



3. The land upon which the Burlington Hotel stands is a certain parcel of 42,408 square feet in area, more particularly described as Lot 97 in Square 214 in the official Land Records of the District of Columbia (hereinafter described as "the Burlington property", or "the property").

4. In or about February, 1972, Respondent issued a Notice of Assessment of Real Estate Taxes to Petitioner, pertaining to the Burlington property for the fiscal year 1973. Respondent had at that time assessed the Burlington property at an assessed valuation of \$2,544,480, reflecting an estimate of approximately \$91 per square foot as the fair market value of the property.

5. On March 27, 1972, Petitioner filed an Appeal From Real Estate Assessment to the District of Columbia Board of Equalization and Review, claiming that the Burlington property had been overvalued for fiscal year 1973, in view of comparable land values and real property sales, that the said assessment was unequal and inequitable, and that the Burlington property should be assessed upon the basis of a fair market value of \$60 per square foot.

6. After a hearing which took place on April 6, 1972, the Board of Equalization and Review, on April 28, 1972, issued its decision on the appeal, and ruled that the aforementioned assessment be adjusted and equalized to \$2,332,410 for fiscal year 1973. Such adjusted assessment then reflected an estimated fair market value for the property of approximately \$84-85 per square foot.

7. Pursuant to the above assessment, as adjusted by the Board, Petitioner paid the real property tax on the Burlington property for the first half of fiscal year 1973 on or about September 21, 1972, and paid the

tax for the second half thereof on or about March 22, 1973. Thereafter, on March 27, 1973, Petitioner timely filed the instant proceedings.

8. The Burlington Hotel currently stands upon the property. The hotel is a seven story concrete and steel structure built in approximately 1906.

9. The Burlington property is a mid-block parcel located on the western side of the 1100 block of Vermont Avenue, N.W., between L Street and Thomas Circle. The property lies approximately 91 feet southwest of Thomas Circle, and has 240 feet of frontage on Vermont Avenue. A public alley adjoins the property on portions of its western and northern boundaries. The terrain of the parcel is level and on grade with the street and public alleys. All municipal utilities and services are available to the property site. The Burlington property is zoned C-4, and has an FAR of 10.

10. The Burlington property is located at the northern periphery of the downtown office building district of Washington, D.C. The property is influenced by the 14th Street - Thomas Circle corridor, which is primarily characterized by "honky-tonk" uses, such as nightclubs, "fritie" bars, liquor outlets, "strip shows", adult bookstores, and the like. On the other hand, the property has received slight benefit (as of July 1, 1972) from recent commercial development along 15th Street.

11. Many of the small structures on the eastern side of the 1100 block of 15th Street -- less than one block from the property -- are vacant, either having been condemned or abandoned, and are in an extremely poor state of repair. Moreover, the building directly across the street from the Burlington property on Vermont Avenue contains a large allnight People's Drug Store, which local police authorities have stated is a center and gathering place for the "downtown girls" (street-

walking prostitutes). Guests of the Burlington Hotel have been assaulted or robbed on several recent occasions.

12. The Burlington property is situated quite near the location of the severe and destructive riots which occurred in April, 1968. Those civil disturbances adversely effected property values in the neighborhood of the Burlington property.

13. The highest and best use of the Burlington property is the development of a single office building structure of the maximum size permitted, for rental to a single large organization such as GSA, or C & P Telephone Company, or PEPCO, or a similar tenant.

14. In order for the Burlington property to be developed to its highest and best use, demolition of the existing hotel building is required. The cost of such demolition is estimated to be \$123,000.

15. The following sales of real property in the same square as the Burlington property, which are relevant to the question of the fair market value of that property for purposes of taxation in fiscal year 1973, and which are closely comparable in terms of time, location, zoning, and other factors, have been recorded in the Land Records of the District of Columbia:

(a) Square 214, Lot 026 (known as "One Thomas Circle"), the property is directly adjacent to the Burlington property to the north, and fronting on Thomas Circle at the corner of Vermont Avenue, was sold by Columbia Federal Savings & Loan Association to Thomas 12 Limited Partnership (Jerome Golub) for a price of \$400,000, reflecting a fair market value of \$60.70 per square foot of land. The sale was recorded July 14, 1972.

(b) Square 214, Lot 74, the property immediately adjacent to One Thomas Circle to the north and west, and fronting on Thomas Circle midway between Vermont Avenue and M Street, N. W., was sold by Sidney Brown to Jerome Golub and Rose Weinsoff for a price of \$232,500, reflecting a fair market value of \$69.20 per square foot of land. This sale was recorded on June 1, 1972.

