

Sewer Costs - Arbitration Decision

In mid October of 2014 it was reported in the local newspaper that East Lampeter Township was “told to pay City \$2.4 million”. However, as they say, there is more to the story:

- In 1983, East Lampeter Township, the East Lampeter Sewer Authority (ELSA) and the City of Lancaster entered into an agreement regarding the completion of Capital improvements to the sanitary sewer system and the sharing of operational costs associated with the transmission and treatment of sewage flows.
- 1985 was the first year where the method of calculating operational costs to be shared by East Lampeter was used.
- After a thorough review and analysis of the 1983 agreement, City billings to the Township, and discussions with the Board of Supervisors and ELSA, it was believed that the City was not following the provisions of the 1983 agreement and was overbilling the Township for operational costs related to the sanitary sewer system.
- Beginning in 1992, contacts were made to City officials by Township officials expressing this belief and requesting additional information regarding the billed costs and requesting the opportunity to meet and discuss the Township’s questions and concerns.
- City officials declined these requests to meet.
- Therefore, beginning in 1992, the Township took the action of paying quarterly bills received from the City using the rates calculated and charged for 1991 and continued to request additional information.
- As City administrations and officials changed over the years of this dispute, additional contacts were made with City officials and continuing requests for additional information and the opportunity to meet were made in an effort to find a resolution to this dispute. Each time these requests were either declined or ignored and the dispute continued.
- In 2009, Township staff did another thorough review and analysis of the 1983 agreement and City billings to the Township. Based upon this review and analysis, the Township modified the rate paid to the City for operational costs on an annual basis rather than continuing to use the same rate from 1991.
- In April of 2012, without any prior communication or request to meet to discuss the dispute, the City’s legal counsel sent a letter invoking the arbitration provisions of the 1983 agreement. The time period of the arbitration was set by the City in its claim to be 1992 through 2012 (excluding 1995 and the years prior to 1992, due to a lack of records for the years before 1992 and for 1995). The City’s claim was that the Township owed approximately \$3.67 million in unpaid sewer operations shared costs.
- After the Board of Arbitrators was selected and a period of discovery leading up to the actual arbitration hearing, the arbitration hearing was held over a period of two (2) days in February of 2014.
- In March of 2014, the Board of Arbitrators issued a decision using 2009 as the sample year and ordering that the concepts used for this sample year be applied to the other years of the dispute. Additionally,

the arbitrators strongly recommended that the parties work to prepare a new agreement so that “the distribution of costs and benefits should be reasonably and fairly allocated”.

- After review of the sample year decision by the City’s financial staff, it appeared that the Township owed the City approximately \$2.9 million. East Lampeter requested some additional information from the City in order to assist in clarifying the decision and to assist in calculating the result of the decision when applied to all of the years involved in the dispute (1992 – 2012 ,excluding 1995 and the years prior to 1992 due to a lack of information). This request was made to the City in April, 2014.
- City officials provided the additional information requested by East Lampeter in July, 2014. This information resulted in a reduction of the overall claim by more than \$500,000 and resulted in a final total amount of \$2,433,543 owed to the City rather than the \$3,673,373 originally claimed by the City.
- The decision makes it clear that the arbitrators reached the following two conclusions regarding the disputed cost sharing under the 1983 agreement:
 1. The City overbilled the Township by \$1,239,830 for the years 1992 through 2012 (excluding 1995 and the years prior to 1992 due to a lack of information) in total.

And

2. The Township underpaid the City by \$2,433,543 for the years 1992 through 2012 (excluding 1995 and the years prior to 1992 due to a lack of information) in total.
- Based upon a year by year review of the arbitrator’s decision, it is clear that the City overbilled the Township in every year of the dispute. It is therefore reasonable to conclude that the City overbilled the Township from 1985 through 1991 and in 1995 even though the records for these years are unavailable. So the Township’s concerns regarding the City’s calculations of shared costs beginning in 1992, based upon the arbitrator’s decision, were valid. Additionally, having been unable to obtain the information needed to more accurately calculate the appropriate amount of shared costs to be paid, the Township’s payments to the City, again based upon the arbitrators’ decision, were too high from 1992 through 2001 and then too low from 2002 through 2012.
 - Shortly after we received the additional information from the City in July, 2014, we began requesting a meeting with Mayor Gray for the purpose of discussing and resolving a settlement agreement that would address the following issues:
 1. Payment of the underpaid amount over time.
 2. Providing a credit against the underpayment for the City’s overbilling the Township in the years 1985 – 1991 and 1995.
 3. Opening negotiations for a new agreement.
 - At the time of this writing (January 2, 2015), discussions with City representatives regarding payment arrangements, credit for years excluded in the arbitration process and negotiations for a new agreement are ongoing. However, we did have a meeting in late October where the City reported to the Township that they have been holding \$466,086 in East Lampeter funds for many years. It is our understanding that these funds represent funds that remained after certain capital projects were completed and

reconciled. It is also our understanding that although the City returned funds to other entities that contributed to these capital projects, they chose to withhold these funds from East Lampeter alone. If these funds are applied against the amount determined by the arbitration, the net amount due to the City is actually \$1,967,457. The Township has requested additional information from the City regarding where these funds came from, how they were calculated and when they began withholding them from the Township.

- East Lampeter will continue to provide information regarding the investigation of these issues in future newsletters.

In preparing the 2015 budget for the Township's Sewer Fund, we have included a substantial increase in Sewer rates to be charged beginning in 2015. This large increase is noted in another article within the quarterly newsletter to be distributed in mid January. This large increase is needed in order to address the amount owed to the City based upon the arbitration decision. Therefore, beginning with the bill that will be due at the end of April, 2015, the new sewer service rate will be \$90 per dwelling unit per quarter. This rate still compares very favorably with rates charged in other sewer systems in Lancaster County. The following is a listing of some of these rates that were in place in 2014: (quarterly charges per dwelling unit)

Lancaster Area Sewer Authority	\$ 84.45
Ephrata Borough	\$ 87.81
Earl Township (1)	\$ 90.00
New Holland Borough	\$ 92.50
Suburban Lancaster Sewer Authority	\$100.00
Quarryville Borough	\$105.00
Clay Township	\$107.85
Ephrata Township	\$107.85
Millersville Borough	\$110.00
Mount Joy	\$117.00
Columbia	\$119.10
Upper Leacock	\$120.00
West Donegal	\$140.00
Earl Township (2)	\$155.00
West Earl	\$175.50
East Cocalico	\$181.50

East Lampeter will continue to closely monitor and control the costs of sanitary sewer services. We will also continue our efforts to better communicate with the City of Lancaster in this important cooperative effort to provide sanitary sewer collection, pumping and treatment services in the interests of the public's health, safety and welfare.