	\$0.46 per square foot	\$73,549.40
<b>Total: 189,890</b>	-	<b>\$99,705.40</b>

The schedule of water fees set forth under Subsection (b)(6) of Section A175-3 of the Westminster City Code sets forth the schedule of fees for water benefits. As applied to Random House's 189,865 square foot warehouse expansion, the water assessment is calculated as follows:

Square Footage	Water Rate	Water Assessment
2,000	-	\$5,244.00
3,000	\$1.00 per square foot	\$3,000.00
5,000	\$0.84 per square foot	\$4,200.00
20,000	\$0.69 per square foot	\$13,800.00
159,890	\$0.46 per square foot	\$73,549.40
<b>Total: 189,890</b>	-	<b>\$99,793.40</b>

Random House contends that the assessments violated Maryland common law, constituted a taking without just compensation, and were wrongfully collected under Local Government Article Section 20.113. The basis for Petitioner's argument is that the assessments are grossly disproportionate to the amount of sewer and water that will be used in the expanded warehouse facility. The addition of 189,865 square feet to the Random House facility only requires the addition of twenty (20) new employees at the new facility, one (1) additional bathroom, with each employee requiring the use of fifteen (15) gallons of water per day ("GPD"), totaling 300 GPD.

The central issue in dispute is whether Westminster could or should have imposed an alternate assessment in response to Random House's fairness argument. The Court must first consider whether Respondent adhered to the correct interpretation of the statute when calculating the water and sewer special benefit assessments. Moreover, did the governing body satisfy legal requirements when it adopted the rates for new construction that requires access to Westminster's water and sewer service?

Petitioner argues that the water and sewer benefits assessments in the amount of \$199,498.80 violate well established Maryland law because these assessments are completely disproportionate to the addition of one (1) restroom for men and one (1) restroom for women and the future projection of a maximum of an additional 300 gallons per day if 20 additional warehouse employees are ever added. Since the projected additional demand for water and sewer is basically equivalent to a single-family dwelling (235 GPD), a fee similar to that charged for a single-family dwelling would be in line with the benefit provided. The charge for a single-family dwelling unit is \$5,496.00 for sewer or \$23.38 per gallon and \$5,244.00 for water, or \$22.31 per gallon. Using those numbers, and the 300 GPD allocation for the warehouse expansion, water and sewer benefit assessments in the amount of \$7,014.01 for sewer and \$6,693.00 for water would comply with Maryland law because these special assessment numbers would be approximately equal to the benefit conferred.

Petitioner questions the legality of the assessment based on certain cases addressing special benefit assessments which can be distinguished from the present case. In *Pumphrey v. County Commissioners of Anne Arundel County*, 212 Md. 536, 542 (1957), the court said, “[I]n the absence of a showing of arbitrary action and plain abuse of power,” the legislative body’s decision is final.” Here, the legislative body made a reasonable legislative judgment about the total costs of water and sewer related capital projects over time and imposed those costs on the public generally based on a definite and just plan. The calculation was based on the charges set in Ordinance 795 which reflected the information summarized in the 2008 Cost of Service Study. The City has for many years based these assessments on square footage of proposed improvements, rather than linear road frontage. Square footage is more appropriate to the context of water and sewer improvements

because it better reflects the theoretical impact of a particular improvement on the water and sewer systems. Moreover, a determination of water and sewer assessments based on the anticipated number of employees for individual use could result in equally disparate assessments.

In *Montgomery County v. Schultze*, 302 Md. 481 (1985) two abutting property owners appealed their assessments under the front-foot assessment formula authorized by the County Code, arguing that some, if not all, of the benefit of the road improvement project accrued to the public in general, and that it was thus improper to assess the total construction costs as a special front-foot benefit to the abutting property owners. The case was remanded to recalculate the assessment, but the assessment being challenged by Petitioner is distinguishable from the assessment in *Schultze* because Petitioner has not been asked to shoulder the cost of a public project that benefits others who are not also paying for the project. In *Schultze*, the Court stated the general rule that a legislative determination as to the imposition of a special assessment upon property specially benefited is presumed correct.

In *Washington Suburban Sanitary Comm'n v. Evans*, 62 Md. App. 577 (1985), the Commission had used the front-foot rule to assess properties for water and sewer construction. The average front footage of the properties in the neighborhood was approximately 180 feet, but the Evans' property had frontage of 364 feet, even though the lot itself was the same size as the other lots in the area. Because the property was irregularly shaped, the Evans' assessment using the front-foot rule resulted in a substantially larger assessment than the regularly shaped lots in the neighborhood. The property owners challenged the assessment as an unconstitutional taking, and the Court agreed:

[I]t is reasonable to say that all of these lots derive the identical benefits from the water and sewer facilities installed by the WSSC. Further, it is undisputed that each property owner

is responsible for his share of the cost in proportion to the corresponding benefit received. It follows that each property owner, having received the same benefit as his neighbors, should be burdened with an assessment comparable to those paid by his neighbors. An assessment far in excess of those levied against similarly benefited properties is a *prima facie* indicium of a disproportionate assessment.

The facts here are different. The application of the square footage rule does not have a constitutionally disproportionate impact on Random House. Petitioner's property is not different from other properties in Westminster in a manner that makes use of the square foot rule unfair. Petitioner's present use of the property may have a lesser burden on the other uses, but the space inside the building will not change. Under the applicable statutes, all owners are treated the same regardless of a different or changing use.

Consequently, as with the front-foot rule, using square footage promotes uniformity among the warehouse uses seeking access to the Westminster's water and sewer service. Westminster acted reasonably in adopting the ordinance and the rates it uses, and Random House has not shown that its assessment is substantially disproportionate to other warehouses that access Westminster's water and sewer. The fact that Random House will use less water and sewer than other warehouses by comparing it to the presumed usage of a single-family dwellings does not alter the reasonableness of Westminster's legislative apportionment of the capital costs of the system. Random House has not been asked to shoulder the entire cost of a public project that benefits others who are not also paying for the project. Instead, the assessment is imposed on all new construction based on the nature of the use – industrial warehouse, commercial, or residential. The ordinance reasonably uses square footage to calculate Petitioner's share of the cost of improvements, which is comparable to the method for all users of Westminster's water and sewer

systems. In each category, the legislative body considered the size of the structure based on square footage or capacity of occupancy.

The Court finds that Westminster reasonably viewed the square footage of industrial and commercial uses to provide an appropriate assessment of the potential impact on water and sewer service by those uses. There has been no showing that Westminster acted arbitrarily, and the application of the square-footage rule does not have a constitutionally disproportionate impact on Petitioner.

Accordingly, it is, this 7<sup>th</sup> day of MARCH, 2019, ORDERED, by the Maryland Tax Court, that the Westminster's denial of the Petitioner's refund claim is hereby AFFIRMED.

CC: J. Brooks Leahy, Esq.  
Elissa D. Levan, Esq.

**CERTIFIED TRUE COPY**  
**TEST:** John T. Hearn, Clerk

**NOTICE:** You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.