(c) Square 214, Lot 79, the property on the corner of Thomas Circle and M Street, was sold by Joseph Rogers to Jane C. Nash for \$125,000, reflecting a fair market value of \$67.97 per square foot of land. This sale was recorded on July 5, 1972.

(d) Square 214, Lot 82, the property adjacent to Lot 79 to the west, and fronting on M Street, was sold by Wade Atkinson to Sylvia K. Nash for \$65,000, reflecting a fair market value of \$46.59 per square foot of land. This sale was recorded on August 4, 1972.

16. The following sales of land -- which were consummated specifically on the basis of the use of the land as a site for a building for GSA or a similar large single tenant -- and are thus indicative of what a buyer would pay for the Burlington property (which has the same developmental potential as the properties sold), with adjustment for varying FAR, have been recorded in the Land Records of the District of Columbia:

(a) A 125,714 square foot parcel of land at the intersection of Maryland and Virginia Avenues at 7th Street, E. W., was sold by the District of Columbia Redevelopment Land Agency to Nassif for \$2,000,000 on May 6, 1972. This sale reflects, when adjusted for a FAR of 10 (the FAR of the Burlington property), a fair market value of \$57.40 per square foot of land for GSA use.

(b) A 102, 032 square foot piece at 4th Street, N.W., between K and L Streets, was sold by Leo M. Bernstein Trust to the DCRLA on February 5, 1971, for \$3,775,000. When adjusted for equivalent FAR, this sale reflects a fair market value of \$56.90 per square foot of land for GSA use.

(c) Security Bank and others sold a 47,487 square foot parcel of land at 9th and G Streets, N.W., to C & P Telephone Company for \$2,849,384 on February 17, 1970. When adjusted, this sale reflects a fair market value of \$70.60 per square foot.

(d) A 16,472 square foot piece at 13th and E Streets, N.W., was sold by Warner Theatres, Inc., to Joseph Weinberg and others for \$1,000,000 on August 17, 1971. This property has the same FAR as the Burlington site, so no adjustment here was required. The sale price reflected a fair market value for GSA-used land of \$60.70 per square foot.

17. In the event the Burlington property were to be leased, Petitioner sought a \$240,000 annual "net-net" lease, and a return on investment of between eight and ten percent per annum.

18. The fair market value of the Burlington land, Square 214, Lot 97, as of July 1, 1972, in its then-existing condition -- to wit, improved by an obsolete seven story building which must be demolished to develop the land to its highest and best use -- is \$67.00 per square foot.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties hereto, and over the subject matter of this Petition. D.C. Code, §11-921(a)(3)(B) (Supp. V, 1972); D.C. Code, §§47-709, 47-2403, and 47-2405 (Supp. V, 1972).

2. This Court is empowered to hear and determine all questions arising in this real property tax appeal, and is required to make separate

findings of fact and conclusions of law, and to render its decision in writing.

The Court may affirm, cancel, reduce, or increase the assessment of tax.

D. C. Code, §§47-709, and 47-2403 (Supp. V, 1972). If the Court orders a reduction or cancellation of the tax, it has the power to order that any overpayment of tax made be refunded or credited to the taxpayer, with interest.

D. C. Code, §47-2413(b), (c). The Court's determination of the proper assessment shall also constitute the basis of taxation for succeeding years until another evaluation is made according to law. See D. C. Code, §47-709.

3. The Petition herein was timely filed, Petitioner having first made its complaint respecting such assessment to the District of Columbia Board of Equalization and Review, and thereafter having filed this Petition within six months after October 1, 1972. D. C. Code, §§47-709, 47-2405 (Supp. V, 1972). Petitioner having already paid in full the real property tax levied upon the Burlington property for fiscal year 1973, the Court has jurisdiction to hear and determine this tax appeal. Compare, District of Columbia v. Barenter, 466 F. 2d 367 (D. C. Cir. 1972). rev'g Barenter v. District of Columbia, D. C. Tax Court, June 19, 1969 (CCH Dist. of Col. State Tax Rptr., ¶200-136, p. 10,011).

4. Under the law of the District of Columbia, all real estate located therein which is subject to taxation, including improvements upon such real estate, must be listed and assessed "at no less than the full and true value thereof in lawful money." D. C. Code, §47-713. Such listing and assessment is required to be made, equalized, and approved by the Commissioners not later than July 1st annually, and assessments must be effective as of July 1st, which is the first day of the District of Columbia's fiscal year. D. C. Code, §47-709 ( Supp. V, 1972).

