

August 30, 2024

IN RE: Wakanek Property Management, LP (Remanded)

Property: 2101 Hornig Road

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

On February 7, 2023, the Court of Common Pleas remanded this case to the Tax Review Board, "TRB", "with instructions that the Tax Review Board conduct a hearing on the merits in accordance with the Tax Review Board standard procedure".

As such, please incorporate the previous statement of record from the July 22, 2022 TRB opinion.

Statement of Record

- 1) The remanded hearing before the full Tax Review Board was scheduled on May 31, 2023. Case was continued as both parties requested and agreed to a continuance.
- 2) The case was rescheduled for October 17, 2023. After hearing evidence and testimony, the TRB held the case under advisement and requested both parties to provide post hearing briefs.
- 3) The TRB issued a decision on February 28, 2024 and denied the petition for refund.
- 4) Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) Petitioner is appealing the PWD denial, dated September 1, 2020, of a request for refund. "For the record, the City has come up with two calculations depending on how the credits would be calculated. The one number is \$33,265.11. The second number is \$22,907.02"¹, for the time period of June 30, 2018 to November 1, 2019. (Hearing Transcript dated 10/17/23; pg. 12; Lns. 4-8). No penalties or liens have accrued on this bill.
- 2) Petitioner testified that he is the managing director of Wolf Investment Corporation, an industrial real estate business, which currently owns 10 properties in the City of Philadelphia. He explained that Wolf Investment Corporation has "owed up to 15 properties. We've always paid out taxes, We've been a good partner with the City." (Id., Pgs. 23-24, Lns. 23-3).
- 3) Petitioner became the owner of the property at 2101 Hornig Road, Philadelphia in January 2017. (Id., Pg. 25, Ln. 16). At the time Petitioner became the owner of the property, it had already been issued partial stormwater credits by the Water Department.
- 4) Petitioner testified that he was familiar with the City of Philadelphia's Stormwater Management program. Specifically, he explained that he was part of "putting many of the stormwater things together in different meetings that the City had with the community," (Id., Pgs. 26, Lns. 11-13). Additionally, Petitioner noted "[m]ost of the properties that we own have some participation in that program. Many of them have phased out, but there are still a few left that are part of ...that program". (Id., Pgs. 27, Lns. 15-18).

¹ City asserts, depending on the method of calculation, the value of the stormwater credits for the period in question is either \$22,907.02 or \$33,265.11. As noted by Mr. Bernburg, "the value of the stormwater credits at the expired application and then the renewal application were different. So the credits...after the renewal—were more valuable". (Hearing Transcript 10/17/23., Pgs.125, Lns. 10-14).

