

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

DEPARTMENT OF THE DISTRICT OF COLUMBIA
SUPERIOR COURT
TAX DIVISION

APR 2 1976

FILED

Docket No. 2290

DISTRICT OF COLUMBIA REDEVELOP-)
MENT LAND AGENCY and)
L'ENFANT PLAZA PROPERTIES, INC.)
)
Petitioners)
)
v.)
)
DISTRICT OF COLUMBIA,)
)
Respondent)

MEMORANDUM ORDER AND TRIAL FINDINGS

Petitioners, District of Columbia Redevelopment Land Agency (DCRLA) and L'Enfant Plaza Properties, Inc. (L'Enfant Plaza) appeal from real property tax assessments for Fiscal Year 1975. This court has jurisdiction pursuant to D. C. Code 1973, §§11-1201, 47-2403, 47-2405.^{1/}

The petitioners appeal only from so much of the assessment as involves the value of the land; petitioners have conceded the values assigned to the improvements as correct.^{2/} The

^{1/} In making this appeal, the petitioners concede the evaluation given to the improvements on the real property and only contest the values assigned to the land. Respondent had previously moved to dismiss this petition on the grounds that the court lacks jurisdiction to entertain an appeal from the value assigned to the land only. In a Memorandum Order filed on June 18, 1975, the Court ruled that it had jurisdiction and that the case amounted to an appeal of the entire assessment where the petitioners had conceded, one portion of the assessment, that being the value assigned to the improvements.

^{2/} See comments in Fn. 1.

subject property is all located in the District of Columbia and is described as follows: 400 Tenth Street, Southwest (Square 387, Lot 865), 990 L'Enfant Plaza, Southwest (Square 435, Lot 61) and 825 Frontage Road, Southwest (Square 387, Lot 187). The properties consist of land and improvements.

The land is owned by DCRLA and is subject to long term leases granted to L'Enfant Plaza. The leases require L'Enfant Plaza to pay the real property taxes and also assures to that corporation the right to challenge or appeal the real property assessments before the Board of Equalization and Review or before this court.

The assessed values, as determined by the respondent, are as follows:

<u>Square</u>	<u>Lot</u>	<u>Assessment</u> ^{3/}
387	865	L \$ 3,802,224 I 11,292,765
435	61	L 2,569,683 I 11,301,224
387	187	L 776,475 I -

^{3/} L = Land, I = Improvement.
The improvement noted for Square 435, Lot 61 is also located on Square 387, Lot 187, therefore, no separate value is assigned for improvements on the last described property.

All taxes were paid prior to the filing of this appeal.^{4/}

I

Prior to addressing the merits of this case, it is necessary for the Court to comment on its denial of respondent's motions to continue made on February 20 and 23, 1976.

The trial of this case began on February 9, 1976.

Petitioners presented a number of documents and two witnesses, one an expert who gave his opinion as to the value of the land. After the petitioners had rested, the respondent called, what was to be their only witness; an appraiser employed by the Department of Finance and Revenue and the person who had assigned the original land values for Fiscal Year 1975.

Petitioners objected to the witness on the grounds that he had made the original assessment and was now being called as an expert witness. The Court denied the objection holding that the objection went, not to the admissibility, but to the weight the court should give his testimony.

Both counsel examined the witness as to his qualifications and thereafter the Court ruled that he would be permitted to testify as an expert witness on the issue of the value of the property. The direct examination of the witness was heard on February 10, 11, 17, 18 and 19. On February 19, the petitioners

^{4/} See District of Columbia v. Berenter, 155 U.S. App. D.C. 196, 466 F.2d 367 (1972); George Hyman Constr. Co. v. District of Columbia, 315 A.2d 175 (D.C. App. 1974).

began their cross-examination and elicited a number of startling admissions by the witness concerning his qualifications.^{5/}

It was brought out that while the witness had testified in this case and at least one prior case that he had a degree in banking from American University in the District of Columbia, that in fact he had no such degree. Although he attempted to explain the error as a mistake, typographical error or misinterpretation, his own words would appear to indicate otherwise. For example, in the case of Sixty M Street, Inc. v. District of Columbia, Tax Docket 2272, the witness had testified (Tr. 58):

Q Have you taken any University courses?

A Yes, I hold a degree in banking, which I took through American University.

