



ERIE COUNTY COMPTROLLER

HON. STEFAN I. MYCHAJLIW

November 23, 2016

The Honorable
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Honorable:

This letter serves as a follow-up to our report on the Real Property Tax Cap dated November 1, 2016, as well as discussions during budget hearings on November 1, 2016 and November 3, 2016. As a result of these discussions, the position of the Comptroller's Office has not changed as outlined in the report. Regardless of the intentions to change terminology in an effort to subvert the spirit of New York State's Property Tax Cap, the method for billing users did not change. Because the annual property tax bill that users received did not change, the amount billed remains a tax and must be counted as such in Erie County's computation of the real property tax cap.

During the discussion on November 1, 2016, Chair of the Finance, Management and Budget Committee Legislator Lorigo questioned Commissioner of Sewerage Management Joseph Fiegl regarding usage charges compared to use fees. In short, Legislator Lorigo questioned the definition of use. Does use mean the actual incident of producing sewage or is it a measure of how much a household uses the sewer system. A definitive answer was not ultimately decided.

The purpose of this correspondence is not to provide a definitive answer to that question to your Honorable body. Rather, it is to provide information which may be useful to your deliberations, based upon questions raised in the report submitted by our office on November 1, 2016. As stated above, the opinions of the Comptroller's Office remain unchanged as presented on November 1, 2016.

Commissioner Fiegl stated that water usage was used as a surrogate for sewage production, because sewage exiting a property is not metered. He acknowledged that this number would be inflated for some users, because some properties may water grass or fill a swimming pool, which would not produce sewage. For purposes of billing sewage usage, one unit represented 91,500 gallons of water consumed. Commercial properties were charged one unit, and then additional charges for water consumed beyond that amount. Single family residential units are charged one unit, regardless of the amount of water actually consumed. Two family residences are charged two units. Apartment buildings are charged based on a formula. As such, a residence which accesses a sewer line is charged the same use fee regardless whether the household is vacant and uses absolutely no water or it uses 155,000 gallons of water, well above the 91,500 gallons on which a unit is based.

The Erie County Water Authority charges its users a minimum usage fee each quarter. That fee is based on 9,000 gallons of consumption. Consumption beyond 9,000 gallons is charged in 1,000 gallon increments. Three out of every ten bills sent to residential users is based on a minimum usage charge. The Erie County Water Authority shares consumption information with the Erie County Department of Sewers. Our office utilized the FOIL to obtain water consumption records from 2015 for Lombardy Street in Lancaster, one of the streets examined for the purposes of our November 1, 2016 report. Because water usage information is not readily available, a copy of a spreadsheet which includes water usage for residences on Lombardy Street will be made available to you upon your request.

Water consumption information provided by the Erie County Water Authority includes actual readings, user reported readings and estimated usage. Further, in making computations based on water usage information, the number of units charged per property was considered. A number of properties on Lombardy Street do have swimming pools. As Commissioner Fiegl stated, water consumption used to fill pools and water lawns would not ultimately tax the sanitary sewer system.

For properties on Lombardy Street, the average water consumption was 43,700 gallons. The highest water usage was 155,000 gallons. The lowest usage was zero gallons, which applied to two properties. For statistical purposes, one standard deviation from the average is 29,439 gallons. As such, the lowest water consumption properties are 1.48 standard deviations from the average property. The highest consumption property is 3.78 standard deviations from the average property. In fact, 91,250 gallons, the consumption level upon which the unit charge is based, is 1.62 standard deviations from the average.

Of course, statistics do not matter if the definition of sewer usage depends on the mere connection to the sewer system, regardless of the incident of usage (again, two properties consumed no water during 2015 and were charged sewer usage flat fees). However, they may matter if the definition of sewer usage depends upon a user fee that "bear[s] a rational relationship to the amount of use." *Real Property Tax Cap Information – Frequently Asked Questions*, New York State Department of Taxation and Finance and the Office of the New York State Comptroller.

Should you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott W. Kroll', written over a horizontal line.

Scott W. Kroll

cc: Erie County Fiscal Stability Authority
Office of the New York State Comptroller