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By Marc J Garofalo MPA, MMC, MCTC at 10:55 am, Sep 08, 2026

September 3, 2026

Chair and Members
Derby Water Pollution Control Authority
1 Elizabeth Street
Derby, Connecticut 06418

RE: FORMAL USER APPEAL UNDER WPCA REGULATION § E-13 — REQUEST TO IMPLEMENT JULY 19, 2023 WPCA ACTION AND CORRECT TWO-EDU CAPITAL FEE CLASSIFICATION

Property: 34 New Haven Avenue, Derby, Connecticut 06418
Billing Period: 2026–2027

Dear Chair and Members of the Derby Water Pollution Control Authority:

I respectfully submit this correspondence as a formal User Appeal pursuant to Section E-13 of the Derby Water Pollution Control Authority Sanitary Sewer System Regulations, challenging both the user classification and the amount billed with respect to the Capital Fee imposed upon the above-referenced property.

The property is presently being treated as one unit for purposes of its sewer-use billing but two Equivalent Dwelling Units ("EDUs") for purposes of the Capital Fee. I respectfully dispute the factual and regulatory basis for the second EDU and request that the Authority correct the classification to one EDU.

This matter is particularly significant because it is not a new issue. The Derby WPCA previously considered this exact two-EDU Capital Fee dispute and unanimously determined that the matter should be addressed once the Assessor's record was corrected to reflect one-family use. That correction has now occurred.

I. July 19, 2023 WPCA Action

At the Derby WPCA meeting of July 19, 2023, this property appeared on the agenda under the issue "CF Billed as 2 EDU's (mixed use)." The official minutes reflect that the two-EDU billing was tied to the Assessor's field card, which at the time characterized the property as mixed use. The minutes also reflect my position that the first floor was not being used as a storefront and that the property was being used as a single-family home.

During that discussion, the Authority determined that the classification issue should first be corrected through the Assessor's Office and that the WPCA would then address the billing once the property was corrected to one-family status. The Authority unanimously approved that course of action.

I relied on that direction and subsequently pursued the classification issue with the City. The condition identified by the WPCA in its July 19, 2023 action has now been satisfied.

II. The City Has Corrected the Property to Single-Family Residential Use

In June 2026, the City Assessor personally inspected the property. Following that inspection, the City revised its assessment records and reclassified the property as a single-family residential dwelling.

Although the building historically contained a first-floor area with a storefront-type physical configuration, that historical configuration must be distinguished from actual commercial occupancy or a separate use. Since at least 2007, the property has been occupied and used exclusively as a single-family residence. During that period:

- no business or commercial operation has been conducted from the former storefront area;
- there has been no commercial tenant or separate commercial occupant;

- the area has not been rented;
- it has not been operated as an apartment;
- it has not been occupied as a second dwelling unit; and
- there has been no independent residential or commercial occupancy generating a separate use of the sewer system.

The former existence or appearance of a storefront does not, by itself, establish that a second commercial business, occupant, apartment, dwelling unit, or independent sewer-system user actually exists.

III. The City's Historical Records Support One Actual Living Unit

The City's records predating the 2026 correction also contained facts inconsistent with a continuing assumption that two separate active units existed. The Assessor record contained in materials before the WPCA in connection with the January 19, 2022 meeting, at which my mixed-use Capital Fee dispute appeared on the agenda, identified "Living Units: 1" and contained the notation "First Floor Gutted 2019."

Thus, even while older records retained mixed-use or commercial coding, the City's own contemporaneous records reflected one living unit and the gutted condition of the former first-floor space. In 2023, a City Inspector also inspected the premises and confirmed that the first-floor area was gutted and that no operating apartment, commercial operation, or separate occupancy existed there. I also presented video evidence concerning the condition of the first floor during the 2023 proceedings.

Accordingly, this is not a situation involving an operating commercial storefront with apartments above it, nor is it a property containing two independently occupied dwelling units.

IV. Derby WPCA Regulation § E-7 Supports One EDU

Section E-7 of the Derby WPCA Regulations establishes the method for imposing charges on an Equivalent Dwelling Unit basis. Section E-7(A) provides that a property is billed an EDU fee according to its property classification and contemplates multiple EDU fees where a property has multiple classifications or uses, including the example of a commercial storefront together with apartments.