In the instant case the testimony on the same subject, as elicited by the Assistant Corporation Counsel, was as follows (2/10/76 Tr. p. 6):^{6/}

Q Did you attend a University?

A Yes, I did.

Q What University was that?

A American University.

Q Was that in the District of Columbia?

A Yes, it was.

Q Did you receive a degree?

A Yes, a banking degree.

Q In the course of receiving that banking

^{5/} The witness will be referred to only as Mr. A.

^{6/} Refers to a partial transcript of testimony given on the date noted.

degree or I should say, have you taken any further courses after graduating from college?

The witness was later to testify in this case that he had not received a degree in banking from American University and that the reference to a degree from American University in the Appraisal Report was a "typing error".^{7/}

A number of other discrepancies were brought out on cross-examination and counsel for the petitioners proffered he would be able to demonstrate even more should he be permitted to continue his cross-examination. Those other proffered revelations included the fact that the witness had testified in a prior case that he had been an assistant vice president of a local bank when in fact he held no such position, that he had been a candidate or member of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraiser when such was not the case, the number of times he had qualified as an expert and the reasons for leaving his last place of employment before joining the staff of the Department of Finance and Revenue.

The above is only representative of the testimony of the witness and what petitioners hoped to expose should the cross-examination have continued. It is unnecessary, however, to take the time to detail every misstatement of fact or false

^{7/} Which, of course, does not explain his testimony in this and a prior case.

representation made or allegedly made in this and prior cases by the witness. In some instances he simply acknowledged that his statements had been untrue. Suffice it to say that all of the challenged statements were directed to the subject of his qualifications as an expert witness and the revelations posed serious questions as to his expertise, credibility and reliability. ^{8/ 9/}

The above sets the stage and furnishes the background at the time the respondent moved to withdraw and strike the testimony of its expert witness and thereafter moved to continue the case in order that it could consider what further action to take; for example, whether to obtain the services of a new expert.

8/ At the time the respondent successfully moved to withdraw the witness and strike his testimony he was still before the Court as an expert witness. At no point did the Court rule that he was no longer qualified to testify as an expert. Moreover, at the time he was withdrawn, it was impossible for the Court to determine how much weight it would give his testimony since the cross-examination, and presumably redirect examination of the witness, had not been completed. The witness testified concerning a very complicated theory as to the proper method to use in valuing the property and he also submitted a detailed 86 page Appraisal Report, together with exhibits in support of his opinion. Based upon these factors, the Court continued to treat him as an expert throughout his appearance in the case.

9/ The credibility and reliability of an expert witness is especially important since the testimony of an expert, in a case involving the valuation of property, includes what would normally be hearsay in another context. See District of Columbia Redevelopment Land Agency v. 61 Parcels of Land, 98 U.S. App. D.C. 367, 235 F.2d 864 (1956).

II

The cross-examination of the witness continued for a period of time when finally, counsel for the respondent objected and advised the Court (2/19/76 Tr. 32):

Last week, Mr. Hahn came to our offices and told us that he was going to bring up these matters, and Mr. A spent many hours trying to recollect what actually happened during his time with the bank, and in fact wasted a lot of his time, as well as that of myself, Mr. Wixen, Mr. --, and Mr. Robbins, trying to prepare for this obvious character assassination attempt by Mr. Hahn. And it serves no purpose for the Court to hear any more testimony on this. I think enough has been done to Mr. A as a witness at this point. It is only an effort to try to throw Mr. A off tract, and then he intends to go back to his calculations with a witness who has been upset by these allegations which are entirely baseless.

And I think we have had just about enough of this, Your Honor, and I think we should stop it right here. Mr. Hahn sought, by coming to our office and proffering that he was going to get into these matters, only to upset Mr. A with an attempt to make Mr. A afraid to testify. And

the obvious, very obvious, purpose of his visit was to invite us to withdraw Mr. A as a witness. For obvious reasons we have not done so. Mr. A has been an excellent witness, fully qualified to testify as an expert before you, and there is nothing that has been said today which in any way impinges upon his qualifications or his credibility.

