

**November 1, 2022**

**IN RE: Richard and Deborah Ball**

**TRB Docket No: 26NUMERZZ6989**

**Property: 106 W. Walnut Park Drive**

**Statement of Record:**

- 1) Mr. Richard and Mrs. Deborah Ball (hereafter "Petitioners") filed a Petition for Appeal with the Tax Review Board ("Board") on December 6, 2018. They are represented by attorney, Mr. Robert Vance.
- 2) The petition requested a review of a site improvement fee and associated cost assessed by City of Philadelphia's License and Inspection Department ("Department") against the property at 106 W. Walnut Park Drive, Philadelphia, PA billed on November 7, 2018.
- 3) A public hearing before a TRB Board was scheduled for May 9, 2019.
- 4) The Petitioner requested a continuance which the Board granted.
- 5) Subsequent hearing was scheduled before the Board on July 18, 2019; Petitioner again requested a hearing due to a funeral.
- 6) At the scheduled October 31, 2019 hearing, the Board granted an extended continuance due to on-going litigation in the Court of Common Pleas. Parties were to contact the Board to put back on the scheduled.
- 7) On March 25, 2021, a status hearing was held and parties requested the case be scheduled for a hearing on the merits.
- 8) The case was listed for hearing on September 16, 2021. Evidence and testimony were taken and the Board held the case under advisement for post-hearing briefs.
- 9) Additional evidence and arguments were considered and on February 1, 2022, the Board rendered its decision to abate 100% interest and 100% of the administrative charge and ordered petitioners to arrange installment payments for the remainder of the balance within 30 days of the new bill.
- 10) Petitioners filed an appeal to the Court of Common Pleas.

**Findings of Fact:**

- 1) Petitioners are the owner of the property located at 106 W. Walnut Park Drive, Philadelphia, PA.
- 2) Petitioners entered into a contract with Registered Master Plumber to perform external plumbing work at their property.
- 3) The Philadelphia Department of L&I (hereafter "Department") issued a Plumbing Permit to the Master Plumber to start the work. On August 15, 2018, the Department sent an Inspector to approve a trench that the Master Plumber had dug to complete the work.
- 4) The work was not approved by the Department's Inspector.
- 5) On August 16, 2018, while working on the trench, the trench collapse leading to the death of the Master Plumber.
- 6) The Department's Director of Emergency Services, Mr. Steven Gallagher reported to the accident location and relayed to the Petitioners that they should contract with another plumber

to make improvements to the premises caused by the collapse of the trench or else the City would contract with a plumber and conduct the work.

- 7) On August 20, 2018, the Department designated the property as "imminently dangerous" and a Notice of Violation was issued. An Emergency Site Improvement was performed between August 17, 2018 and September 20, 2018.
- 8) The Department contracted with P. Palmer Construction, Inc. and its subcontractor, Big Dawg Plumbing & Heating (hereafter "Big Dawg", to do this work and rent the equipment. Big Dawg invoiced P. Palmer Construction \$55,976 on August 20, 2018, for "For Plumbing Construction- 106 W. Walnut Park Dr.- provide labor, material and excavation". (City Exhibit, Pg. 5-6). P. Palmer Construction then billed the Department \$60,976.00 on October 23, 2018 for "106 W. Walnut Park Dr., Plumbing Construction, 1 truck 8hrs, Transportation of Dirt [and] 1 Excavator 8hrs". (Id.; Pg. 4).
- 9) On November 7, 2018, the Department billed the Petitioners \$73,780.96 for the work performed, Site Improvement and mailed this bill to the Petitioners' address.
- 10) At the time of the hearing, the "bill amount and principal, \$73,780.96. Its broken down into labor and materials; \$60,976 and administrative charge, \$12,804,96. Interest to date \$13,280.40. The total amount due, \$87,061.36". (Notes of Testimony; Pg. 8; Ln. 13-17).

