

December 28, 2018

IN RE: 701 W. Lehigh Partners, LP

Property: 701 W. Lehigh Ave.

Docket No: 28WAMERZZ9932- corresponds with account ending -1005

28WAMERZZ9933- corresponds with account ending 1004

28WAMERZZ9934- corresponds with account ending 1003

Statement of Record:

- 1) 701 W. Lehigh Ave LP (hereafter "Petitioner"), represented by attorney Dorothy Anne Hamill, filed a Petition for Appeal with the Tax Review Board (TRB) on March 18, 2016. The petition requested a review of stormwater credits charged to the petitioner's account for the property at 701 W. Lehigh Ave., Philadelphia, Pa by the Philadelphia Water Department (hereafter "PWD").
- 2) A public hearing was scheduled on May 17, 2016 before the TRB. The petitioner requested a continuance which was granted.
- 3) A public hearing was scheduled on November 1, 2016 before the TRB. The petitioner requested a continuance which was granted.
- 4) A public hearing was scheduled on February 21, 2017 before a TRB. The City requested a continuance to await a decision from the TRB on a similar case. The Board granted the request.
- 5) A public hearing was scheduled on July 10, 2018 before the TRB. The Board granted the continuance.
- 6) A public hearing was scheduled on September 18, 2018 before the TRB. After hearing evidence and testimony, the TRB denied the petition.
- 7) Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) Petitioner is the owner of the property at 701 W. Lehigh Ave., Philadelphia, Pa, which is a shopping mall and has several different water accounts.
- 2) At issue is the effective date of the Philadelphia Water Department's Stormwater Credits program on the Petitioner's property; specifically, whether the reduction of the Petitioner's monthly water bill should have occurred at the time of final inspection approval or when the application for the program was approved.
- 3) Petitioner is appealing the amount at issue is \$8,348.16, for the time period of August 11, 2014 to April 29, 2015. (Hearing Transcript; pg. 7; Lns. 23-24). No penalties or liens have accrued on this bill.
- 4) Petitioner began re-developing the property in 2012 and the PWD informed the Petitioner that they would be eligible for future stormwater billing credits if they met the requirements of the program, installation and maintenance of stormwater management practices, by the completion of construction.
- 5) Various documents were entered into evidence documenting the communication between the Petitioner and PWD regarding the approval of the Petitioner's project and application for stormwater credits.

- 6) An email dated December 18, 2012 from PWD to Petitioner and Mr. Paul Lonie, PLS, a former PWD employee who “created the stormwater plan, implemented the plan and prepared the drawings...on behalf of 701 Lehigh Partners,” outlined the necessary steps after the conditional approval (Hearing Transcript; pgs. 31-32; Lns. 19-24). Attached to the email was the PWD’s Credits Program Summary.
- 7) In PWD’s Program Summary, Section (f)4, notes “Credits shall be effective upon receipt of a complete application”.
- 8) Ms. Vicky Lanucci, a private development services manager with PWD testified that a final inspection of the completed construction project was approved by PWD on September 15, 2014. (Hearing Transcript; pg. 24; Lns. 14-15).
- 9) On September 17, 2014, two days after the final inspection approval, PWD sent a letter titled, *Post Construction Stormwater Management Plan Review Record Drawing* to Mr. Lonie. The letter stated, “the Record Drawing submission is incomplete. The documents were not submitted in accordance with PWD’s Record Drawing Requirements”. The letter went on to explain, “Projects that are not in compliance with the Regulations or that have any outstanding corrective actions required are not eligible for stormwater billing credits. After complete Record Drawings have been submitted in accordance with the Record Drawing Requirements, a post construction inspection is completed, and the project is found to be general accordance with the approved PCSMP, a Stormwater Credits Application may be submitted to PWD for review and approval”.
- 10) No evidence was presented regarding communications after September 17, 2014 and March 12, 2015.
- 11) The application for the actual credits program was received on March 12, 2015 and verified and considered complete until April 29, 2015. (Hearing Transcript; pg. 25; Lns. 16-21).
- 12) The TRB denied the petition.

Conclusions of Law:

The Petitioner bears the burden of proof to establish by substantial evidence that the City’s bill had been improperly assessed. *Ernest Renda Construction Co., Inc v. Commonwealth*, 94 Commonwealth Ct., 608,504 A2d 1349 (1986). This evidence may be in the form of testimony, documentation, or other demonstrative evidence. Petitioner failed to meet this burden.

According to the Philadelphia Water Department’s Storm Water Management Service Charge Credits and Adjustments Appeals Manual, Section 4.2.8.4, states Credits are effective the date that PWD receives a complete credits application, including all required supporting documentation and the application fee.

The Petitioner asserts that the PWD’s effective date of the stormwater credits applied to 701 West Lehigh Ave should begin on the date of the final inspection approval as opposed to the date the application was actually approved, noting that “[t]here was no difference between what happened on 9-15-14 and no additional work was done, nothing else had to be done to the stormwater management system between then and six month later, when the sign-off occurred on the application”. (Hearing Transcript; pg. 10; Lns. 1-6). Further, Petitioner contends that PWD failed to provide the requirements for final approval in one location or in an easily accessible manner.

While Petitioner's arguments have some merit in regard to no changes occurring during the 7 months between final inspection approval and stormwater application approval, the Board found the September 17, 2014 letter sent from PWD to the Petitioner's agent especially dispositive. The letter, issued after the final approval, not only noted that the submission was incomplete but also specifically laid out what was required for a project to *first* be eligible for stormwater credits; *and then* submit a stormwater application. Then, that application would need to be reviewed and then approved. PWD clearly identified the steps still required regarding the incomplete submission and how the Petitioner should proceed. Additionally, the PWD Stormwater Summary sent in December 2012, also identified that the effective date of the credits occurs upon approval of the application.

As the Petitioners failed to meet their burden that the effective date of the stormwater credits applied by PWD was improper, incorrect, or that the application process lack clarity, the Tax Review Board decision to deny the petition was appropriate.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Ryan Boyer