

Summary of Highland Hills Sewer Overcharge

The following is from Don Smaltz's *President's Letter* in the 2009 Annual General Meeting package:

“In a nut shell, the problem is as follows. Under a 1983 agreement, HHMC residents are obligated to pay 1½ times the amount of sewer fees paid by Sequim city residents. There was a single rate charged to all Sequim residents, and HHMC residents paid 1½ times that amount. The city followed the contract until June 1999, when by city ordinance it adopted a new sewer rate for city residents. This new rate was two-tiered, based on the amount of water the residence used monthly. If the residence used less than 800 cubic feet of water, a lower rate was charged; if more than 800 feet, a higher rate was charged. Sequim does not meter its sewage effluent, but uses water consumption as a basis for measuring sewage effluent. The city automatically assumed that HHMC residents used more than 800 feet per month and billed us 1½ times the higher rate. The city had no authority to abrogate the contractual agreement it entered into in 1983 and reconfirmed in 1992, which based the charges on a single rate, and had no authority to assume that HHMC residents are all required to pay a rate based on a higher water usage amount.

In March 2009 a resident brought this matter along with his analysis to the Board's attention. After research, investigation, and consultation with our attorney, the Board authorized the sending of the enclosed letter to the Interim City Manager. To fully understand the basis for our claims, please read the letter. We assumed that the City would either take appropriate corrective action or point out any factual errors in our analysis. By letter dated August 15, the City Attorney acknowledged receipt of my letter, but stated he could not “begin my review of the issues” until September 4. My effort to reach him by phone in mid-September was unavailing. Finally, on September 23, 2009 he wrote:

“... your recent phone message is pinned to a noteholder directly in front of my keyboard and I do intend to respond at my earliest opportunity; however the matter obviously requires a detailed review and possibly even a title search of recorded documents. I may ultimately need to turn over your correspondence to the city's risk pool to deal with, but at this point I haven't had the time even to make that determination. I appreciate your patience, and will get back to you as soon as I possibly can.”

Although I subsequently wrote to the City Attorney and did speak with him in early October, there still has been no response to the issues raised in our letter. Sequim has continued to bill HHMC residents at the same apparently-illegal rates and required that they pay these fees. We are advised that, in Washington, legal claims such as this must be filed within six years of the time of the occurrence. Since the apparent overcharges have been ongoing since July 1999, any recovery would be limited to the six years prior to the date the litigation was filed. Who knows when, if ever, Sequim will respond or what its response will be. In the meantime, we

suggest that you note on the face of your check, when paying your water bill, *“Paid under protest pending determination of applicable rate.”*

We are advised by counsel that your Association has no standing to file suit against the City to recover damages, since the residents, not the Association, pay the water bills. That means any legal action will have to be filed (either individually or collectively) by residents who want to pursue a claim. We recommend that, if you have any questions concerning the nature and extent of your legal rights, you consult your attorney. Copies of the documents referenced in the enclosed August 11 letter to the City Manager will be provided upon your request via email to info@hhmcsequim.org or via snail mail to P.O. Box 2198, Sequim, WA 98382.”