

# **Petitioner's Request for Relief from Unfair Billing of Water And Sewer Charges**

## **Petitioners:**

### **Pepperell Siding Model Railroad Club, Inc.**

*41 Lomar Park Drive, Unit #4*

*Pepperell, Massachusetts 01463*

### **Lomar Industrial Condominium No 33 Association**

*33 Lomar Park Drive, Unit #33*

*Pepperell, Massachusetts 01463*

*Thursday, May 19, 2022. Town Hall, Pepperell Massachusetts*

*<https://www.unfairbilling.com>*

# *Why Are We Here?*



**33 & 41 Lomar Park**  
Water Meters: **Two**  
Number of Units: **26**  
Usage: **19,800** CF/Yr

*Water & Sewer Bill*  
2021: **\$2,959.78**  
2022: **\$15,329.36**  
Diff: **\$12,369.58**  
**+518%**



**NO RATIONAL BASIS**  
***for a 500%+ Up-Charge***



# ***Statutory Requirements***

**MGL, Chapter 40N, Section 9:**

***“... The commission shall hold at least one public hearing on its schedule of fees, rates and charges or any revision thereof prior to adoption, ...”***

# ***What is a Fee?***

A '***fee***' is ***exchanged for a service rendered*** and some reasonable ***relationship*** exists between the ***amount of the fee*** and the ***value of the service***

# ***Statutory Requirements***

## **MGL, Chapter 40N, Section 1**

***"... fees, rates and charges for water and sewer service ... , pay their fair share of the costs of such services;..."***

# ***Tighe & Bond Consultants***

**“... the concept of *cost causation prevails* and customers’ *bills reflect their portion of the costs of operating the systems.*”**





TOWN OF PEPPERELL - DPW  
SEWER DIVISION

| SEWER CODES & RATES - May 2021 |             |               |         |            |                                      |             |         |            |
|--------------------------------|-------------|---------------|---------|------------|--------------------------------------|-------------|---------|------------|
| RATE CODE 231                  |             |               |         |            | RATE CODE 282                        |             |         |            |
| Single Family - Quarterly      |             |               |         |            | Use Residential                      |             |         |            |
| Tier                           | Consumption | Cubic Feet    | Rate'19 | Rate FY 22 | Sewer Flat Rate - Quarterly No Meter |             |         |            |
| 1                              | 1,250       | Min 1,250     | 103.42  | 109.63     | Tier                                 | Consumption | Rate'19 | Rate FY 22 |
| 2                              | 1,750       | 1,251-3,000   | 0.08273 | 0.0877     | 1                                    | Fixed       | 199.19  | 211.14     |
| 3                              | 3,000       | 3,001-6,000   | 0.09650 | 0.1023     | RATE CODE 501                        |             |         |            |
| 4                              | 3,000       | 6,000-9,000   | 0.10842 | 0.1149     | Use Residential                      |             |         |            |
| 5                              | 9,999,999   | 9,000 +       | 0.12036 | 0.1276     | Sewer Maintenance Fee - Quarterly    |             |         |            |
| RATE CODE 132                  |             |               |         |            | Tier                                 | Consumption | Rate'19 | Rate FY 22 |
| 2 Family Home - Quarterly      |             |               |         |            | 1                                    | Fixed       | 29.37   | 0.00       |
| Tier                           | Consumption | Cubic Feet    | Rate'19 | Rate FY 22 | Use Residential                      |             |         |            |
| 1                              | 1,250       | Min 1,250     | 103.42  | 109.63     | Sewer Minimum                        |             |         |            |
| 2                              | 4,750       | 1,251-6,000   | 0.08273 | 0.0877     | Tier                                 | Consumption | Rate'19 | Rate FY 22 |
| 3                              | 6,000       | 6,001-12,000  | 0.09650 | 0.1023     | 1                                    | Fixed       | 103.42  | 109.63     |
| 4                              | 6,000       | 12,001-18,000 | 0.10842 | 0.1149     |                                      |             |         |            |
| 5                              | 9,999,999   | 18,001 +      | 0.12036 | 0.1276     |                                      |             |         |            |
| RATE CODE 233                  |             |               |         |            |                                      |             |         |            |
| 3 & Up - Quarterly             |             |               |         |            |                                      |             |         |            |
| Tier                           | Consumption | Cubic Feet    | Rate'19 | Rate FY 22 |                                      |             |         |            |
| 1                              | 1,250       | Min 1,250     | 103.42  | 109.63     |                                      |             |         |            |
| 2                              | 750         | 1,251-2,000   | 0.08273 | 0.0877     |                                      |             |         |            |
| 3                              | 2,000       | 2,001-4,000   | 0.09650 | 0.1023     |                                      |             |         |            |
| 4                              | 2,000       | 4,001-6,000   | 0.10842 | 0.1149     |                                      |             |         |            |
| 5                              | 9,999,999   | 6,001 +       | 0.12036 | 0.1276     |                                      |             |         |            |
| RATE CODE 223                  |             |               |         |            |                                      |             |         |            |
| Comm. & Indust. - Quarterly    |             |               |         |            |                                      |             |         |            |
| Tier                           | Consumption | Cubic Feet    | Rate'19 | Rate FY 22 |                                      |             |         |            |
| 1                              | 1,250       | Min 1,250     | 103.42  | 109.63     |                                      |             |         |            |
| 2                              | 250         | 1,250-1,500   | 0.08273 | 0.0877     |                                      |             |         |            |
| 3                              | 1,500       | 1,501-3,000   | 0.09650 | 0.1023     |                                      |             |         |            |
| 4                              | 1,500       | 3,001-4,500   | 0.10842 | 0.1149     |                                      |             |         |            |
| 5                              | 9,999,999   | 4,501 +       | 0.12036 | 0.1276     |                                      |             |         |            |