Both counsel then approached the Court and counsel for the petitioners advised the Court that "within the past few days following up on inconsistencies in Mr. A's statement in prior testimony" he came across facts which were quite serious and that he voluntarily went to the Acting Corporation Counsel, the Chief, Tax Division, Corporation Counsel's Office, and respondent's trial counsel and "told them what I had and recommended that Mr. A be withdrawn as a witness for his own good". (2/19/76 Tr. 33-34)^{10/} During the course of the

^{10/} The Acting Corporation Counsel, the Chief of the Tax Division and Trial Counsel appeared at a hearing on February 23, 1976, and confirmed that petitioners' counsel had met with them on February 13, 1976, and made certain representations concerning the witness. However, there is a disagreement as to the exact nature or content of the statements made by counsel for the petitioners. For example, respondent's counsel advised the Court that the representations went to the issue concerning whether the witness had actually testified and qualified as an expert in the case of McCrory (Best) v. District of Columbia, and the reasons for his leaving his employment with the bank. It is conceded, however, that respondent's counsel did discuss with the witness, over that weekend, his educational background and ascertained that the witness had not received a degree from American University. The actions of petitioners' counsel in approaching respondent's counsel concerning the witness was entirely proper.

conversation, counsel for the respondent advised the Court that there had been a meeting on February 13, 1976, and after that meeting the attorneys representing the respondent had elected to go forward with their witness. This case was finally adjourned until the following morning in order that counsel for the respondent could consult with his superiors.

On the following morning, counsel for the respondent advised the Court that he had consulted with his superiors and was now moving to withdraw the witness and strike his testimony and also to continue the case. After hearing arguments, the Court took the matter under advisement so that it could review the transcripts in this and other cases in which the witness had been called as an expert. Obviously, one issue was whether the respondent was on notice or should have been on notice of the discrepancies in the testimony of this witness. Counsel were thereafter advised that the motion to continue had been denied and that the motion to withdraw was being held in order to allow respondent a further opportunity to decide whether they wished to continue on with the testimony of the witness.

Any motion to continue is addressed to the sound discretion of the trial court. Harris v. Akindulureni, 342 A.2d 684 (D.C. App. 1975); Evening Star Newspaper Co. v. Covington, 323 A.2d 718 (D.C. App. 1974).

Here, the Court concluded that a continuance should not be granted for the following reasons, in addition to those

reasons which may have been set forth in the Court's oral order denying the continuance: First, counsel for the respondent represented to the Court on February 19 and again on February 20 that petitioners' counsel had approached he and his superiors and advised them of certain problems concerning their expert witness and that they had thereafter elected to go forward with this witness. The decision to go forward was made on Friday, February 13. On Tuesday, February 17 (Monday being a Holiday) the respondent made no representation at all to the Court concerning this matter or the fact that information had come to their attention that there were certain discrepancies in the testimony of the witness concerning his qualifications to be an expert witness. While there is a dispute concerning the content of the representations made by petitioners' counsel on February 13 to respondent's attorneys, it appears to this Court that a sufficient question had been raised so that counsel for the respondent were required to bring this matter to the attention of the Court and advise the Court of a potential problem.^{11/} Moreover, counsel for respondent advised the Court that during the weekend of February 13, he discussed this matter with the witness and ascertained that the witness had not received a degree from American University but had received a certificate

^{11/} There would also have been a tactical advantage in doing so.

from the American Institute of Banking. Counsel concluded that the difference was insignificant. (2/20/76 Tr. 7)

Even if the difference had been insignificant, it should have been brought to the attention of the Court and/or the witness given a chance to correct his statement before the Court.

Last on this point is the fact that the witness had also been called before respondent's attorneys and questioned concerning the allegations made on February 13. Apparently he denied those allegations. Respondent's counsel advised the Court as follows: (2/20/76 Tr. 3)

At the time that Mr. Hahn made his representations to us last Friday, following that meeting, I should say, we had a meeting with the witness, Mr. A. Following our conversation on the matters which Mr. Hahn brought to our attention, we judged it appropriate to continue, and to continue with Mr. A as our expert witness. Inasmuch as matters have come to light now which all of which we were not aware of -- some were brought to our attention by Mr. Hahn, not all of them were -- in view of all the circumstances that have come to light in the last day, most regretfully, Respondent moves the Court to strike the testimony of Mr. A. And if that motion is granted, to permit - also to continue the case until Respondent has an opportunity to procure another - a witness to testify as to market value, an expert witness.