#### Conclusions of Law:

In an administrative hearing before the Tax Review Board, the burden of proof rests with the petitioning party to provide substantial evidence to establish that the Petition of Appeal should be granted. The taxpayer bears the burden to prove that the City's assessment is incorrect or warrants adjustment, or that the Petitioner should not be responsible for the cost associated with the City's action to demolish the property or some reduction should be given. See *City of Philadelphia v. Litvin*, 235 A.2d 157, Pa Super.1967.

In this matter, Petitioner asserts that the work by Big Dawg should not be assessed to the Petitioners as work was done on the "City's lateral sewer...in the city street and not on [Petitioners] property". (Notes of Testimony; Pg.10; Ln. 17-18). This argument by the Petitioners was not supported by any substantial evidence put forth by the Petitioner. Rather, the City presented evidence and testimony noting that the Petitioner's property was deemed "imminently dangerous" specifically because there was "a breach in the foundation wall in that the sewer line had been removed from this property. The water service line had been removed from this property... we issued an unsafe case in that the property itself had a breach in the foundation. Also, with a property that doesn't have water service or sanitary line, the property is uninhabitable". (Id.; Pg. 35; Ln. 9-16). Further, in the Board's experience with water cases, the lateral and repairs to it, are the responsibility of the property owners.

The Board found the City's witness, Inspector Rybakowski's testimony very probative regarding the reasons why the work by Big Dawg was required and done with the urgency in which it was completed. Most probative was the Department's record read into evidence regarding the Department's inspection on August 15, 2018, the day before the collapse. Inspector Traynor noted that he arrived at the premises and observed "the contractor was in the beginning stages of excavation...I explained to him that he's not ready for an inspection. No plumbing work was being performed and no plumbing material

on the job site. I informed the contractor to make sure all proper shoring is being used per code". (Id.; Pg. 25; Ln. 14-20).

Based on the evidence, the work done by Big Dawg was "all in conjunction with the collapse and the emergency response that was done". (Id.; Pg. 43; Ln. 12-14). For example, testimony regarding the shoring that needed to be put in place to prevent collapse as well as installation of the "new service line...new sanitary line [and] new storm water line". (Id.; Pg. 41; Ln.12-15). Corroborating that the work done by Big Dawg, was necessary to ensuring the safety of the property.

Additionally, the Petitioner argues the theory of promissory estoppel should apply in this case as L&I Inspector Gallagher, assured the Petitioner that the City would not bill the Petitioners for the work done by the contractors. Specifically, Mrs. Ball testified to Mr. Gallagher said he would "make her whole... [and] was going take care of it. (Id.; Pg. 14; Ln. 16-22). Petitioner's brief asserts that "Mr. Gallagher, made a promise to the Balls that they would not be charged for the work performed by Big Dawg...the Balls reasonably relied on Mr. Gallagher's representation, and took no further action to obtain a plumber or contractor of their own choosing." (Petitioner's Brief; Pg. 5; Ln. 10-15).

First, there remains some doubt regarding whether Mr. Gallagher statements about making the Petitioners "whole" implied that the City would in fact provide all these services for free. Aside from Ms. Ball's testimony there is no additional evidence to support the promises that Petitioner alleges were made by Mr. Gallagher; especially, when Mr. Gallagher's affidavit specifically refutes those allegations. (Dated October 21, 2021). The Board also finds the Petitioners property was significantly improved by the work completed by Big Dawg and P. Palmer Construction; and that would have had to be completed to return the Petitioner's home to a safe and habitable residence. It is not a leap to conclude that further damage was avoided by the Department's immediate inspection, "imminently dangerous" determination, and contracting with P. Palmer Construction to complete the work started by the Petitioners' plumber provided a benefit to the Petitioners.

While the Board is sympathetic to the traumatic event that occurred on the Petitioners property and therefore, the decision of the Tax Review Board to abate 100% of the interest and 100% of the administrative charge was appropriate.

Concurred:

Nancy Kammerdeiner

Paula Weiss

George Matthews

Ryan Boyer

Dominique Ward, Esq.