6%

| Tier | Rate FY 22 | Rate'19 | Rate'16 |
|------|------------|---------|---------|
| 1    | 109.63     | 103.42  | 103.42  |
| 2    | 0.0877     | 0.08273 | 0.08273 |
| 3    | 0.1023     | 0.09650 | 0.09650 |
| 4    | 0.1149     | 0.10842 | 0.10842 |
| 5    | 0.1276     | 0.12036 | 0.12036 |

**NO "Per Unit"**

Pepperell Board of Public Works - Adopted Date: April 1, 2021  
Effective Date: May 1, 2021 (to coincide with May - June 2021 bill cycle)

\_\_\_\_\_  
Thomas Nephew, Chairman Date

\_\_\_\_\_  
Paul Brinkman, Vice Chair Date

\_\_\_\_\_  
George Clark Date

\_\_\_\_\_  
Lewis Lann Date  
*Patrick Harrington* 5-17-21  
Patrick Harrington Date

(SIGNED FOR THE BOARD per VOTE 5/13/21)

Note: Due to the Covid 19 pandemic, the Board of Public Works voted to authorize the Chairman, Thomas Nephew, to sign on their behalf.  
Vote taken at April 1, 2021 BOPW meeting.



# ***Water Meter***

***measure and bill for usage***



How many ***units*** in a building has ***nothing***  
to do with ***charging for water usage***

# Single Owner Building



Water Meters: **One**  
Number of Units: **1**  
Building Sizes: **20K** Sq Ft  
Water Usage: **9,900** CF/Yr  
Type of Use: **Industrial**

*"Multi Unit" Billing*  
2021: **\$1,479.89**  
2022: **\$1,479.89**

Beginning February 7, 2022  
*"Multi Unit"* billing started



# Condominium Building



Water Meters: **One**  
Number of Units: **13**  
Building Sizes: **20K** Sq Ft  
Water Usage: **9,900** CF/Yr  
Type of Use: **Industrial**

*"Multi Unit" Billing*

2021: **\$1,479.89**

2022: **\$7,664.68**

Diff: **\$6,184.79**

**+518%**

**NO RATIONAL BASIS**  
***for a 500%+ Up-Charge***



# Single House - Sewer



\$109.63 per quarter

- Commonly doesn't exceed 1250 cf \*
- Tiers for excess beyond 1250 cf

\$109.63    **\$438.52/year**

***\* 55% do not use 5,000 cf per year***

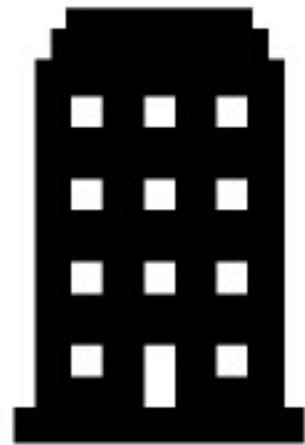
*RE: Slide #14 revised, Pepperell Water and Sewer Rate Discussion  
Paul Brinkman, DPW Business Manager March 17, 2022*

