

June 14, 2012

In Re: Ernest Tookes

Docket No: 26DEMERZZ9499

Statement of Record:

1. Ernest Tookes (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on August 25, 2011 requesting review of an abatement bill from the City of Philadelphia for demolition of the property at 2251 North 12<sup>th</sup> St. Philadelphia, Pa.
2. A public hearing was held before a TRB Master on November 18, 2011. The decision of the Master, as ratified by the TRB was to abate the administrative charge and provide 90 days from the date of the revised bill to remit payment.
3. Petitioner requested and was granted a rehearing before the full TRB.
4. A public hearing before the TRB was held on February 23, 2012. At the conclusion of this hearing, the TRB announced its decision to abate the interest, lien charges and administrative charges assessed and to provide 60 days from the date of the revised bill to enter into a payment agreement for the remaining balance.
5. Petitioner filed a timely appeal to the Court of Common Pleas.

Findings of Fact:

1. Petitioner filed an appeal for review of a City of Philadelphia issued bill for demolition of the property at 2251 North 12<sup>th</sup> St. Philadelphia, Pa. The principal amount due was \$3000, with an administrative charge of \$630, interest as of the TRB hearing date of \$90.75, and lien charges of \$197, for a total due of \$3,917.75.
2. At all relevant Times, Petitioner owned the properties 2251 North 12<sup>th</sup> St. and 2253 North 12<sup>th</sup> St.
3. Although side by side, the 2 structures were different sizes, with the structure on 2253 North 12<sup>th</sup> St. at 1607 square feet and the property at 2251 North 12<sup>th</sup> St. at 804.99 square feet.
4. On June 15, 2011, the Department of Licenses and Inspections (L&I) issued a Violation Notice declaring the property at 2251 North 12<sup>th</sup> St. "imminently dangerous" as defined by the Philadelphia Property Maintenance Code, Section PM-308. This notice informed Petitioner that he must immediately repair the property or demolish the structure, and if he failed to do so, the City could move to demolish the structure and bill Petitioner as the property owner. This notice provided details as to the portions of the property in "imminent danger of collapse". See City Exhibit 1. The notice to Petitioner for this property was sent by certified mail with a return receipt signed by Petitioner. See City Exhibit 2.
5. Similar Violation Notices were issued for the properties at 2253 North 12<sup>th</sup> St. and 2255 North 12<sup>th</sup> St. Petitioner did not file an appeal for the demolition bill issued for 2253 North 12<sup>th</sup> St.

6. Petitioner did not dispute the dangerous condition of the property as described by the City's representative.
7. When no action was taken by Petitioner to comply with the Violation Notices sent on June 15, 2011 for the properties he owned, the City took action to have the properties demolished by holding an emergency bid that included demolition of Petitioner's 2 properties at 2251 North 12<sup>th</sup> St. and 2253 North 12<sup>th</sup> St., as well as the neighboring property at 2255 North 12<sup>th</sup> St.
8. On June 30, 2011, as per City procedure and policy, the lowest bid for this project was accepted and demolition was authorized to go forward.
9. The total bid for demolition of the 3 properties was \$17,988.00. The amount of the demolition bid assigned to 2251 North 12<sup>th</sup> St. was \$3000 and the amount assigned for 2253 N. 12<sup>th</sup> St. was also \$3000. See City Exhibit 5.
10. Petitioner's appeal seeking review of the \$3000 bill for 2251 N. 12<sup>th</sup> St. was based on his belief that since the structure on 2251 N. 12<sup>th</sup> St. was smaller than the structure on 2253 N. 12<sup>th</sup> St., the bill apportionment should have not been in equal amounts for the 2 properties but should have been a lesser amount for 2251 N.12<sup>th</sup> St. than for 2253 N. 12<sup>th</sup> St.
11. It was the testimony of the L&I representative that all pricing is set by the bidding companies based on their estimation of the magnitude of the job and their own cost considerations. The City sets out the specifications and requirements of the job but does not issue pricing guidelines or in any way attempt to influence how a bid is calculated. The city reviews all bids that comply with the specifications as provided by the bidding contractors and awards the contract to the lowest bidder.
12. Petitioner agreed that the demolition job was done as stated by the City.

Conclusions of Law:

The Philadelphia Property Maintenance Code Section PM-301.2 requires that "(t)he owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided. All premises, whether occupied or vacant, shall be maintained in such repair and in such safe and sanitary condition that no physical damage shall be caused to any adjoining premises."

The Philadelphia Property Maintenance Code Section 308.2 provides that "(i)f an imminently dangerous condition is found, the code official shall serve on the owner, managing agent or person in control of the structure a written notice describing the imminent danger and specifying the required repair to render the structure safe, or requiring the imminently dangerous structure or portion thereof to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the code official acceptance or rejection of the terms of an order to demolish."

There was no dispute that upon inspection by L&I, the property at 2251 North 12<sup>th</sup> St., and the contiguous property at 2253 North 12<sup>th</sup> St., both owned by Petitioner, were found to be imminently dangerous and Petitioner was so notified.

Petitioner did not dispute that the properties were in the hazardous condition stated by L&I and that he was aware of their condition and that Violation Notices had been issued by L&I. He did not file any appeals to contest the violations or imminently dangerous designation.

Petitioner did not provide evidence that he undertook any repairs to render the properties safe.

Therefore as provided in The Philadelphia Property Maintenance Code Section 308.4 which states that“(w)here the order to eliminate an imminent danger is rejected or not obeyed, or when, in the opinion of the code official, immediate action is required to protect the public safety, the code official shall cause the necessary work to be done to demolish the structure or to render the structure temporarily safe” , the City took action to demolish the structure and eliminate the hazardous condition.

Finally, as provided for in Section 308.6 of The Philadelphia Property Maintenance Code, the City charged the cost for demolition to the owner of the property, the petitioner in this appeal.

The City followed the rules and procedures as set out in The Philadelphia Code for issuing the violation, notifying the property owner, stepping in to eliminate the dangerous condition, and then billing the responsible party so it could recoup the costs incurred on behalf of the property owner.

Petitioner testified that he was aware of the property’s hazardous condition and of the violations issued by L&I. He seemed content to let the City take the responsibility for dealing with the emergency condition, and in fact only complained because he felt the bill was too high in contrast to the bill for the adjoining property which he also owned. Petitioner could have stepped in at any time and accepted his responsibility to alleviate the conditions t the property and search for a price that better suited him.

The City’s responsibility was to accept the lowest bid offered through its bid process, not to negotiate and shop around for the lowest price that might be available, while this property continued to deteriorate and create a dangerous condition.

Concurred:

Nancy Kammerdeiner

Joseph Ferla

George Mathew