

DISTRICT OF COLUMBIA TAX COURT

FILED

MAY 22 1969

District of Columbia
Tax Court

LAURENCE I. PEAK,)
Petitioner,)
v.) DOCKET NO. 2067
DISTRICT OF COLUMBIA,)
Respondent.)

Petitioner complains of real property tax assessed and paid for the fiscal year 1969 on Lot 826 in Square 1245, in the amount of \$621.84. He has met the jurisdictional prerequisites of D. C. Code sections 47-709, 47-2405 and 47-2403, under which latter section, the Court is required to make "separate findings of fact and conclusions of law", and a "decision thereon in writing."

Findings of Fact

Square 1245 is bounded by 33d and 34th Streets and O and P Streets, in a concededly prime area of Georgetown, west of Wisconsin Avenue. Lot 826 is an interior lot fronting on a blind alley (exit on 33d Street) at the rear of 3310 - 3316 P Street, N. W. The alley is of 20 foot width in front of petitioner's property, narrows to 13 feet, widens to 20 feet and narrows to 10 feet as it proceeds on an irregular course to 33d Street. Lot 826 is improved with four one-story garages and four two-story carriage houses. The garages are not rented. The words "For Rent", together with a telephone number, are crudely painted on the door of one of the garages. The garage doors are of the old-fashioned, wooden, center-opening type, and seem to be in disrepair, from the photographic exhibits. The ground floor of

one of the carriage houses is rented as a residence, the remainder of the space in such houses, classified for non-conforming use as commercial art studios, is rented to hobbyists. Lot 826 and the other lots fronting on the alley are zoned R-3; if the buildings were to be removed use of the land would be restricted to garages, parking spaces or extensions of rear yards.

Lot 826 was assessed \$16,026 land and \$4,702 improvements, total \$20,728. These assessments represent the "conservative market value", or a "range of from 55 to 65 percent" of full estimated market value. CCH D.C. State Tax Reporter, par. 20.301.17. Petitioner claims that the "real market value of this property under existing conditions is around \$19,000". If the assessment were at 60 percent, the result would total \$11,400, divided \$6,697.50 for the land and \$4,702.50 for the improvements. Accordingly petitioner does not contest the assessment of the improvements at a "valuation accepted by both parties". (Pet. Br. 2, 6.)

Taxpayer's evidence. The expert witness for taxpayer, Miss Rhea Radin, used the "comparable sales approach" to estimate a maximum value of land and improvements of Lot 826 at \$20,000; however, she found no "comparables" in Georgetown and therefore used her knowledge of interior lots in the Foggy Bottom section of the city as her basis. Miss Radin also capitalized income of \$300 per month--taxpayer's gross receipts from the property--at seven times the annual receipts, to arrive at a fair market value of \$25,200, but this was reduced because she "took other factors into consideration", principally the limited market for this interior lot. (Tr. 25 - 32.)

Taxpayer, testifying PRO SE, stressed the decision of this Court entered February 27, 1967 in Docket No. 2021, covering this same Lot 826 for the fiscal year ended June 30, 1967. On

the record there made, the "real value" of land and improvements was found to be \$19,000, to be appraised for tax purposes at 60 percent, or \$11,400, allocated (following the method of the District's appraisers) 58.75 percent to land and 41.25 percent to improvements, or an assessment of \$6,697.50 land and \$4,702.50 improvements.

Taxpayer's testimony sounds partly in discrimination, dealt with later herein, but mostly in intrinsic value of lot 826, from the point of view of income production: the four garages "produced no income whatsoever" * * * (because cars larger than compacts find it) extremely difficult to enter this alley, and two of the garages are too small to accommodate (the larger cars). (Tr. 8 - 9.) Since taxpayer has been denied commercial zoning "these garages are practically a liability, you might say". (Tr. 10.)

The District's evidence. Mr. Donald P. Fleming, Property Tax Division, Department of Finance and Revenue, found several sales of interior lots in Georgetown from which to draw conclusions as to the value of lot 826. These sales included unimproved "completely landlocked" properties with "no access whatsoever to any thing", sold to abutting owners to the front "to increase the size of their back yard". (Tr. 62 - 63.) They included garage properties on alleys ranging down to 10-foot width. Based on these sales, Mr. Fleming found that Lot 826 land is worth \$7.50 per square foot, or \$20,000 total.

Under the "cost" approach (replacement cost new, less depreciation), Mr. Fleming found a value for the four garages of \$2,364, of the dwelling portion of the carriage houses of \$7,452, and of the remainder of such houses of \$4,697; all improvements rounded to \$14,500. Thus, land and buildings, together, total \$34,500.

By capitalizing potential income from the property, including \$25 per month from two of the garages and \$17.50 per month from the other two, Mr. Fleming found an indicated value of the property, rounded, to be \$32,900, which checked with the "gross annual multiplier" value (seven times potential gross income) of \$31,920.

Mr. Fleming, aware of the fact that the garages are not rented, built his "potential" income theory on the premise that parking in Georgetown is in "extremely scarce supply", particularly in the subject block. (Tr. 74.) He found the area one of "fantastic appreciation in value", still on the increase. (Tr. 83.) He found petitioner's property "in the best area of Georgetown". (Tr. 85.)