5. The statutory concept of "full and true value" is defined by the District of Columbia to be "conservative market value." See Letter,

Finance Officer D. C. to Commerce Clearing House, Inc., October 17, 1960 (CCH Dist. of Col. State Tax Rptr., ¶20-302, 20-302.24; pp. 2101-2111). "Conservative market value" is presently deemed, for commercial real estate, at least, to be equivalent to sixty-five percent (65%) of market value.

6. Market value is deemed to be that price which a willing seller would be willing to accept, and which a willing buyer would be willing to pay for the property, assuming that both buyer and seller are knowledgeable of all the present or potential elements of value involved, and that neither buyer nor seller is under any duress or obligation to act. Reservation Eleven Associates v. District of Columbia, 420 F. 2d 153, 155 (D. C. Cir. 1969).

7. The character of the neighborhood and area surrounding a subject parcel of real estate may be considered as a factor in determining the market value of such parcel. Nichols on Eminent Domain, Vol. 4, §12.2[3].

8. Recently completed arms-length sales of a subject real property, or of other land comparable to the subject real property in terms of location, zoning, and other like factors, may also be admitted into evidence and considered in the determination of the market value of the subject real property. Loughran v. U. S., 64 F. 2d 555 (D. C. Cir. 1933); see also Loeave, Inc. v. DCRLA, 296 F. 2d 438 (D. C. Cir 1961); Jayson v. U. S., 294 F. 2d 808 (5th Cir. 1961); U. S. v. Smith, 355 F. 2d 807 (5th Cir. 1966); Nichols on Eminent Domain, Vol. 4, §§12.311[1], [3], Vol. 5, §§21.2, 21.3[1]; 29 Am. Jur. 2d "Evidence," §§396-7. However, evidence of unexercised options to buy or sell the subject real property, or of

unconsummated sales contract entered into with respect to said land, or of unaccepted offers for the purchase or sale of the subject real property, is irrelevant to and non-probative of the issue of the market value of the subject land, and such evidence is therefore inadmissible. Sharp v. U.S., 191 U.S. 341, 24 S. Ct. 114 (1903); Jayson, supra, at p. 810; Smith, supra, at pp. 811-12; 29 Am. Jur. 2d, "Evidence," §399; Nichols on Eminent Domain, Vol. 4, §12.311[2]. See also, Cloud v. Veeder, 140 So. 2d 292, 293 (Ala. 1962).

9. For fiscal year 1973 (July 1, 1972 - June 30, 1973) the lawful tax rate upon real property located in the District of Columbia was \$3.32 per \$100 of the assessed value. CCH Dis. of Col. State Tax Rptr, ¶20.402, p. 2135.

10. Based upon the foregoing, and upon the Court's findings of fact set forth herein, the Court concludes that the Respondent's assessment of the Burlington property at an assessed value of \$2,332,440 was ostensibly against the evidence and was erroneous, arbitrary, and unlawful; and the Court further concludes that the Burlington property should properly have been assessed -- based upon a market value for the property of \$67 per square foot -- at a figure of \$1,871,334.79.

#### ORDER

Upon the findings of fact and conclusions of law heretofore set forth, and the Court having determined that Petitioner is entitled to relief in the premises, it is now, by the Court, on this 11th day of October, 1973, hereby

ORDERED, that the real property tax assessment of the land in the District of Columbia referred to herein as the Burlington property, and officially designated as Lot 97 in Square 214 in the District of Columbia, for District of Columbia fiscal year 1973, shall be, and the same hereby is reduced to \$1,871,334.79; and it is further,

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See Petitioner's Exhibit #2 which the Court concludes, after hearing all the witnesses and other evidence, to be highly credible. Contrariwise, Respondent's Exhibit #2 is not supported by the testimony.

ORDERED, that the aforesaid reduced assessment of \$1,871,334.79 shall constitute the full and lawful assessment of the land designated as Square 214, Lot 97 in the District of Columbia, for District of Columbia fiscal year 1973, and, pursuant to District of Columbia Code §47-709, for all succeeding years until another valuation is made according to law; and it is further,

ORDERED, that Respondent shall amend its official real property tax ledgers and other real property tax and assessment records pertaining to District of Columbia fiscal years 1973 and 1974 to reflect the aforementioned reduced assessment of \$1,871,334.79, and it is further,

ORDERED, that within ten (10) days from the date hereof, Respondent shall refund to Petitioner the overpayment of real property tax paid by Petitioner with respect to the land designated as Square 214, Lot 97 in the District of Columbia, for District of Columbia fiscal year 1973, in the total amount of \$15,308.72 together with interest thereon computed at four percent (4%) per annum from March 22, 1973 to the date of such refund; each party to bear its respective costs.

  
George H. Rasmussen, Judge

FILED AS FOLLOWS:

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