



## Capitol Park IV Condominium Association, Inc.

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October 20, 2014

VIA U.S. MAIL AND EMAIL

District of Columbia Water and Sewer Authority  
Customer Service Department  
810 First Street, NE, 11th Floor  
Washington, D.C. 20002

RE: DC Water Clean Rivers Impervious Area and Other Water/Sewer Charges  
Accounts: 0104758-8, 0104757-0, 0104756-2, 0104768-7,  
0105035-0, 0104647-3, 0105036-8

Dear Sir or Madam:

The Board of Directors of Capitol Park IV Condominium Association, Inc. (“Board” and “CPIV”) protest the application of DC Water commercial water and sewer rates, including the DC Water Impervious Clean Rivers Area Charge (CRIAC), to our horizontal residential condominium association, which is comprised of 243 single-family residential townhouses. The Board demands that:

- (1) DC Water apply the proper residential water and sewer rate to CPIV as it is a residential property, and that our eleven (11) accounts be retroactively credited back to the inception of this practice with our accounts with DC Water;
- (2) DC Water cap the total ERUs for our residential property to 13.5 per the CRIAC ERU rate scale;
- (3) DC Water reduce our overall ERU based on our implementation of several best management practices (BMPs) and low-impact designs (LIDs) as of January 2014; and
- (4) DC Water immediately stop the application of all commercial water and sewer rates to CPIV and remediate the extreme, undue and unfair hardship it has created through the CRIAC Pilot Program for our property, specifically with regard to the proposed annual increases to the six-tier CRIAC rate scale through FY 2021.

### **I. DC Water Must Apply the Proper Residential Customer CRIAC Rate to CPIV**

DC Water established the CRIAC in FY 2011 with a six-tier rate based on the total aggregate square footage of impervious area for each residential property. A sample for FY 2014 is provided below from DC Water’s website:

## FY 2014 Rates

Impervious Area (Square Feet)	ERU	ERU Rate	Monthly Cost
100-600	0.6	\$11.85	\$7.11
700-2,000	1.0	\$11.85	\$11.85
2,100-3,000	2.4	\$11.85	\$28.44
3,100-7,000	3.8	\$11.85	\$45.03
7,100-11,000	8.6	\$11.85	\$101.91
11,100 and more	13.5	\$11.85	\$159.98

DC Water states that “all non-residential customers are assessed ERUs based on the total amount of impervious surface on each lot.”

DC Water has been erroneously charging CPIV under the aforementioned non-residential customer policy rate. In fact, each bill states “Current Water and Sewer Charges – Commercial”. CPIV’s ERUs are not capped at 13.5 according to the above six-tier rate scale. Instead, the total 321,000 square feet of impervious area for our property is being used to calculate the monthly CRIAC charge. However, CPIV is not a commercial property. It is a unique horizontal residential condominium association made up of single-family townhouse dwellings, akin to traditional townhomes. Founded under the Horizontal Property Act (now the DC Condominium Act), CPIV is a not-for-profit entity. CPIV’s Declaration defines the use of the condominium property “only for residential purposes and no use may be made of any Unit except as a residence for the Co-Owner [Unit Owner/individual] thereof or his lessees and the members of their families and servants...”. Under the DC Condominium Act, "Unit" shall mean a portion of the condominium designed and intended for individual ownership” and "Unit owner" shall mean a declarant or any person who owns a condominium unit.” The units in CPIV are for individual ownership and residential use only. By DC law, they cannot be used for commercial or multi-family ownership.

Furthermore, CPIV’s property line falls within the DC Office of Zoning Commission’s Zone R-4 category (see attached diagram). The DC Zoning Commission defines zone R-4 to “[permit] matter-of-right development of single-family residential uses (including detached, semi-detached, row dwellings, and flats), churches and public schools with a minimum lot width of 18 feet, a minimum lot area of 1,800 square feet and a maximum lot occupancy of 60% for row dwellings, ...”.

It is clear that CPIV is a single-family residential townhouse condominium association. Therefore, the residential customer rate for both water and sewer charges should not be at the commercial rate, but at the residential rate. This includes the ERU square footage rate, which should have been capped at 13.5 ERUs in calculating the CRIAC. We demand that the correct residential customer calculation be applied for the water and sewer charge for our accounts, and that DC Water retroactively credit every previous bill from the inception of our accounts that used a DC Water commercial water or sewer rate in calculating these charges for CPIV.