The Court may have some questions for counsel on that matter particularly, but this is where we stand at this point.

I would like the record to indicate, for my part, that the matters brought to our attention on last Friday were discussed with the witness, and we judged it, among the people participating in the judgment, we judged it appropriate to continue, based upon our discussion with the witness.

It appears from the record that respondent's counsel and his superiors had made a conscious decision to continue with the trial of this case after hearing at least some of the allegations and after interviewing the witness on February 13, 1976, and after ascertaining that at least one representation (his degree from American University) was false. When counsel for the petitioners pursued his cross-examination on this issue, the respondent objected and accused him of character assassination. It was only after the facts became a part of the record that the Court was advised by respondent that it had prior knowledge of some of these matters. The fact that the case was in trial and that the respondent had elected to go forward with this witness, even knowing that he was subject to cross-examination on the issue of his qualifications and for the purpose of impeachment, dictated against continuing the case as requested by respondent.

Second, it must be remembered that the motion to continue was made during the course of the trial - after the petitioners had fully presented their case and after the respondent's witness had completed four days of direct testimony. This was not the case where a motion to continue was made prior to trial. At this point in the trial, the respondent had heard the testimony of petitioners' expert. As petitioners argued, in opposing the motion, they had taken full discovery of Mr. A and any continuance would have meant further preparation by their expert and discovery of the expert to be called by the respondent. All of these factors would have worked to detriment of the petitioners.

Third, the respondent had elected to call the witness. He qualified as an expert and he remained so qualified throughout the trial. ^{11a/} At the time respondent moved to withdraw him and strike his testimony he was still qualified as an expert witness. A party calling a witness knows that the credibility of the witness is always an issue. He knows that the scope of cross-examination includes testing the credibility and the reliability of the witness, and in preparing his witness for trial he takes all of those matters into consideration. Counsel knows that, in the case of an expert, it means that the witness's expertise in the critical area will be tested. It can hardly be said that the cross-examination in this case, directed both to the expertise of the witness and the merits of the case, came as a surprise to anyone. Petitioners' counsel

^{11a/} Respondent would not have been entitled to a continuance had the witness failed to qualify as an expert.

had made it known months before that he believed the witness would not qualify as an expert and that he intended to test his qualifications. The fact that the cross-examination was successful in impeaching and in bringing out matters detrimental to the other side, is not grounds for granting a continuance and allowing respondent to start its case over again.

Fourth, at no time did the Court rule that the witness was no longer qualified as an expert. This fact was impressed on respondent's counsel several times. Although the Court found the revelations to be disturbing, it advised the parties that it had an open mind on the merits of this case.^{12/} The motion to continue and to strike and withdraw were made at the same time, however, the Court, after denying the motion to continue, delayed its ruling on the other motion in order to afford respondent additional time to evaluate its position.

Taking all of the above matters into consideration, the Court again concludes that its order denying the continuance was proper under the circumstances of this case.

III

After the respondent's motion to continue was denied and its motion to strike and withdraw the testimony of its expert

^{12/} Indeed, a similar question may now be posed in the case in which the same witness testified and which is now on appeal before the District of Columbia Court of Appeals.

granted, the case was scheduled for resumption of the trial on March 1, 1976. The trial actually resumed on March 3, 1976, due to the fact that the Court was in trial in another case.

On the day of trial, the respondent advised the Court that it would not call an expert witness but would call three factual witnesses. The first witness called was a Deputy Administrator of the District's Building and Licensing Program who was asked to testify concerning the application filed for a permit in the case of property which was contiguous to the subject property in this case. In addition, the respondent proffered that the witness would testify as to the type of construction, its location in the L'Enfant Plaza Complex and its proximity to the subject property, its physical characteristics, its zoning, and its height. Respondent was permitted to make a full proffer regarding all three potential witnesses. Respondent was also permitted to mark and present various exhibits as a part of its proffer. After hearing the entire proffer and considering the proffered exhibits, the Court ruled that the evidence would not establish that the property was comparable property to the subject property, and that absent such a finding, the proffered testimony and exhibits were irrelevant and immaterial. In short, the Court ruled, as a matter of law, that the proffered evidence, considering it in a light most favorable to respondent, would have no probative value.

