

March 6, 2017

In Re: Henry Hall/ Anthony Floyd

Docket No: 28WAMERZZ9321 & 28WAMERZZ9324

Statement of Records:

Henry Hall and Anthony Floyd (hereafter "Petitioners" each filed Petitions for Appeal with the Tax Review Board (TRB) requesting reviews of Philadelphia Water Department (PWD) bills issued for repairs to their adjoining properties.

-Mr. Hall filed a Petition for Appeal on October 5, 2015 for a bill issued to the property at 2642 N. 22nd St. Philadelphia PA. This petition was assigned TRB Docket No: 28WAMERZZ9321.

-Mr. Floyd filed a Petition for Appeal on September 14, 2015 for a bill issued to the property at 2644 N. 22nd St. Philadelphia PA. This petition was assigned TRB Docket No: 28WAMERZZ9324.

- 1) At the request of Petitioners, their appeals were scheduled for the same hearing date, December 8, 2016, so they could present their appeals together.
At the conclusion of this hearing, the TRB announced its decision that for each property, one half of the principal and all penalties were to be abated.
- 2) Petitioners filed individual appeals to the Court of Common Pleas.

Findings of Fact:

- 1) Anthony Floyd was the owner of 2644 N. 22nd St. Philadelphia PA during all periods under appeal. The principal due was \$5,832.00, with penalty due as of the TRB hearing of \$291.60, for total due of \$6,123.60.
- 2) Henry Hall was the owner of 2642 N. 22nd St. Philadelphia PA during all periods under appeal. The principal due was \$6,092, with penalty due as of the TRB hearing of \$304.60, for a total due of \$6,396.60.
- 3) The bills under appeal were for costs incurred by the Philadelphia Water Department for repairs made to replace defective laterals, curb traps and vent boxes leading to the 2 properties belonging to the Petitioners.
- 4) For the address 2642 N. 22nd St., the City issued a Notice of Plumbing Defect for Waste Water and/or Storm Water on April 1, 2015. This Notice listed as defective the vent box, curb trap and lateral for the property.
The repair invoice dated May 5, 2015 from the plumbing company engaged by the PWD listed work performed and repairs completed, including but not limited to installing "new 5" cast iron lateral, new 5" curb trap, new 4" fresh air inlet...fill and secure ditch."
- 5) For the address 2644 N. 22nd St., the City issued a Notice of Plumbing Defect for Waste Water and/or Storm Water on April 14, 2015. This Notice listed as defective the vent box, curb trap and lateral for the property.
As with the neighboring property, these repairs were performed by a plumbing company engaged by the PWD.
- 6) Petitioners did not make any repairs.

- 7) The breaks or defects in these lateral pipes caused water to be discharged under the street and sidewalks. This eventually caused an erosion of the street and sidewalk underpinnings.
 - 8) As repairs were not made by Petitioners, the PWD authorized that repairs be made to the defective laterals at each property to stop leaking water and facilitate repairs to the street and sidewalk areas.
 - 9) PWD hired a plumber to effectuate the repairs at each property and billed Petitioners for the plumber repair costs. Each received a bill for the cost to repair the lateral at his property and these bills were the subject of the TRB appeals. Repairs were done on May 13, 2015.
 - 10) Petitioners did not contest that there were water related issues under the street in front of their properties which needed to be repaired. They also did not contest that the PWD had the repairs done to fix the problems.
 - 11) Petitioners contested that the source of the problem was any defect in the laterals coming from their respective water service lines and properties.
The basis of their argument was testimony by Petitioners of unsubstantiated statements by unknown workers to Petitioners that any leakage was not from their properties.
There was no evidence presented to establish who might have made such statements, what authority or expertise they may have possessed to assess the situation or when any statements may have been made. Petitioners did not present any witnesses or documents to substantiate their position that the leaking water came from somewhere other than the laterals leading from their properties.
 - 12) Mr. Hall testified that on or about the same day as the City's repairs, PGW was also onsite to do some repair work. He asserted that the PGW work in the street somehow created the problem. He also testified that their repair was done improperly and exacerbated lateral break or water service breaks. He testified that PGW personnel told him there was some kind of water leak washing away the street foundation.
 - 13) In addition to the water service lines specific to their properties, there was an abandoned water line at the site that may have contributed to the erosion and had an effect on the condition of the laterals to Petitioners' properties.
Mr. Hall testified that they had heard water running in and under the street for years prior to any notice that the laterals for their properties had any issues.
 - 14) The WRB representative testified that PWD shut off the abandoned water line when they were at the site on May 13, 2015.
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Conclusions of Law:

In proceedings before the Tax Review Board, the petitioning parties bear the burden of proof to establish by substantial evidence that the assessment or bill they are challenging warrants adjustment or abatement. "The ultimate burden of proof remains at all times with the protesting party." Commonwealth of Pa., Pennsylvania Game Commission v. Commonwealth of Pa., Department of Environmental Resources, Ganzer Sand & Gravel, Inc. and Hammermill Paper. Co., 509 A.2d 877, 97 Pa. Cmwlth 78, appeal granted 521 A.2d 934, 513 Pa. 643 (1986).

Petitioners admitted that there was water leaking underground in front of their properties and causing damage. Petitioner also admitted that the work and repairs reflected in the bills under challenge had been done by the city hired contractor.

Petitioners asserted that the admitted water leakage under their properties that caused the street and sidewalk to crumble and cave did not come from the laterals or water service lines leading from their properties but provided no information or documentation to support these claims other than unsubstantiated statements from unnamed and unknown persons who they said were on the scene during inspections or when repairs were underway. Petitioners provided no evidence to support their position that water leaks were not from their property laterals.

Petitioners also asserted that PGW work on the street caused the problem by opening or closing the street improperly. However, any PGW work was substantially after Petitioners had already been notified by the PWD that their laterals were leaking and so could not have been the initial cause of the problem, although may have exacerbated damage to an abandoned water line and the laterals.

While Petitioner Mr. Hall testified that a PWD worker at the site in April and May told him the water problems under the street and sidewalk were not his problem or not from his property, he had no supporting information, either the names of those workers or any documentation. Clearly there were PWD workers on site who had concluded that the water leakage was originating from their laterals as they issued violation notices.

They each received notices from the PWD in April 2015 that the PWD had found breaks in the laterals leading from each of their properties that needed to be repaired.

After more than 2 months, when the water leakage had undermined the street and sidewalk, the Petitioners had not taken steps to make repairs nor hired a plumber to even ascertain that the problem was not from their properties, as they contended. At that point, the PWD stepped into have repairs made before more damage could be done under the street.

The PWD provided work orders and invoices detailing significant repairs done to each property.

It was the determination of the TRB that the responsibility for the significant water leakage that undermined the street and sidewalk was shared between Petitioners and the City.

Petitioners were notified in April 2015 that the laterals leading from their properties were defective. Petitioners did not take steps to have the repairs done and the City was required to engage a plumber to repair the pipes and stop the running water.

However, adding to the problem was an abandoned water line that had been there for years and was contributing to the water problem under the street. As acknowledged by the city representative, this water line was not turned off until May 2015 repairs were under way.

Therefore the decision of the TRB was that each Petitioner was to be responsible for 50% of the principal amount of each bill and 100% of accrued penalty was abated.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

George Mathew