

**February 28, 2019**

**IN RE: Belfield Community Development**

**Docket No: 35WRMERZW4621**

**Statement of Record:**

- 1) Belfield Community Development, represented by Swetwedien Muhammed, (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (hereafter "TRB") on August 3, 2015. The petition requested a review of a bill charged to the petitioner's account for the property at 414 E. Penn Street, Philadelphia, Pa by the Water Revenue Bureau (hereafter "WRB").
- 2) The Tax Review Board approved the petition after reviewing it for Nunc Pro Tunc consideration on September 4, 2015.
- 3) A public hearing before the Master was held on November 9, 2015. Petition was denied as the Petitioner failed to appear for the hearing.
- 4) Petitioner requested a re-hearing on November 19, 2015 and it was granted.
- 5) A public hearing was scheduled for February 12, 2016 and the Petitioner requested a continuance. The continuance was granted, and the hearing was rescheduled for May 13, 2016, noting no further continuances.
- 6) The hearing was then re-scheduled for June 17, 2016 and again denied as the Petitioner failure to appear.
- 7) On June 26, 2016, the Petitioner requested a rehearing which was granted. The hearing was then listed before the Tax Review Board on October 18, 2016.
- 8) The Board held the matter under advisement, for the "parties to meet with documentation of the things that were discussed with water department in 2014 and report back to TRB within 90 days".
- 9) A status listing was scheduled for March 28, 2017 and continued for the City to submit the requested information. The documentation was then submitted by the City on May 12, 2017.
- 10) A hearing was then scheduled on February 20, 2018 and the Tax Review Board adjusted the bill for the period of January 4, 2008 to February 20, 2018 "based on 2000CF".
- 11) The Petitioner has filed an appeal to the Philadelphia Court of Common Pleas.

**Findings of Fact:**

- 1) Petitioner is the owner of the commercial property at 414 E. Penn Street, Philadelphia, Pa., and testified that the property was used as a non-profit house of worship and community center with approximately one bathroom.
- 2) At issue is the billing period from January 4, 2008 to February 20, 2018. At the time of the hearing, the principal balance, for storm water, service and usage totaled \$9,239.65, lien of \$30.00 and penalty \$199.00 for a total of \$9,468.65.
- 3) In January 2014, the Water Department went to the property and replaced encoder receiver transmitter, ("ERT") at the property and not the actual meter that was in the property prior to 2014.

- 4) After the change of the ERT, the Water Department registered 15 months of prior estimated readings followed by actual readings. The Water Department then billed the Petitioner for the back actual usage and continued to bill the Petitioner for current usage at the property.
- 5) According to the history sheet, the usage at the property since the change of the ERT was consistently fluctuated throughout the years however, a March 2015 bill registered at 19,000 CF; significantly higher than any reading. Petitioner testified that there were never any leaks or plumbing issues at the property.
- 6) In the report filed by the City to the Board on May 12, 2017, the Water Department sent out Mr. Otis Barlow, Supervisor of the Special Investigation Unit, to the property. On the third attempt to visit the property on November 22, 2016, Mr. Barlow noted, "meet with owner of business, property is center to help community...this property has 1 bathroom, no large meter. The property used to be a plumbing and heating warehouse, now has been gutted and portioned off".
- 7) The Board also inquired about the payment history of the Petitioner and the Water representative testified, "the payment history at the property is inconsistent with the last payment being recorded on January 22, 2016".

#### 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.

The Petitioner asserts that the bill assessed after the change of the ERT was incorrect, arguing that the amount should not be that high as the property has little water use due to only having one bathroom on the premises and only a few people entering and using the community center. This assertion by the Petitioner was corroborated by the report submitted by Supervisor Barlow.

However, the City's evidence revealed that the ERT needed to be changed for actual usage to be registered and calculated at the property. After the 2014 ERT change, the meter readings were actual and reveal consistently fluctuating monthly readings despite evidence of only one bathroom. Aside from a spike of 19,000 CFs in March 2015, the readings resulted in the bills as charged. Further, the City Representative asserted that the high spike in March 2015 could have been cause by a leak, "for example, a running toilet or spicket running outside...[while] the readings obtained are high, they are actual readings and progressive and should be considered correct".

The Board also found persuasive the lack of any payments made by the Petitioner since 2016, contributing to the high amount due and owing, as charges continued to accrue on the property as it remains a used and functioning community center.

As the Petitioner failed to present evidence or meet his burden that the City's assessment was improper or incorrect, the Tax Review Board decision to adjust the bill to 2000CF based on the average usage over the prior ten years was an appropriate determination based on the use of the property.

**Concurred:**

**Nancy Kammerdeiner, Chair**

**Joseph Ferla**

**Gaetano Piccirilli Esq.**

**George Matthew**