There are several methods used in establishing the value of real property; one of the best known and the one which respondent attempted to utilize, before and after the withdrawal of its expert witness, is the so-called comparable sales method. Simply stated, it means making reference to the sale or sales of similar property in order to establish the value of the subject property. "Whether or not the sales used by a party to establish value are comparable to the subject property is a factual issue" which the Court must determine. "Where sales are not comparable they are irrelevant to the proceedings and hence inadmissible". District of Columbia v. Burlington Apartment House Co., No. 7986 (D.C. App. decided January 29, 1976), at Slip Op. 10. See also, District of Columbia Redevelopment Land Agency v. 13 Parcels Of Land, No. 74-1644 (C.A. D.C. decided February 23, 1976) at Slip Op. 6; District of Columbia Redevelopment Land Agency v. 61 Parcels of Land, 98 U.S. App. D.C. 367, 368, 235 F.2d 864, 865 (1956). The key is whether the alleged "comparable" sale will have any probative value. In determining whether the sale would represent a comparable sale, and as such have probative value, the Court may consider the location, size, use, neighborhood and special utility of the property. All of this becomes relevant after the appraiser or expert has established the highest and best use for the property. District of Columbia v. Burlington Apartment House Co., supra, at Slip Op. 9.

There was no foundation laid for the admission of the proffered testimony and evidence; i.e., there was no evidence offered which would indicate the highest and best use of the property, which is necessary before using the comparable sales method. Admittedly, the witness proffered by the respondent could testify only as to facts. Obviously, the mere fact that the specimen property (sometimes referred to as the West property) might be the same size or in the same location or of the same height does not, without more, make it comparable property. See District of Columbia v. Burlington Apartment House Co., supra. Although counsel for respondent made a valiant effort to present his evidence, he was unable to demonstrate to this Court's satisfaction that the sale, of the West property, which took place in another year, was a comparable sale. The property had no probative value.

Even if the Court had ruled that the West property was comparable and that the sale of that property could be used to determine the value of the subject property, the problem was the proffered evidence becomes even more obvious. As a part of his proffer, counsel for respondent had marked three exhibits; a Special Warranty Deed for the specimen (West) property (Resp. Ex. 3 for ID), the Recordation Tax Form (Resp. Ex. 4 for ID) and the offer, and eventually the contract of sale of the West property (Resp. Ex. 5 for ID). The West property is the so-called L'Enfant Plaza West Parcel and is contiguous with the subject property.

Respondent sought to establish that the value of the West property (land) at the time of the sale amounted to \$5 million. In doing so, respondent referred to the contract, in which the entire sales price was \$29 million and the fact that the offer, and later the contract, assigned as the price of the land, \$5 million. (Resp. Ex. 5 for ID, ¶5) Of course, the owner of real property can testify as to its value without qualifying as an expert witness.^{13/} District of Columbia Redevelopment Land Agency v. 31 Parcels of Property, supra, at Slip Op. 4. However, here the owner was not asked to testify and accordingly could not be subjected to cross-examination by the petitioners. Instead, all that was offered or proffered was the above exhibit which set forth a price for land without citing any reason therefore. When counsel for the respondent was asked to proffer why the figure of \$5 million had been set in order to demonstrate its relevance in this case, he advised the Court that he had no idea. Certainly, if the party proffering the evidence is unaware of a reason why the price was set, such evidence would have no probative value to the Court. It is easy to speculate why any figure was suggested in the contract. It may have been for tax purposes, for reasons of internal management, for depreciation purposes, for banking

^{13/} A principle which may be questionable when considering this type of property.

purposes and for many other purposes, none of which would have any bearing on the fair market value of the land of the specimen property. For all of the above reasons, the proffered evidence was rejected as having no probative value.

Respondent even had problems establishing comparable sales when its expert was still a witness in the case. Prior to the withdrawal of the witness, the Court had ruled that five of the six properties proffered as comparable sales and described in the Appraisal Report, were inadmissible since no showing had been made that they were comparable. (See Court Ex. 1.)^{14/} Before the witness was withdrawn, problems also arose as to the method he was attempting to use to demonstrate that the West property represented a comparable sale.

Respondent's last motion was to have the Court view the West property. This motion was also denied. Although the Court had seen the property before the trial of this case and had seen pictures of the property (see Court Ex. 1, p. 51), it is obvious that viewing the property would not assist the Court in determining whether the property or the sale of that property represented a comparable sale.

