

April 14, 2014

In Re: Adams Run Associates, L.P.

Docket No: 35WRMERZW6415

STATEMENT OF RECORD:

1. Adams Run Associates, L.P. filed a Petition for Appeal on February 21, 2013, requesting a review of certain water/sewer charges paid for the property located at 155 East Godfrey Ave. Philadelphia, Pa.
2. A public hearing before a Tax Review Board Master was scheduled for June 7, 2013 and continued at that time to allow for further research by the Philadelphia Water Department.
3. A public hearing was scheduled for September 13, 2013 and continued pending the determination of Petitioner's petition filed with the Department of Revenue for a refund of the same water/sewer charges that were the subject of Petitioner's Tax Review Board appeal.
4. A public hearing was scheduled for December 16, 2013 and continued by the Tax Review Board.
5. Petitioner provided a letter from the Department of Revenue denying its refund request
6. A public hearing was scheduled before the full Tax Review Board for January 9, 2014. At the conclusion of the hearing, the Tax Review Board announced its decision to grant the petition for a refund in the amount of \$38,497.03.

Findings of Fact:

1. Petitioner owned an apartment complex at 155 East Godfrey St. Philadelphia, Pa. for all periods in question.
2. From 2010 through 2012, Petitioner paid all City of Philadelphia water/sewer bills as received.
3. At some point in 2012, Petitioner determined that the water/sewer bills for one of the three meters serving the property was showing higher usage than historically had been the case.
4. While continuing to pay the bills as received, Petitioner hired a plumber to go through the buildings and look for plumbing leaks. None were found.
5. Petitioner then hired an engineer who determined that there was an underground leak \which Petitioner then had repaired. Subsequent bills showed a reduction down to where previous years' bills had been.
6. Petitioner's engineering report posited that the leaking water went into the ground or the nearby Tacony Creek and not into the City's sewer system. Therefore Petitioner requested a refund of that portion of their water bill that was for sewer treatment.
7. Petitioner did not request a refund of the usage charges as Petitioner acknowledged that the leak on the system was on the property side of the water meter and therefore had gone through the meter and was Petitioner's responsibility.
8. The crack in Petitioner's pipe resulted in a slow leak and not gushing water and therefore did not result in a cave in or other giving way of the ground.
9. PWD records showed the water main pipe with the leak was positioned above the pipes set up for the sewer system. The sewer pipes were not built to take in water from anywhere other than

the stormwater inlets that flow into the sewer pipes which are openings at the street level. Leaking water occurring underground would have no entry point into the sewer pipes.

10. The engineer hired by Petitioner reported that the water leaking from Petitioner's service would have flowed away from the sewer inlets. And because it was a relatively small leak it was able to go undetected except for a spike in Petitioner's bill in 2012.
11. The city acknowledged that if Petitioner could show that the water did not go into the city system that the City would be willing to discuss a refund. However, it was the city's position that the Petitioner could not prove where the water went after leaking from the water main.
12. Petitioner's consultants, EDS, analyzed the actual water usage for 2010 to 2012 both before and during the time the leak occurred, and for the first 3 months of 2013 after the leak was repaired to determine how much of the 2012 usage could be attributable to the water leak.
13. Actual water usage billed to petitioner was as follows:

	Average Daily Usage	Annual Usage
2010	58.95 ccf	21,281 ccf
2011	60.72 ccf	22,217 ccf
2012	110.56 ccf	37,812 ccf
2013 – first quarter	45.43 ccf	

14. The EDS report estimated the expected 2012 usage if there had been no leak on the service would have been 20,424 ccf. Petitioner was billed for 37,812 ccf, an average of approximately 17,388 ccf for 2012.
15. The city's representative countered Petitioner's engineering report by stating that while it may have been true that there was no sewer openings near or at the point of the leak into which the water could flow, because the pipes were old they were likely to have openings, cracks and/ or porous sections where water could find entry into the city's sewer pipes.

Conclusions of Law:

City of Philadelphia water/sewer bills have several components for which there are separate billings that when taken together comprise the entire billing period's amount due. Account customers pay a charge for usage, a charge for sewer treatment, a stormwater runoff charge and a service charge.

Petitioner acknowledges that there was leak from a water pipe for which Petitioner was responsible and that caused the amount of water used as measured by the property's water meter to be higher than the usage amounts for prior years and the period subsequent to when the leak was repaired.

Petitioner has paid the usage and service charges for the time period, including the charges for the excess water usage attributable to the leaking pipe.

Petitioner is contesting the charge associated with the sewer treatment based on a consultant's report detailing the likely path the water took to a nearby creek. The water as it leaked was not substantial enough to cause a cave in of the ground and so dissipated below the surface. While the sewer pipes were below the water pipes, there was no point of entry for the leaking water to enter the sewer treatment system.

The city could only hypothesize as to cracks in the sewer pipes or seam openings between pipes that might have allowed water to enter those pipes and thereby head in to the sewer treatment system. The city could not point to an actual entry point for the leaking water to support its position or rebut Petitioner's evidence.

Petitioner requested a refund of the sewer charges already paid for the estimated 17,388 ccf of water spilled from the leaking pipe.

It was the finding of the TRB that Petitioner met its burden of proof to establish that the leaking water did not enter the sewer treatment system. Therefore, the TRB granted the refund request for \$38, 497.03 representing the 17,338 ccf of water attributed to the leaking pipes underground at Petitioner's facility.

Concurred:

Nancy Kammerdeiner, Chair

Christian DiCicco, Esq.

Joseph Ferla

George Mathew, CPA