- 5) Petitioner also testified that he was familiar with the City's process as it relates to the expiration of credits. He explains that the City "give[s] notice about any given building that either is in the CAP program or has stormwater credits", (Id., Pgs. 32, Lns. 8-10). Petitioner then provides an example of an email he received on another property owned by Wolf Investment Corporation where the City sent notification with the subject, "Stormwater Credit Renewal Three Month Notification". (Id., Pgs. 35, Lns. 22-23).
- 6) The Petitioner testified he became aware of 2101 Hornig Road stormwater credits expired sometime after looking at the water invoices. (Id., Pgs. 32-33 and 57-58).
- 7) Petitioner applied for stormwater credits for the property on 2101 Hornig Road on November 1, 2019 and which was approved on November 22, 2019. **(City's Exhibit F)**.
- 8) The Petitioner then applied for a refund of the stormwater credits from June 30, 2018, to August 30, 2020. (Petitioner's Exhibit W4). The Water Revenue Bureau denied the retroactive application of stormwater credits on September 1, 2020. **(Petitioner's Exhibit W9)**
- 9) Ms. Megan Mitchell, Petitioner's bookkeeper and whose duty was to complete all stormwater renewals, testified that she never received a notice from the City regarding the stormwater credits expiring. (Hearing Transcript dated 10/17/23, Pgs. 63, Lns. 14-17). She also testified that this was the only case wherein the City failed to provide notice relative to a timely renewal of stormwater credits. (Id., Pgs. 66, Lns. 23-3).
- 10) Attorney for the Petitioner also called Mr. Pickering, who at the time, was an engineering supervisor with the Stormwater Credits program. He testified that it was the "practice of the Water Department to provide 90-day notices via email to property owners to provide them notice of expiring credits". (Id., Pgs. 80, Lns. 19-22).
- 11) Mr. Pickering also testified that the Water Department sent notice to the prior owner informing them of the upcoming expiration and need to submit a renewal application. (Id., Pgs.89, Lns. 17-23). He explained that he did not "remember them being a requirement. I remember them being something that, you know, we did to, to remind people but not a requirement." (Id., Pgs. 1, Lns. 3-5).
- 12) Mr. Pickering identified City's Exhibit 6 as the Credits and Appeals Manual dated September 2018, Section 4.4.2 regarding that credits may lapse due to a failure to "submit a renewal application at least 30 days before the expiration date... as PWD cannot guarantee the renewal will be processed prior to the next billing period." (Id., Pgs. 93-94, Lns. 21-4). Additionally, the Manual also states, "[N]ote: Should the customer fail to reapply within 30 days of the expiration date, the customer will not receive credits towards the Stormwater management Service charge during the months in which the renewal application was passed due and the credits had lapsed". (Id., Pgs. 94, Lns. 5-10).
- 13) The City presented Mr. Synder, a civil engineer in the Stormwater Billing and Incentives Unit. Mr. Synder testified that he received a stormwater credits renewal application dated November 1, 2019 for 2101 Hornig Rd. He also explained that stormwater credits on the property had lapsed on June 30, 2018 (Id., Pg.97).
- 14) The City presented Mr. Pollum, a engineering supervisor for the Stormwater Credits Program. He testified to that PWD allows "30 days after the expiration date, we do allow a grace period for an owner to reapply". (Id., Pgs. 114, Lns. 20-22).
- 15) Lastly, the City presented Mr. Bernburg as a witness. Mr. Bernburg is a GI Specialist 3 and supervises the Stormwater Billing program for PWD. Mr. Bernburg testified that billing records

for 2102 Hornig Road reveal that the Petitioner's water bills in June 2018, before the stormwater credits expired was \$1,378.57. Thereafter, the amount increased to \$2,622.57.

- 16) The Petitioner paid the increased amount consistently every month. This amount increased steadily to \$3,075.35 by October 2019 (Id., pg. 36).

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 error in failing to comply with its policy to notify Petitioners of the pending expiration caused the lapse in stormwater credits being applied to his account. Specifically, Petitioner's relies on principles of equity and fairness; that the PWD mistake entitles the Petitioner a refund of credits it would have received if notified promptly by the City.

The Board's rehearing of the case, with a more thorough understanding of the facts and detailed breakdown of what occurred, as well as a more rigorous argument by Petitioner's counsel, did not change the Board's determination regarding whether the refund should be issued in this case. The Board again relies on Stormwater Management Service Charge, *Credits and Adjustments Manual*, which specifically states PWD policy regarding late applications for stormwater credits renewal applications. Additionally, the Board finds that PWD's "policy or practice" of notifying owners of upcoming expiration date is not a requirement of the Stormwater Credits Program; rather the Board believes to be a courtesy. Therefore, the City's failure to provide the Petitioner a reminder email, is not an absolution of an owner's responsibility to make timely renewal applications in order to participate and benefit from the program.

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. Petitioner even testified that his observation of the bill, immediately alerted

him to the fact that the stormwater credits were not being applied to the bill. Petitioner's experience with the program as testified to, was how he knew something was amiss.

As such, the Tax Review Board's decision to deny the petition was appropriate.

Concurred:

Paula Weiss, Chair

Nancy Kammerdeiner

George Matthews