That example is materially different from the circumstances presented here. There is no operating storefront, commercial business, commercial occupant, apartment, tenant, second family, or separate residential occupancy at the property.

Most importantly, Section E-7(A)(i) provides that single-family dwellings shall be levied one equivalent dwelling unit fee per property. The City's current Assessor records now classify 34 New Haven Avenue as a single-family residential dwelling — the very correction the WPCA directed be pursued in July 2023.

I therefore respectfully request that the Authority identify any provision that authorizes the continued assessment of a second Capital Fee EDU after the property has been corrected to one-family residential status and in the absence of any separate commercial or residential occupancy.

V. The Current Sewer Billing Creates an Internal Inconsistency

The current billing presents an additional material inconsistency. The property is presently being treated as one unit for its sewer-use charge, while the Capital Fee continues to be imposed on the basis of two EDUs.

If the property presently contains two separately chargeable classifications, uses, businesses, occupants, or dwelling units sufficient to justify two Capital Fee EDUs, I respectfully request that the Authority identify those two uses and explain why the sewer-use component presently recognizes only one unit. Conversely, if the one-unit sewer-use classification correctly reflects the property's current single-family use, I request that the Authority explain the statutory or regulatory authority for maintaining a second EDU solely for purposes of the Capital Fee.

VI. Connecticut General Statutes § 7-255

Connecticut General Statutes § 7-255(a) authorizes a municipal water pollution control authority to establish and revise fair and reasonable charges for connection with and use of a sewerage system. The statute permits an authority to classify properties and users and to consider relevant factors concerning the kind, quality, and extent of sewer use, including building characteristics, water discharged, plumbing fixtures, customary occupants and, for commercial properties, employees and guests.

I recognize that the statute permits the Authority to consider relevant physical and usage characteristics and does not limit its consideration exclusively to the Assessor's tax classification. Nevertheless, the classification ultimately applied must have a rational factual basis, must comply with the WPCA's duly adopted regulations, and must result in a fair and reasonable charge.

The relevant facts now include the property's longstanding single-family residential use; the absence of any commercial business or occupant; the absence of any rental or second apartment; the historical City record identifying one living unit; the documented gutted condition of the former storefront area; the 2023 City inspection; the June 2026 Assessor inspection and resulting single-family classification; the WPCA's current one-unit sewer-use treatment; and the WPCA's July 19, 2023 action stating that it would address the billing once the property was corrected to one-family status.

Connecticut appellate decisions recognize that municipal water pollution control authorities possess substantial administrative discretion, but that such discretion remains subject to applicable statutes and regulations and may not be exercised arbitrarily or unlawfully. See Forest Walk, LLC v. Water Pollution Control Authority, 291 Conn. 271 (2009); Dauti Construction, LLC v. Water & Sewer Authority, 125 Conn. App. 652 (2010).

VII. This Appeal Concerns Classification, Not a Discretionary Billing Adjustment

I specifically request that this appeal be treated as a user-classification and EDU determination under Section E-13, rather than as a request for a discretionary billing adjustment under Section E-14.

I recognize that Section E-14 contains limitations concerning adjustments to EDU, flat, and capital fees. However, I am not asking the Authority to reduce a fee that was correctly assessed against two properly existing EDUs. I dispute the underlying applicability of the second EDU itself.

Section E-13 expressly authorizes an owner to dispute the amount billed, the user classification, or another matter related thereto. Accordingly, the threshold issue is whether the property is properly classified as one or two EDUs — not whether a correctly imposed two-EDU charge should be voluntarily adjusted.

VIII. Requested Determination and Relief

1. Implement the action taken by the Authority on July 19, 2023, now that the Assessor has corrected the property to one-family residential status.
2. Correct the property's WPCA classification to one EDU for purposes of the Capital Fee and any other EDU-based charge for which no separately existing qualifying use or occupancy exists.
3. Correct the 2026–2027 Capital Fee bill to reflect one EDU.
4. Identify in writing the current WPCA classification assigned to the property for each component of its annual sewer bill.
5. If the Authority contends that two EDUs remain appropriate, identify the specific second use, dwelling, business, occupant, tenant, apartment, or other classification constituting the second EDU.
6. Identify the particular provision of the Derby WPCA Regulations, duly adopted rate schedule, City ordinance, or Connecticut statute upon which the Authority relies for treating an unused former storefront configuration, in the absence of an operating commercial business or separate occupancy, as a separate EDU.

