

July 26, 2022

IN RE: Wakanek Property Management, LP

Property: 2101 Hornig Road

Docket No: 28WAMERZZ9995- corresponds with account -0474355002101-001

**Statement of Record:**

- 1) Wakanek Property Management, LP (hereafter "Petitioner"), filed a Petition for Appeal with the Tax Review Board (TRB) on September 22, 2020. The petition requested a review of refund denial of stormwater credits charged to the petitioner's account for the property at 2101 Hornig Rd., Philadelphia, Pa by the Philadelphia Water Department (hereafter "PWD").
- 2) A public hearing was scheduled on February 8, 2021 before the TRB Master level. The petitioner requested a continuance which was granted.
- 3) A public hearing was then scheduled on April 19, 2021 before the TRB Master Level. At this hearing, it was noted that the case was not docketed correctly, and the TRB administratively re-docketed this petition as a Water Department refund matter.
- 4) A public hearing was scheduled on August 20, 2021 before a TRB. The Hearing Officer granted the refund.
- 5) On August 30, 2021, PWD requested an statutory appeal of the Hearing Officer decision.
- 6) An appeal to the full Tax Review Board was scheduled on December 14, 2021. After hearing evidence and testimony, the TRB requested additional information from both the PWD and Petitioner. Specifically, the TRB requested a brief from PWD and the necessary power of attorney from the Petitioner.
- 7) After reviewing the documentation, the TRB issued a decision on February 15, 2022 and denied the petition for refund.
- 8) Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

**Findings of Fact:**

- 1) Petitioner became the owner of the property at 2101 Hornig Road, Philadelphia, Pa, on January 16, 2017.
- 2) Petitioner is appealing the PWD denial, dated September 1, 2020, of a request for refund amount at issue is \$37,958.39<sup>1</sup>, for the time period of June 30, 2018 to August 31, 2020. (Hearing Transcript; pg. 7; Lns. 23-24). No penalties or liens have accrued on this bill.
- 3) At the time Petitioner became owner, the property had already been issued partial credits by the Water Department and they expired on June 30, 2018.
- 4) Prior to the date of expiration, the Philadelphia Water Department sent notice to the prior owner on April 6, 2018, informing them of the upcoming expiration and need to submit a renewal application. (City Package, Exhibit E, pg. 30).

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<sup>1</sup> City disputes this amount, noting in its' brief "[t]he Department disagrees with the value of the stormwater credits Appellee claims in is petition; by the Department's calculation, the value of the stormwater credits for the period in question is either \$22,907.02 or \$33,265.11, depending on the method of calculation."

- 5) Petitioner testified that the Water Revenue Bureau had been sending him monthly bills, outlining his usage, service and stormwater charges since taking ownership of the property. (Id., Exhibit F, pg. 31).
- 6) Upon the stormwater credits expiring on June 30, 2018, PWD considered the credits on 2101 Hornig Rd as lapsed and charged an increase amount for stormwater. Specifically, Water Revenue billing records indicate that the Petitioner's water bills in June 2018 was \$1,378.57 and increased to \$2,622.57 in July 2018 and \$2,709.57 in August 2018. The Petitioner paid the increased amount consistently every month. This amount increased steadily to \$3,075.35 by October 2019 (Id., pg. 36).
- 7) The Petitioner applied for stormwater credits for the property on 2101 Hornig Road on November 1, 2019 and which was approved on November 22, 2019. (Id. Exhibit D, pg. 23-30).
- 8) The Petitioner then applied for a refund of the stormwater credits from June 30, 2018, to August 30, 2020. The Water Revenue Bureau denied the retroactive application of stormwater credits on September 1, 2020. (Petitioner's Exhibit, Email from Maya Thomas dated 9/1/2020)
- 9) The Petitioner then sold the property on June 9, 2021. Petitioner did not have proper standing at the time of the December 14, 2021 hearing. Petitioner noted, "I would like to make my case and then we can work out the legal things that you want from the owner, the present owner" (Notes of Testimony, Pg. 17, Ln-11). Petitioner then acquired Power of Attorney on January 4, 2022 from the current owner to have standing before the TRB.
- 10) Both the Petitioner and City acknowledge that the Petitioner has had experience with the application process for stormwater credits on other properties.

#### Conclusions of Law:

The Philadelphia Code Chapter 19-1703(7) provides that a denial of refund request by the Department of Revenue may be appealed to the Tax Review Board. "Any decision of the Department [of Revenue] denying a refund in whole or in part may be appealed to the Tax Review Board by the petitioner within 90 days after the mailing of notice of such decision to the petitioner by the Department".

According to the Philadelphia Water Department's Storm Water Management Service Charge, *Credits and Adjustments Appeals Manual*, Section 4.4.2,

*Stormwater Credits Renewal Application... The customer must submit a completed Form C and payment at least thirty (30) days before the expiration date to renew the stormwater credits. The approved credits renewal is effective on the expiration date of the original credit. If the customer fails to submit a renewal application at least thirty (30) days before the expiration date, then the credits may expire.*

**Note:** *Should the customer fail to reapply within 30 days of the expiration date, the customer will not receive credit towards the SWMS Charge during the months in which the renewal application was past due and the credits had lapsed.*

The Petitioner asserts that PWD erred by sending the Renewal application to the prior owner and this failure to notify Petitioner of the pending expiration caused the lapse in credits. The lapse in credits and subsequent increase in stormwater fees paid by the Petitioner should therefore be refunded.

While the Board understands Petitioner's arguments regarding PWD's error in mailing out the notification of impending expiration as the cause of the initial lapse, the *Credits and Adjustments*

*Appeals Manual* is quite clear regarding the refunding of lapsed credits. Stormwater credit applicants will not receive credits towards their bill during the months in which the renewal application has been late and credits have lapsed. Further, the Board considers that for over a year, the Petitioner had constructive notice of the lapse in credits by receiving water bills that reflected a significant increase due to the stormwater charge. The Board asserts that immediately after the lapse, the water bill increased by approximately \$1,300. A review of the July 2018 water bill or any thereafter, should have notified the Petitioner of an issue with the stormwater credits and application on their account. Petitioner has multiple properties with stormwater credits and testified to working with the Water Department before on these issues.

The Tax Review Board's decision to deny the petition was appropriate.

Concurred:

Nancy Kammerdeiner, Chair

Dominique Ward, Esq

Paula Weiss

Ryan Boyer