

June 30, 2008

IN RE: **MATHEW CLAYTON**  
DOCKET NO: **35WRMERZX0931**

**STATEMENT OF RECORD:**

1. Mathew Clayton (hereafter "Petitioner") filed an appeal with the Tax Review Board on August 17, 2006 requesting review of the water/sewer charges for the property at 5602 Spruce St. Philadelphia, Pa. for the July 7, 2006 billing cycle with a meter reading that covered the period August 10, 1993 through June 9, 2006.
2. A public hearing was scheduled before a Tax Review Board Hearing Master for December 4, 2006. The decision of the Master, as ratified by the Tax Review Board was to deny the petition.
3. Petitioner requested and was granted a rehearing before the full Tax Review Board.
4. A public hearing was scheduled for April 24, 2007 and continued for additional documentation from Petitioner
5. A public hearing was held July 17, 2007. The decision of the Board was to abate the penalty accrued against the delinquent bill.
6. Petitioner has appealed to the Philadelphia Court of Common Pleas.

**DISCUSSION:**

As provided by Pennsylvania Local Agency Law, 2 Pa. C.S. §553 the Tax Review Board, through the City of Philadelphia, contracts with a stenographic reporting agency to have a stenographer present at each public hearing of the Board so that a record may be produced when required for an appeal to the Court of Common Pleas. In this case, Class Act Reporting Agency, provided a stenographer who was present and recording the proceedings .

Upon receipt of the Notice of Appeal to the Court of Common Pleas, a staff member for the Tax Review Board contacted Class Act Reporting Agency to request that the Board receive a copy of any transcript so that an Opinion could be prepared and the record certified to the Court.

At some point thereafter, a Class Act representative contacted the Board staff with the information that they were having difficulty getting in contact with the stenographer from that hearing but were attempting to do so in order to have a transcript of the hearing prepared.

There have been numerous conversations back and forth between Class Act and the Tax Review Board and it is clear that Class Act cannot locate the stenographer and cannot produce a transcript of the proceedings involving this petitioner.

The Board's file documents are insufficient to allow for a re-creation of the witness testimony and arguments that were put forth to the Board members during the hearing process.

The lack of a transcript makes it impossible for the Board to prepare an Opinion with Findings of Fact and Conclusions of Law for the Court.

Attached are the file documents, listed in Exhibit "A" of this certification that provide some substantive information as to the petitioner's challenge to the assessment

July 24, 2008

IN RE:           **Mathew Clayton**  
Docket No:      **35WRMERZX0931**

Amended Tax Review Board Opinion

The Tax Review Board filed a certified record and Opinion in this matter dated June 30, 2008. At that time a transcript of the public hearing before the Board was unavailable and therefore the Opinion provided did not include Findings of Fact or Conclusions of Law.

A transcript for proceedings before the Board on July 17, 2007 has recently become available. Therefore the following Opinion supercedes the Opinion dated June 30, 2008, in the matter of Mathew Clayton. The transcript for the proceedings of April 24, 2007 remains unavailable.

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6. Petitioner has appealed to the Philadelphia Court of Common Pleas.

**FINDINGS OF FACT:**

1. The property at 5602 Spruce St. Philadelphia, Pa. was purchased by Petitioner's father and uncle in 1987.
2. Petitioner became the owner of the property in June 1995.
3. Petitioner received and paid the water/sewer bills during his period of ownership. All bills were estimated as to usage from August 10, 1993 to June 9, 2006 at which time a meter reading was obtained. At the same time as a new meter was installed in the property.
4. The meter reading taken on June 9, 2006 covered the 154 month period that began on August 10, 1993. Using this reading, the Water Revenue Bureau calculated that water usage for this period averaged 3,953 cubic feet per month.
5. The property was vacant during Petitioner's ownership period.
6. Although the property was vacant for a period of time during the 154 months when the meter was not read, there is no way to ascertain during which months water was or was not used during this time. The meter reading merely informs that during this time frame this amount of water flowed through the meter and was used at the property.

7. The bills that Petitioner received and paid had monthly estimated usage of 700 cubic feet.
8. As a result of the June 9, 2006 meter reading, it was determined that although Petitioner had paid the estimated bills sent for the property, these payments did not fully cover the actual usage charges and a delinquency bill was sent.
9. Petitioner did not provide documentation to establish how the property was used prior to his ownership.
10. Petitioner testified that on some occasions when he would stop by the property and find a card from the meter reader who had been unable to enter the property to read the meter, he would call in a meter reading to the department. But he acknowledged that those calls may have been outside the 2 to 3 day window listed on the card for the dates when such a reading could be accepted for billing purposes.

#### CONCLUSIONS OF LAW:

As the petitioning party, Petitioner bears the burden of proof to establish that the assessment put forth by the City was in error or improperly assessed. *Ernest Renda Construction Co., Inc. v. Commonwealth*, 94 Pa.Commonwealth Ct. 608, 504 A.2d 1349 (1986). This evidence may be in the form of testimony, documentation or other demonstrative evidence. Petitioner failed to meet this burden.

Petitioner was unable to show by either testimony or documentation that the water usage attributed to the property meter was incorrect or inaccurate. He did not provide any information that during the 154 month period when the meter went unread, less water was used than indicated by the meter reading introduced by the City.

Petitioner did demonstrate sufficient good faith to warrant an abatement of the penalties accrued against the delinquent bill. He paid all estimated bills as received and did attempt to call in meter readings, although without success.

#### **Concurred:**

Derrick Johnson, Chair  
Joseph Ferla  
Una Vee Bruce