^{14/} Formerly Resp. Ex. 1a for ID. Respondent had requested the Court to withdraw that exhibit and although the Court allowed the exhibit to be withdrawn it marked the exhibit as a Court exhibit for the reason that the exhibit contained certain representations of the expert witness which the Appellate Court may wish to consider in the event this case is appealed.

The Court makes the following findings of fact:

1. The subject land is owned by DCRLA and is leased to L'Enfant Plaza.

2. L'Enfant Plaza is the successor by merger, as of June 30, 1974, to L'Enfant Plaza East, Inc. (Plaza East), L'Enfant Plaza North, Inc. (Plaza North), L'Enfant Plaza Center, Inc. (Plaza Center), and L'Enfant Plaza South, Inc. (Plaza South), and to the related leases on the property. (Pet. Exs. 3A - 3D.)

3. L'Enfant Plaza was and is obligated, at all times pertinent to this case, to pay all real property tax assessments. L'Enfant Plaza has the right to challenge or appeal and real property tax assessment on the property.

4. The real property tax assessments for Fiscal Year 1975 were paid in full.

5. The subject property is described as Lot 187 in Square 387, Lot 61 in Square 435, and Lot 865 in Square 387. The total area is 341,744.59 square feet. The lots are contiguous and form a single parcel of land and the property is subject to the leases and purchase options described in finding No. 2 and below.

6. The ground leases were made in 1965 between DCRLA as lessor and L'Enfant Plaza as lessee (and as successor) to run for a term of 99 years.

7. Lots 187 and 61 have a combined land total of 91,992.59 square feet. The lease provides for an annual payment of net ground rent in the amount of \$141,281.70.

8. The lease contract refers to a total land value of \$2,354,695 (ground rent of \$141,281.70 at 6 percent per annum) and grants to lessee an absolute option to purchase the fee.

9. The purchase option set forth in finding No. 8 runs to 1988 and states a purchase price of 110 percent of the stated value (110% x \$2,354, 695) or \$2,590,164.50.

10. Lot 865 in Square 387, contains 249,752 square feet and was leased as above except that the stated net ground rent, value and option were: Rent \$186,892, stated value \$3,114,869 (also at a 6% yield), and an absolute option to purchase running until 1983 at 110 percent of the stated value or \$3,426,353.20. That figure represents the option to purchase the fee.

11. The total ground rent reserved in the leases for the total land area is a sum of \$328,173.70 with options to purchase the fees at a total of \$6,016,517.70.

12. The subject property is zoned U.R. (Urban Renewal).

13. Respondent rendered an assessed value on the property for Fiscal Year 1975 as follows: Lot 865, Square 387, \$3,802,224, Lot 61, Square 435, \$2,569,683, and Lot 187, Square 387 \$776,475. These assessed values were based on respondent's finding that the subject property had a total fair market value in excess of \$13 million.

14. Petitioners filed an appeal to the Board of Equalization and Review and the Board disallowed the appeals and claims in May, 1974.

VI

It is important to note the state of the record in this case. Petitioners have placed in evidence documents and the testimony of two witnesses. The respondent has presented no evidence whatsoever on any issue in this litigation.^{15/} The law is clear that it is unnecessary for the petitioner to show that respondent's "assessment of the property resulted from fraud, illegality or, at the very least, that it was arbitrary and inequitable." Rather the standard of review is "whether the property has been assessed in accordance with the statute, i.e., at 'the full and true value thereof in lawful money'. D. C. Code 1973, §47-713." District of Columbia v. Burlington Apartment House, Co., supra, at Slip Op. 8, n 15. At the close of the petitioners' case, the respondent moved for a directed verdict and that motion was denied meaning that the respondent then had the burden of going forward, although the burden of proof remained with the petitioners.

The petitioners' expert assigned a total fair market value of \$6,016,517.70 to the subject property, specifically \$2,590,164.50

^{15/} Respondent offered evidence, however, the evidence, in the form of testimony and documents, was not received.

for Lots 187 and 61 and \$3,426,353.20 for Lot 865. In doing so he took into consideration the zoning limitation; the property zoned U.R. (Urban Renewal), and the fact that the zoning has a local requirement which is restrictive and not a requirement for other zoning categories.^{16/} The expert also took into consideration that, in his opinion, the terms of the land leases were agreed to between the lessor and the lessee in a "arms length" transaction. Another factor which he considered was the long term lease agreement and the option prices set forth therein.