# Multi-Unit Property – Sewer (corrected)

- \$109.63 per unit\* per quarter

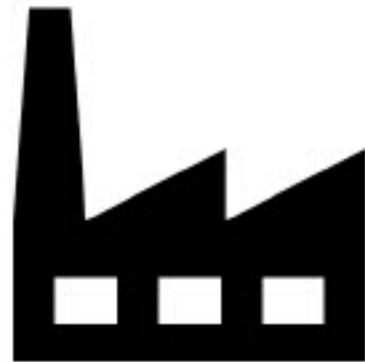
- Tiers for Use

Tiers adjusted for number of units\*



Example 8 units

**1 water meter**



8 X \$109.63 = \$877.04    **\$3,508.16/year**

\$109.63 per unit

**\$438.52/unit/year**

*\* There is NO “per unit” billing in the rate tables*

# **"Multi-Unit" Sewer Penalty**

Example 8 units **Water Meter Unit #1**

2021: Unit #1 paid **\$438.52** for sewer  
measured by the water meter

2022: Unit #1 pays **\$438.52** for sewer  
measured by the water meter

The other 7 units ***each*** pay **\$438.52**  
***for sewer services not used***

7 units over billed **\$3,508.16**





## Exhibit #5 - Pepperell Water Billing Analysis

### Typical Single Property Owner – 5,000 Cubic Feet of Water Annually

| <b>Water Res &amp; Comm</b> | <b>Quarterly Tier</b> | <b>2022 Rate</b> | <b>Annual Usage</b> | <b>Total</b>    |
|-----------------------------|-----------------------|------------------|---------------------|-----------------|
| <b>Minimum</b>              |                       | \$30.0000        | 4                   | \$120.00        |
| 1                           | 1250                  | \$0.04080        | 5,000               | \$204.00        |
| 2                           | 250                   | \$0.05130        | 0                   | \$0.00          |
| 3                           | 1500                  | \$0.06060        | 0                   | \$0.00          |
| <b>Totals</b>               |                       |                  | 5000                | <b>\$324.00</b> |

| <b>Sewer Res</b>   | <b>Quarterly Tier</b> | <b>2022 Rate</b> | <b>Annual Usage</b> | <b>Total</b>    |  |
|--------------------|-----------------------|------------------|---------------------|-----------------|--|
| 1                  | 1250                  | \$109.63000      | 5,000               | \$438.52        |  |
| 2                  | 1750                  | \$0.08770        | 0                   | \$0.00          |  |
| <b>Total</b>       |                       |                  | 5,000               | <b>\$438.52</b> | <b>Residential<br/>Water &amp; Sewer</b> |
| <b>Grand Total</b> |                       |                  |                     |                 | <b>\$762.52</b>                          |

| <b>Sewer Comm</b>  | <b>Quarterly Tier</b> | <b>2022 Rate</b> | <b>Annual Usage</b> | <b>Total</b>    |   |
|--------------------|-----------------------|------------------|---------------------|-----------------|---|
| 1                  | 1250                  | \$109.63000      | 5,000               | \$438.52        |   |
| 2                  | 250                   | \$0.08770        | 0                   | \$0.00          |   |
| 3                  | 1500                  | \$0.10230        | 0                   | \$0.00          |   |
| <b>Totals</b>      |                       |                  | 5,000               | <b>\$438.52</b> | <b>Commercial<br/>Water &amp; Sewer</b> |
| <b>Grand Total</b> |                       |                  |                     |                 | <b>\$762.52</b>                         |