## **II. CRIAC Poses an Extremely Unfair and Highly Detrimental Financial Hardship to CPIV**

Since inception of the CRIAC, CPIV has been paying twenty (20) times the maximum ERU rate charged to other residential properties. Using aerial photography, DC Water determined in 2009 that CPIV has 321,000 square feet of impervious surface (roofs, courtyards, parking lots and sidewalks), or 321 ERUs. The CRIAC was levied in addition to the metering fee, PILOT fee, Right of Way fee, storm water fee, and the actual cost of the water itself, all of which are subject to future increases, and all of which have been erroneously charged at the commercial rate.

In 2009, CPIV's annual budget was \$1.3 million. The monthly CRIAC for one ERU was \$1.29. CPIV's DC Water expense for that year was approximately \$111,000, or 8% of the budget. Since 2011, our annual budget has averaged \$1.5 million. Over the last four years, the average monthly CRIAC for one ERU was \$10.35. Our average annual DC Water expense during that time has risen to \$230,000, or an average of 15% of that \$1.5 mil budget, which reflects an approximate 50% increase (double) in what we have paid in the last 4 years.

By way of example, in 2013, the CRIAC was \$9.57 and DC Water calculated all 321 ERUs under the commercial rate policy. That totaled over \$3,000/mo. for just one fee, at an annual expense of almost \$37, 000 for just one of six fees! For fiscal year 2014, it rose to \$11.85, and another increase was recently approved for FY 2015 for \$16.75. This fee rate is currently scheduled to peak at an astounding \$30.67 per ERU per month in 2021. The CRIAC will cost CPIV approximately \$9,845 per month in 2021! That's a 900% percent increase over the next 11 years!

Clearly, CPIV's 243 residents are being disproportionately affected by the CRIAC. The CRIAC, in addition to the other DC Water commercial rate fees, will inevitably bankrupt CPIV. The exponential increases will force us to deplete our reserve fund, force us to increase CPIV owner assessments to an unreasonable and unmarketable amount. This will force us to forego other condominium responsibilities, which will lead to lawsuits, inability of owners to make the assessment payments (in addition to their mortgage payments), an inability to retain or attract owners, and ultimately, bankruptcy. The CRIAC is causing true and substantial harm and damage to CPIV. It is unfair, unduly burdensome, and extremely egregious. We demand that DC Water apply the residential CRIAC cap of 13.5 to CPIV.

## **III. DC Water Must Reduce ERUs for Implementation of Storm Water Best Management Practices (BMPs) and/or Low Impact Design/Development (LID)**

In January 2014, CPIV took its first steps to participate in the DDOE RiverSmart and Clean Rivers programs to implement storm water best management practices (BMPs) and low impact design (LID) throughout the property. The first such project was the installation of six-130 gallon rain barrels on the property. Over the course of the last 10 months, these six rain barrels have captured well over 2,000 gallons of rain water. CPIV requests to receive credit for the amounts of rainwater we captured and re-used that did not enter the DC Water sewage system.

In April 2014, we removed concrete courtyards and replaced sections of concrete sidewalks with engineered permeable sidewalk pavers installed over 18 inches of gravel and sand. In total CPIV removed 7,512 square feet of concrete sidewalks and courtyards. We request that DC Water reduce the overall ERUs for CPIV accordingly.

The permeable sidewalks easily handle a 1.2"/hour rain event and are actually much more permeable than most pre-existing grassed areas throughout the property! Because these new permeable sidewalks are adjacent to unpaved areas with abundant grass, shrubs and trees, virtually all of the water that falls on these new permeable sidewalks is absorbed into the ground and/or used by plants. There is virtually no runoff in these areas. Yet, we were stunned to learn that these permeable paver sidewalks are still classified as impervious surfaces, and only qualify under the Clean Rivers IAC program for a 4%

discount from DC Water, which is extremely minimal in defraying current DC Water charges to the Association.

The Board believes that this DC Water policy is harmful, unbalanced, unfair, illogical, and unjustified. If a property like ours can implement BMPs and LIDS and show that we are capturing 100% of the rainwater from previously impervious areas, DC Water should not continue to count those now-permeable areas toward the total ERU calculation. We request a full credit back to January 2014, when we implemented the BMPs and LIDS, and a reduction in the total ERU from that date for the areas where we have installed permeable pavement systems.

**We demand that DC Water immediately cease from applying commercial water and sewer rate charges to CPIV and apply the correct residential charge. We demand that DC Water retroactively credit all CPIV accounts for the misapplied commercial water and sewer charges. We further demand that DC Water properly credit CPIV for the implementation of best management practices and low impact designs throughout our residential property.**

We look forward to your prompt response, as the new DC Water FY 2015 water and sewer charges have gone into effect. The CRIAC charge is now \$16.75, and as currently applied, would result in a monthly CRIAC fee to CPIV of approximately \$5400! The Association simply cannot bear these unfair charges and sustain itself. DC Water's misapplication of commercial rates to our residential property has caused us extreme and undue harm and will bring certain financial ruin to CPIV.