7. Explain why the property is treated as one unit for sewer-use billing but two units for Capital Fee billing.
8. Review the property's Capital Fee billing history and determine the earliest date on which the second EDU was imposed and the factual classification upon which each such charge was based.
9. Review the account back to the earliest legally permissible period, including the period during which the property has been used solely as a single-family residence, and issue any refund, credit, reimbursement, account correction, or other relief permitted by law for amounts attributable to an improperly applied second EDU.
10. In particular, consider that this classification dispute was formally before the WPCA no later than January 19, 2022, and that on July 19, 2023 the Authority unanimously resolved to address the billing when the Assessor's record was corrected to one family.
11. If the Authority concludes that Section E-7, Section E-14, a limitation period, or any other rule limits retroactive monetary relief notwithstanding an erroneous classification, identify the specific provision and legal basis, the period affected by that limitation, and the earliest billing year for which relief remains available.
12. Provide a written, property-specific decision setting forth the factual findings, regulatory provisions, and other authority relied upon in determining the property's correct EDU classification.

IX. Request for Consideration Under § E-13

Section E-13 provides a procedure for a written user appeal disputing the amount billed or user classification. I therefore respectfully request that this appeal be placed before the Authority at its next regularly scheduled meeting and handled in accordance with the procedures and deadlines established by Section E-13.

If the matter is not resolved in my favor, please treat this letter as my request for the hearing provided by Section E-13 and provide reasonable notice of the date and manner of that hearing so that I may present additional evidence.

X. Request for Existing Public Records

To the extent the following records are maintained by the City or WPCA, I also request access to and electronic copies of them pursuant to the Connecticut Freedom of Information Act, including Conn. Gen. Stat. §§ 1-210 and 1-212:

1. all WPCA records identifying the classification and EDU count assigned to 34 New Haven Avenue from 2007 to the present;
2. all records identifying when the second Capital Fee EDU was first imposed;
3. all records identifying the factual or regulatory basis for that second EDU;
4. all communications between the WPCA and Assessor's Office concerning the property from January 1, 2022 to the present;
5. all records received by WPCA reflecting the Assessor's 2026 reclassification of the property;
6. all existing policies, written procedures, rate schedules, memoranda, or instructions governing treatment of former or unused storefront space for EDU purposes;
7. all records establishing whether an actual business, tenant, commercial occupant, rental unit, apartment, or second residential occupant was attributed to the property during the disputed billing periods; and
8. the existing account history showing the number of EDUs used to calculate each annual Capital Fee.

This request seeks existing records only and does not ask the Authority to create a record that does not presently exist.

XI. Payment and Preservation of the Classification Dispute

I understand that Section E-13 provides that filing an objection does not excuse payment of the bill. Accordingly, any payment necessary to avoid delinquency, interest, collection activity, or a lien should not be interpreted as abandonment or withdrawal of this timely classification appeal, or as agreement that the second EDU is properly applicable.

Nothing in this correspondence is intended to waive any administrative, statutory, or judicial rights or remedies available concerning the classification, billing, or recovery of amounts improperly assessed.

Conclusion

This matter has now reached the factual circumstance contemplated by the WPCA's July 19, 2023 action. At that meeting, the Authority indicated that the Assessor's mixed-use field card was the basis for the two-EDU billing and that the Authority would address the matter once the Assessor corrected the property to one family. The Assessor has now inspected the property and made that correction.

The property is a single-family residential dwelling, contains no operating commercial business, rental apartment, second dwelling occupancy, or separate commercial occupant, and the WPCA itself presently treats the property as one unit for sewer-use purposes.

I therefore respectfully request that the Authority complete the process it established in 2023, correct the Capital Fee classification to one EDU, correct the current bill, and determine the appropriate relief concerning prior erroneous billing.

Please provide written confirmation of receipt of this appeal and confirmation that it has been placed before the Authority pursuant to Section E-13.

Thank you for your prompt attention to this matter.

Respectfully,

Juan Medina

34 New Haven Avenue
Derby, Connecticut 06418