# **“Multi Unit” Bills for Services *NOT* Provided**

## **Exhibit #5 - Pepperell Water Billing Analysis**

**Multiple [13] Property Owners - 5,000 Cu Ft of Water Annually**

**Differences**

| <b>Water Comm</b>  | <b>Quarterly Tier</b>       | <b>2022 Rate</b> | <b>Annual Usage</b> | <b>Total</b>      |                          |
|--------------------|-----------------------------|------------------|---------------------|-------------------|--------------------------|
| <b>Minimum</b>     | # Owners x Rate x Quarters  | \$30.0000        | 13                  | \$1,560.00        | <b>Water</b>             |
| <b>1</b>           | Up To 16,250 CuFt           | \$0.04080        | 5,000               | \$204.00          | 544%                     |
| <b>Total</b>       | Annual CuFt Billed = 5,000  |                  |                     | <b>\$1,764.00</b> | <b>Sewer</b>             |
|                    |                             |                  |                     |                   | \$5,262.24               |
|                    |                             |                  |                     |                   | 1300%                    |
| <b>Sewer Comm</b>  | <b>Quarterly Tier</b>       | <b>2022 Rate</b> | <b>Annual Usage</b> | <b>Total</b>      | <b>Water &amp; Sewer</b> |
| <b>1</b>           | Billed Min 16,250 CuFt      | \$109.63000      | 13                  | \$5,700.76        | \$6,702.24               |
| <b>Total</b>       | Annual CuFt Billed = 65,000 |                  |                     | <b>\$5,700.76</b> | 979%                     |
| <b>Grand Total</b> |                             |                  |                     | <b>\$7,464.76</b> |                          |



## **Create a "*Multi Unit*" Policy**

*Governmental bodies adopt policy statements by a **vote of the body and recorded in meeting minutes** where such policy is adopted.*



# ***"Multi Unit" Billing Policy?***

## **Public Records Request:**

What is the board's "Multi Unit" Billing Policy and the date of the meeting, and minutes thereof, where said "Multi Unit" Billing Policy was voted and adopted by the Board?

***No policy documents found***

*Paul D. Brinkman, DPW Business Manager, Thursday, May 5, 2022*

# ***"Multi Unit" Billing Unauthorized***

On April 1, 2021, the Board voted a new set of rate schedules which ***DID NOT*** include ***"Multi Unit"*** billing.

***NO "Multi Unit" Policy*** exists.

Beginning February 7, 2022  
***"Multi Unit"*** billing started and was  
***NEVER*** approved by the Board.



## ***"Multi Unit" 2022 Revenue***

***"Multi Unit"*** billing that has ***NEVER been approved*** by the Board and has ***NEVER had a public hearing*** but and will likely raise an additional ***\$120,000*** in 2022 revenues.

# Minimum Sewer Charge Basis

What is the basis or metrics  
for charging a ***Minimum  
Sewer Charge?***



# ***Cost Causation Questions***

## **Public Records Request:**

"There is a ***Minimum Sewer Charge*** of \$438.52 per year for the first 5,000 cubic feet of water. *What is its fair share cost basis?"*

"A building with one water meter serving multiple condominium owners is charged multiple ***Minimum Sewer Charges*** of \$438.52 per year. *What is its fair share cost basis?"*

***We are unaware of any specific information that is available regarding your questions.***

*Paul D. Brinkman, DPW Business Manager, Monday, April 4, 2022*

# ***Minimum Charge Is Unfair***

The ***mandatory*** annual \$438.52 ***Minimum Sewer Charge*** has no documented cost causation basis.

That violates the ***Fair Share*** rate principle set forth in MGL Chapter 40N.

The ***Minimum Sewer Charge*** is ***higher*** than the ***Fair Share*** principle for more than ***50%*** of all customer accounts.



# *When is a Charge a Fee?*

"a user **fee** must serve a **regulatory purpose** rather than a revenue-raising purpose"; and

"user **fees** must be **proportionate** to the necessary costs of the service."; and

it must include "**voluntariness**" ... "citizens may take it or not as the price does or does not suit them."

# ***When is a Charge a Tax?***

It serves a ***revenue-raising*** purpose.

Is in ***excess*** of the costs of the service.

It is "***mandatory.***"



## ***Courts Cases Defining the Difference Between a **Fee** and a **Tax*****

Supreme Court of Michigan, Bolt v Lansing, 459 Mich 152, 158;  
587 NW2d 264 (1998)

Court of Appeals of Michigan, Saginaw Co v John Sexton Corp,  
232 Mich App 202, 222; 591 NW2d 52 (1998)

Supreme Court of Michigan, Bray v. Dep't of State, 418 Mich.  
149, 160, 162, 341 N.W.2d 92 (1983)

Supreme Court of Michigan, Merrelli v. St. Clair Shores, 355  
Mich. 575, 583-584, 96 N.W.2d 144 (1959)

Supreme Court of Michigan, Vernor v Secretary of State , 179  
Mich 157, 167-170; 146 NW 338 (1914)

Supreme Court of Michigan, Jones v. Detroit Water Comm'rs,  
34 Mich. 273, 275 (1876).