On cross-examination, Mr. Fleming brought out the fact that he had driven a "regular sized Ford, a 1966 Ford" into the alley fronting petitioner's property, turned the Ford around and ^{had gone} ~~went~~ back to 33rd Street, with "some difficulty in negotiating" the turn in the alley. (Tr. 100 - 101.) Other garages in the alley, under the ~~same~~ condition as to egress, are rented for up to \$25 per month. (Tr. 73, 106.)

Mr. Andrew T. Gleason, a real estate tax assessor for the District, qualified by experience and study as an expert on values in the Georgetown area. Based on 200 recent sales, including four of properties considered comparable, Mr. Gleason found petitioner's property to be worth \$34,500 total, on the "direct market comparison" approach, which he felt the most credible in the Georgetown area. (Tr. 122.) Mr. Gleason answered petitioner's principal indication of discrimination--Lot 159 in Square 1245, 14,346 square feet, 95 foot frontage on O Street, 150 foot depth on 34th Street, adjusted rate per square foot of \$3.03 for a total land value of \$72,447 (building \$90,000, total \$162,447), because--

the square foot value is a fraction of the overall value, sir. As the lot diminishes in size, the value per square foot increases because of the intensity (of the use). (Tr. 128 - 129, Exh. 3.)

As is evident from the plat map of Square 1245, Lot 159 is by far the largest lot in the block and is of course for residential use only. The assessment for land in Lot 159 went from \$57,384 in 1968 to \$72,447 in 1969. (Exhs. 2 and 3.)

The assessment and tax rolls show that for fiscal year 1969, forty-four properties in Square 1245 were assessed at an adjusted rate above the \$6.00 per square foot assessed to petitioner. Lot 158, the second-largest lot in the block, was assessed at \$4.75 per square foot. Lot 827, the interior lot adjacent to petitioner's 826, area 1,200 square feet, improved with four garages, usable as such, compared to petitioner's 2,671 square feet of area and improvements, was assessed at \$4.30 per square foot. Petitioner's lot is thus assessed at the fourth lowest rate in the block, somewhat higher than two very large lots and the adjacent garages.

Conclusion of Law

Petitioner has failed to carry the burden of proof that the real property tax assessed is excessive.

Opinion

Each "lot and tract and improvements thereon shall be entered upon the tax list at their value in money". D. C. Code sec. 47-708; see also D. C. Code sec. 47-713: real estate is to be "assessed at not less than the full and true value thereof in lawful money."

Petitioner's claim is primarily on the narrow premise that his garages are unrentable. This premise is untenable: the

record clearly indicates that if petitioner put modern doors on the garages and made a sincere effort to rent them, they would be rented, as are other garages in the alley. The record amply demonstrates the matter of common knowledge and of official notice that parking is in extremely short supply--and that compact cars, which easily traverse the said alley, are in wide usage--in the Square 1245 area of Georgetown.

Assuming, contrary to fact, that Lot 826 garages are unrentable, petitioner still cannot prevail. He "of course" has the burden of proof. D. C. v. Morris, 81 U.S. App. D.C. 356, 357, 159 F.2d 13 (personal property tax). If the assessment reflects fair value "the assessment should be upheld, even if the data or method used by him [the assessor] is incomplete, or even erroneous". (id.) See also, Coltman v. D. C., D.C. BTA, CCH D.C. Tax Service 24-006.

As the evidence shows, as is common knowledge and a matter of official notice, a lot to the rear of properties fronting on P Street in Georgetown ^{is} ~~was~~ of great value to the abutting owners--in this case, the owners of Lots 811, 812 and 813. Such a lot would be of considerable value to the owners of any street frontage in Square 1245. In order to begin to establish his case, petitioner here, but not necessarily in every situation, should be able to show how much he has been offered for his property at a reasonably current date. The record leaves a conviction that the property would bring upwards of \$30,000, and that the assessment of both land and improvements was just and reasonable.

Having so concluded, it is not indispensably necessary to consider respondent's second vigorous argument that "petitioner's case fails because he did not call into question the correctness of the total assessment on his property", but "only that portion of the assessment based on the valuation of his land." (Br. 13,

11.) Respondent in this connection draws attention to D. C. Code sec. 47-709, providing that the assessment is the crux of the grievement if any, that this means the assessment "as a whole", citing Pennsylvania and New Jersey cases. (Br. 11, 12.)

For guidance, a comment is in order. Watrous v. D. C., 77 U.S. App. D.C. 295, 297, 135 F.2d 654, strongly indicates that either as an administrative agency or as a court empowered to decide "all questions" on appeal (D. C. Code sec. 47-2403), the Tax Court is not to impose technical, legalistic or narrow constructions upon its power of review. D. C. v. Morris, 81 U.S. App. D.C. 356, 357, 159 F.2d 13, indicates that the "issue is the correct fair cash value not merely the bases upon which the Assessor proposed his assessment." The indications are, that where, in petitioner's words, "the only point at issue, as I see it, is the value of the land", there is no reason why petitioner should have to, and it is therefore "not necessary to attack the entire appraisal". (Tr. 45.) The facts of the case at bar do not show, e.g., an overassessment of land balanced by an underassessment of improvements. Judgement will be entered for respondent.



Robert M. Weston
Judge