The respondent argued that the petitioners' expert did not value the entire interests and that he was in error in limiting the value to the owners interest. Respondent cited a number of cases in support of this argument including State ex rel Geitel v. City of Milwaukee, 229 N.W. 2d 585 (Sup. Ct. Wis. 1975); Swan Lake Moulding Co. v. Department of Revenue, 478 P 2d 393 (Sup. Ct. Ore. 1970); Springfield Marine Bank v. Property Tax Appeal Board, 256 N.E. 2d 334 (Sup. Ct. Ill. 1970) and Donovan v. City of Haverhill, 141 N.E. 564 (Sup. Jud. Ct. Mass. 1923). Those cases appear to refer to property as including

^{16/} The "local requirement" as stated by the expert is that all tenants, except Government, must relate only to service to the local population and be specifically authorized by DCRLA. (See Pet. Ex. 7, p. 3.)

both the land and improvements and are not necessarily contrary to the position taken by petitioners' expert in this case. Here, the issue was the value of the land only and not the value of the total property. Moreover, although the Court need not be bound, even by the uncontroverted opinion of an expert, the fact remains that in this case there is no other evidence than that offered by petitioners. See Mann v. Robert C. Marshall, 227 A.2d 769, 771 (D.C. App. 1967). It should also be noted that the respondent did not, for example, call the Assessor who could have testified as to the basis ^{17/} for his assessment.

Respondent's argument also suggests that the lease was entered into several years before the challenged assessment and that the value of the property has increased since that time. Petitioners' expert testified however that but for the lease option price amounting to \$6.16 million, he would have assigned a land value at much less than that figure. Furthermore, this Court has no evidence upon which it could find that the value is any greater than it was on the date of the lease. Here again, it can be argued, that since the parties dealt at arms length, they took these matters into consideration.

^{17/} .Here, of course, the Assessor and the respondent's expert witness would have been one in the same. Respondent however could have called the assessor and an expert witness in this case.

One last point made by the respondent is that the petitioners' expert witness valued the property as of January 1, 1974, whereas respondent argues that it should have been valued as of July 1, 1974. The Court need not address this issue because petitioners' expert testified that he would assign the same fair market value for July 1, 1974 as for January 1, 1974.^{18/}

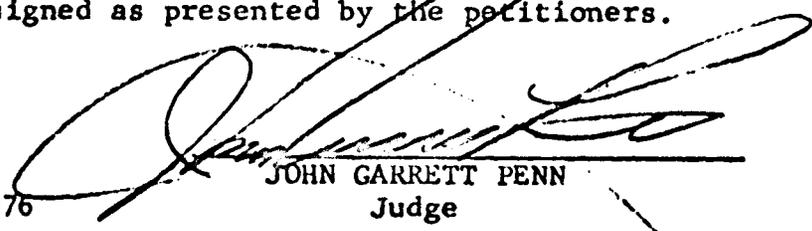
To summarize, the only evidence in this case is that offered by the petitioners; that evidence stands uncontroverted. In view of the above, the Court concludes that the fair market value, for the subject properties for Fiscal Year 1975 amounts to \$6,016,517.70 as argued by the petitioners.

ORDER

It is hereby

ORDERED that the petitioners shall submit a proposed order in five days consistent with these findings and this order. Petitioners shall submit the order to counsel for the respondent who will have an additional five days in which to submit any objections to the form of the order. Should respondent not file objections thereto within five days, the order will be signed as presented by the petitioners.

Dated: March 30, 1976


JOHN GARRETT PENN
Judge

^{18/} Respondent was unable to point to any statute or regulation which would require that the property be valued as of a specific date, however, there is at least a suggestion that July 1st is the appropriate date. See District of Columbia v. Burlington Apartment House Co., No. 7986 (D.C. App. decided January 29, 1976), Slip Op. 14.

Copies to:

Gilbert Hahn, Esq.
Attorney for Petitioners

Dennis McHugh, Esq.
Assistant Corporation Counsel
Attorney for Respondent

Copies mailed postage prepaid
to parties indicated above on
March 24, 1976.

Jean Senerius