We are eager to discuss these issues and would like to schedule a meeting to resolve. Please contact me at (202) 368-5865 or our Vice President, Robert Hall at the above number on this letterhead as soon as possible.

Sincerely,

Felicia Coutts, President  
Capitol Park IV Board of Directors

cc Via email only and without attachments:

Nagle & Zaller, P.C.  
ANC-6D Commissioners  
Mary M. Cheh, Chairman, DC City Council Committee on Transportation and the Environment  
Tommy Wells, DC City Councilmember, Ward 6

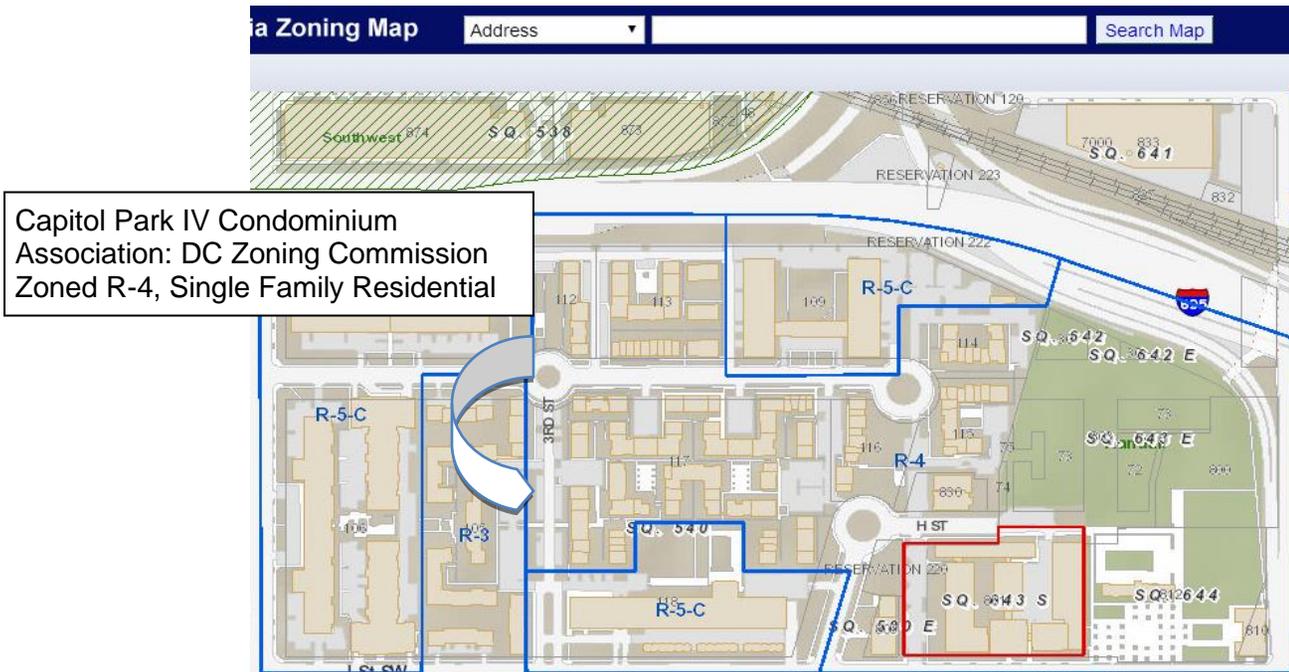
Enclosures: Pictures of Capitol Park IV Condominium Association  
CPIV Declaration –Article III, Section C.  
DC Zoning Map showing CPIV in Residential R-4 Zone  
Concrete Courtyard Removal (Before/After pics) and Total ERU Square Feet  
Concrete Sidewalk Removal (Before/After pics) and Total ERU Square Feet



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R-4 Definition: Permits matter-of-right development of **single-family residential uses (including detached, semi-detached, row dwellings, and flats), churches and public schools** with a minimum lot width of 18 feet, a minimum lot area of 1,800 square feet and a maximum lot occupancy of 60% for row dwellings, churches and flats, a minimum lot width of 30 feet and a minimum lot area of 3,000 square feet for semi-detached structures, a minimum lot width of 40 feet and a minimum lot area of 4,000 square feet and 40% lot occupancy for all other structures (20% lot occupancy for public recreation and community centers); and a maximum height of three (3) stories/forty (40) feet (60 feet for churches and schools and 45 feet for public recreation and community centers). Conversions of existing buildings to apartments are permitted for lots with a minimum lot area of 900 square feet per dwelling unit. Rear yard requirement is twenty (20) feet.