

January 25, 2006

IN RE: **4048 JP LLC & 4076 JP LLC**
Docket No. **35WRMERZX2577**

STATEMENT OF RECORD:

1. A Petition for Review was filed with the Tax Review Board on behalf of 4048 JP LLC & 4076 JP LLC (hereafter "Petitioner") on January 31, 2005.
2. A public hearing was held before the Tax Review Board on August 16, 2005. The decision of the Board, announced at the conclusion of the hearing, was to deny the petition.
3. Petitioner has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner purchased the property at 4080 Frankford Ave. Philadelphia, Pa. on March 29, 2002.
2. At the time of purchase, the water meter at the property had not been read to determine the property's water usage by the Philadelphia Water Department since February 6, 1992, a period of 150 months.
3. At the settlement at which Petitioner purchased the property, he was not made aware of the fact, either by the seller or the title company representative, that the meter had gone unread for so many years.
4. On August 10, 2004, the water meter was read by a City meter reader.
5. All bills issued between February 6, 1992 and August 10, 2004 were for service charge only or estimated usage amounts.
6. The meter reading taken on August 10, 2004 provided an actual reading of the amount of water used during the 150 month time period between actual readings, although, of course, it is not possible to know each month's specific water usage.
7. Petitioner was then billed for the entire time period based on the August 10, 2004 actual meter reading.
8. The average monthly consumption calculated for the time period in question was 6,188 cubic feet. The only other actual readings available for this property were for three month intervals between February 6, 1990 and February 6, 1992, during which time the readings varied from 66 cubic feet per month to 24,130 cubic feet per month.
9. The principal amount due is \$25,785.18, with a penalty amount of \$1,972.92 and a lien charge of \$10 as of the Tax Review Board hearing date.
10. John Veneziale, identified as project manager for the property, first testified that there was no meter at the property when Petitioner purchased it, but then reversed himself and admitted that the City water meter reader did find a meter, although "under the dirt". See Notes of Testimony, page 7.

CONCLUSIONS OF LAW:

In this circumstance, Petitioner purchased the property without having a final water meter reading to determine if there was any unpaid usage on the meter prior to transferring the property. When the meter was read on August 10, 2004, there was usage attributable to the period of Petitioner's ownership that began on March 29, 2002 and also the possibility of usage from periods prior to Petitioner's ownership. It would be impossible to separate out any usage that might have occurred prior to March 29, 2002.

Delinquent water and sewer bills are property based assessments by the City of Philadelphia. Unpaid assessments may be filed as a lien against the property by the City of Philadelphia Water Revenue Bureau. 53 P.S. §7107 These liens remain attached to the property even though ownership may change, if they are not addressed at the time the property changes hands. The lien is imposed against the property and remains attached to the property even after a sale. Bobby McArthur v. Tax Review Board, 16 Phila. 329, 1987 Phila. Cty. Rptr.

Water bills consist of a two part charge: the fixed service charge and the usage charge which will vary each month based on the actual amount of water used at the property.

In the circumstance where a property is vacant and where the service is connected to the property so that water is available for use at the property, the service charge is due and owing each month regardless of whether any water is used. The property owner will receive a bill that reflects the usual service charge, with no amount due for usage.

When a significant amount of time goes by during which the water meter is not read by the Department and accurate usage charges are not billed, at the time when a meter reading is obtained, the usage charge is calculated from the time of the last actual meter reading through the time of the most recent actual reading that is the basis for the current calculation. A usage charge is then generated based on actual water usage as calculated from actual reading to actual reading. There is no way to determine exactly when any of the water was used during that time period. The current owner of the property is then billed for the newly calculated actual usage.

Petitioner purchased the property on March 29, 2002. There was no meter reading at that time that would have allowed for a determination of the usage on the meter attributable to the previous owner, if any.

Although Petitioner may not have been using water during the time of its ownership, the Water Revenue Bureau did find a meter at the property and a service connected to the property. The reading on that meter was the basis for the bill in dispute at the hearing.

There was no evidence presented at the hearing to establish that the usage reading obtained on August 10, 2004 was incorrect.

Therefore the decision of the Tax Review Board was to deny the petition.

Concurred:

Derrick Johnson, Chair
Joseph Ferla
Una Vee Bruce