

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2016-1050

STURBRIDGE HILLS CONDOMINIUM TRUST

vs.

BOARD OF SELECTMEN OF STURBRIDGE¹ & another²

MEMORANDUM OF DECISION AND ORDER ON PARTIES'
CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

The plaintiff, Sturbridge Hills Condominium Trust (the "plaintiff" or the "Trust"). brought this certiorari action pursuant to G. L. c. 249, § 4 seeking review of a decision by the defendant, the Board of Selectmen of Sturbridge (the "Board"). The Board, in a decision dated May 23, 2016, voted to uphold its continued assessment of sewer usage charges against the Trust, despite the fact that the Trust's meters are not tied into the Town of Sturbridge's sewer system.

The parties have filed cross-motions for judgment on the pleadings. For the reasons that follow, the Board's motion is **DENIED**, and the Trust's motion for judgment on the pleadings is **ALLOWED**.

BACKGROUND

The Sturbridge Hills Condominium (the "Condominium") is a residential condominium consisting of 120 townhouse style units in Sturbridge (the "Town"). The Trust is the organization of unit owners and is a separate legal entity pursuant to G. L. c. 183A, § 10. The

¹ In its capacity as Water and Sewer Commissioners

² Board of Selectmen of Sturbridge

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Trust is responsible for maintaining the common areas of the Condominium, including the lawn of the property. In order to maintain the lawn and landscaping, the Trust owns and utilizes an automatic sprinkler system which is served by twenty-one water meters. These meters are not connected to the Town's sewer system.

These twenty-one meters owned by the Trust are distinct from the water meters that are connected to the individual condominium units. In contrast to the meters utilized by the Trust, the individual unit owners' meters are connected to the Town's sewer system. Unit owners are charged individually for their respective water and sewage usage.

It is the sewer usage charges which are at issue in this suit. Where a Town water customer is connected to the Town's sewer system, the Town assesses a sewer usage charge based upon the customer's metered water usage. The twenty-one meters owned by the Trust are not tied into the Town's sewer system, yet the Trust is assessed both a water and sewer usage charge. The sewer charges are significant, accounting for approximately 60% of the Trust's water bills. Other water customers in the Town who are not tied into the sewer system are assessed only for their water usage and not for a corresponding sewer usage charge.

On February 24, 2016, the Trust submitted a letter to the Board requesting that the Trust be treated as a water only customer and not be assessed a sewer usage rate. The Board held discussions on the Trust's application for modification to its water sewer assessments at its April 19, 2016 and May 23, 2016 meetings. On May 23, 2016, the Board issued a decision denying the Trust's request.

The Trust filed this certiorari action on July 15, 2016. The parties filed their cross-motions for judgment on the pleadings on April 7, 2017. The court heard oral argument from the parties on June 20, 2017.

DISCUSSION

Massachusetts General Laws c. 249, § 4 provides in pertinent part: “[a] civil action in the nature of certiorari to correct errors in proceedings which are not according to the course of common law, which proceedings are not otherwise reviewable by motion or by appeal, may be brought in the supreme judicial or superior court” Review pursuant to G. L. c. 249, § 4 “serves to correct errors in administrative proceedings by means of judicial review where such oversight is not otherwise available by statute.” Yerardi’s Moody Street Restaurant and Lounge, Inc. v. Board of Selectmen of Randolph, 19 Mass. App. Ct. 296, 300 (1985). The court is limited to correcting only substantial errors of law, evidenced by the record, that adversely affect material rights. Gloucester v. Civil Service Commission, 408 Mass. 292 (1980).

Massachusetts General Laws c. 83, § 16, titled “Assessment for Use of Sewers,” provides:

“The aldermen of any city or the sewer commissioners, selectmen or road commissioners of a town, may from time to time establish *just and equitable* annual charges for the use of common sewers and main drains and related stormwater facilities, which shall be paid by every *person* who enters his particular sewer therein.”

G. L. c. 83, § 16 (emphasis added). “Although the sewer charge ‘must be proportioned to the benefit [of the sewer] and not in excess of it,’ the city may adopt any ‘reasonable way of estimating the extent of the benefit received.’” Merrimac Paper Co. v. City of Lawrence, 1995 Mass. Super. LEXIS 448 at *24 (Mass. Super. 1995), quoting Carson v. Brockton, 175 Mass. 242, 244 (1900).

The Trust contends that it is a legally distinct entity, separate and apart from the unit owners. Thus, according to the Trust, it is a separate water customer. Because the Trust’s meters are not tied in to the Town’s sewer system, it should accordingly not be assessed a sewer usage fee, regardless of the fact that the individual unit owners’ meters are tied in to the Town’s

sewer system. The Trust further argues that the Town's sewer charges are not assessed in a "fair and equitable" manner pursuant to the language of G. L. c. 83, § 16.

In contrast, the Town argues for a property-based approach. The Town contends that the condominium *property* – as opposed to the Trust's meters in particular – is connected to the Town's sewer system, and thus all meters on the property, including the Trust's, are tied into the sewer system and assessed sewer charges accordingly. Relying on Merrimac Paper Co., the Town further argues that, "as long as there is evidence that the rates indicate a reasonable attempt to balance the myriad concerns and costs of sewage treatment and a rational effort to roughly estimate the benefit received, the rate must be upheld." 1995 Mass. Super. LEXIS 448, at *26. The Town argues their assessment of fees is reasonable here, and thus, judgment should enter in their favor. The court disagrees.

The Trust correctly argues that it is a distinct legal entity from the individual unit owners. See G. L. c. 183A. Thus, the Trust is correct that it is a distinct water customer. Furthermore, the Town's contention that its assessment of sewer fees against the Trust should be upheld because "the Town has decided to apply a uniform sewer rate based on actual metered use of water for all *properties* that are also provided sewer services" is misplaced. Nothing in the record, relevant regulations, statute, or case law supports the Town's position that simply because a property is connected to the Town's sewer system, all meters on that property can appropriately be assessed a sewer fee. In fact, G. L. c. 83, § 16 suggests that the opposite is true, stating in relevant part that a town may assess "just and equitable" charges to "be paid by every *person* who enter his particular sewer therein." (emphasis added).

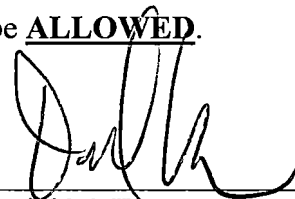
Moreover, the court disagrees with the Town's position that its decision here to assess sewer usage charges against the Trust constitutes "a reasonable attempt to balance the myriad

concerns and costs of sewage treatment and a rational effort to roughly *estimate the benefit received.*” See Merrimac Paper Co., 1995 Mass. Super. LEXIS 448 at *26 (emphasis added). Here, where the Trust’s twenty-one meters are not tied in to the sewer system, there is no “benefit received.” See id.

The Trust’s twenty-one water meters are not tied in to the Town’s sewer system. As a distinct water customer, separate and apart from the condominium unit owners, the Town’s decision to uphold the continued assessment of sewer usage fees against the Trust was in error.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the plaintiff Sturbridge Hills Condominium Trust’s motion for judgment on the pleadings be **ALLOWED**.



Daniel M. Wrenn
Justice of the Superior Court

July 10, 2017