# ***Minimum Charge is an Unlawful Tax***

Chapter 40N is a ***regulatory*** law which only grants ***rate making authority***

The ***mandatory Minimum Sewer Charge*** is a ***tax*** implemented to ***raise revenues*** in excess of ***fair share*** costs

***The Board lacks lawful authority to impose this tax in the billing process.***



# ***"Multi Unit" Billing is an Unlawful Tax***

Chapter 40N is a ***regulatory*** law which only grants ***rate making authority***

The ***mandatory "Multi Unit"*** charge is a ***tax solely*** implemented ***without a public hearing*** to ***raise revenues*** in excess of a ***fair share*** costs

***This tax was unlawfully imposed  
in the billing process.***



## ***Summary of Facts***

***"Multi Unit" and Minimum Sewer Charge are arbitrary revenue generating taxes, NOT fees.***

***The Board has NO authority to impose these taxes in billing for water and sewer services.***

# ***We Are Here Due To Multiple Violations of Law***



**33 & 41 Lomar Park**  
Water Meters: **Two**  
Number of Units: **26**  
Usage: **19,800** CF/Yr

*Water & Sewer Bill*  
2021: **\$2,959.78**  
2022: **\$15,329.36**  
Diff: **\$12,369.58**  
**+518%**



***NO RATIONAL BASIS  
for a 500%+ Up-Charge***



# Relief Sought

It appears to be just and fair to grant the Petitioner's request for an abatement regarding all "***Multi Unit***" charges applied to their water and sewer bills.

***<https://www.unfairbilling.com>***



**Town of Pepperell Massachusetts**  
**Exhibit #3 - Sewer Use Metrics - Year 2021 Summary**

| Accounts     | Type of Use         | Metrics based on Minimum Charge Billing |       |                   |                      |                |
|--------------|---------------------|---|-------|-------------------|----------------------|----------------|
|              |                     | Accounts                                | %     | Cubic Feet        | Over Billed          | % of Total     |
| 167          | 2 Family            | 66                                      | 39.5% | -91,597           | -\$8,033.06          | 5.92%          |
| 5            | 3 Family & Up       | 2                                       | 40.0% | -3,198            | -\$280.46            | 0.21%          |
| 8            | 3 Family & Up Condo | 0                                       | 0.0%  | 0                 | \$0.00               | 0.00%          |
| 12           | Commercial          | 9                                       | 75.0% | -24,374           | -\$2,137.60          | 1.57%          |
| 11           | Condos              | 8                                       | 72.7% | -16,377           | -\$1,436.26          | 1.06%          |
| 4            | Day Care Centers    | 3                                       | 75.0% | -3,980            | -\$349.05            | 0.26%          |
| 69           | INDUSTRIAL          | 39                                      | 56.5% | -98,924           | -\$8,675.63          | 6.39%          |
| 6            | Medical Facility    | 4                                       | 66.7% | -650              | -\$57.01             | 0.04%          |
| 8            | Moblle Home Parks   | 4                                       | 50.0% | 0                 | \$0.00               | 0.00%          |
| 20           | Municipal           | 11                                      | 55.0% | -26,756           | -\$2,346.50          | 1.73%          |
| 16           | Other Non-Transient | 13                                      | 81.3% | -15,597           | -\$1,367.86          | 1.01%          |
| 19           | Other Other         | 14                                      | 73.7% | -38,119           | -\$3,343.04          | 2.46%          |
| 45           | Other Transient     | 23                                      | 51.1% | -48,792           | -\$4,279.06          | 3.15%          |
| 1,638        | Residential         | 905                                     | 55.3% | -1,139,464        | -\$99,930.99         | 73.58%         |
| 4            | Restaurant          | 1                                       | 25.0% | -3,750            | -\$328.88            | 0.24%          |
| 9            | Retail              | 3                                       | 33.3% | -9,391            | -\$823.59            | 0.61%          |
| 4            | Schools             | 1                                       | 25.0% | -4,805            | -\$421.40            | 0.31%          |
| 9            | Service Station     | 8                                       | 88.9% | -22,735           | -\$1,993.86          | 1.47%          |
| 1            | Unknown             | 0                                       | 0.0%  | 0                 | \$0.00               | 0.00%          |
| <b>2,055</b> |                     | <b>1,114</b>                            |       | <b>-1,548,509</b> | <b>-\$135,804.24</b> | <b>100.00%</b> |
|              | <b>% of Total</b>   | <b>54.2%</b>                            |       | <b>-11.1%</b>     | <b>-10.2%</b>        |                |