Opinion No. 1221

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

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TAX DIVISION
APR 23 1984
FILED

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| SIDNEY HELLER, SUE HELLER, SHELDON KRAUS and LYNN KRAUS, Petitioners, v. DISTRICT OF COLUMBIA, Respondent. | : | Tax Docket No. 3201-83 |
| SAMUEL BRISKER and GERTRUDE BRISKER, Petitioners, v. DISTRICT OF COLUMBIA, Respondent. | : | Tax Docket No. 3258-83 |

## O R D E R

These matters came before the Court for trial on February 23, 1984. The cases were tried together due to strong factual similarities, in that both properties are located in the same square and on the same street and both parcels are improved by relatively old, two-story buildings leased for retail or service operations at the time of valuation.

Petitioners in these actions challenge assessments for tax year 1983. This Court has jurisdiction to hear these appeals pursuant to D.C. Code §§11-1201 and 47-3303 (1981), made applicable by §47-825 (1981).

## BACKGROUND

The disputed taxes were assessed upon the following valuations. The subject property in Tax Docket No. 3201-83 ("the Heller property") is Lot 808 in Square 347, known as 509 11th Street, Northwest, and was valued at $485,000 for assessment purposes. Upon administrative appeal and hearing,

the assessment was sustained by the Board of Equalization and Review on May 20, 1982. The subject property in Tax Docket No. 3258-83 ("the Brisker property") is Lot 20 in Square 347, known as 513 11th Street, Northwest, and was valued at $480,000 for assessment purposes. Upon administrative appeal and hearing, the assessment was sustained by the Board of Equalization and Review on May 29, 1982.

DISCUSSION

At trial, the parties presented evidence developed through employment of differing methods of valuation. The respondent urged adoption of the original assessment value which, as established by testimony of the responsible assessor, was derived under the market data approach relying on sales prices of property deemed comparable to the subject properties. The petitioners, on the other hand, presented expert testimony of appraised value under the income approach, in this instance applied by capitalizing the actual lease income of the properties.

For reasons stated more fully below, the Court finds the evidence presented at trial inadequate for properly concluding valuation. Both the assessment and the appraisal, presented through an expert witness, are deficient in several crucial respects.

1. The Assessor's Approach

Under the tax statutes and municipal regulations, it is contemplated that an assessor's use of the market data method will entail consideration of recent sales of "reasonably comparable" properties. 9 DCMR §307.3 (1982), interpreting D.C. Code §47-820 (1981).

The Court finds that several of the sales used to assess the value of these properties either were not sufficiently comparable or were not properly included in the assessor's

considerations. Addressing the latter point first, at least two of the sales were beyond the statutory date of valuation. Under D.C. Code §47-820, "The assessed value for all real property shall be the estimated market value of such property as of January 1st of the year preceding the tax year . . . ." The District thus was required to determine the tax year 1983 values of the subject properties as of January 1, 1982. Yet two of the sales taken into account as representative of value were made in March, 1982, and May, 1982. The District argues that sales completed at those times are likely to have been agreed upon three to six months earlier -- e.g., on or about the valuation date -- and states that property sales "customarily" require several months of negotiation and contract review prior to settlement. Such a contention cannot support the use of sales made beyond the valuation date in these cases. Not only is the point speculative -- the District having made no allegations that the sales used actually were agreed upon by January 1, 1982 -- but it also is plainly wrong as a matter of law. It is logical that the statutory valuation date would operate as a cutoff point for evaluation of market data; this is the plain import of the statute. The District has presented no authority, legislative or judicial, for the proposition that some other interpretation would be accurate or wise, and the Court finds no reason to cast the statute in the way urged. Policy reasons weigh against such a contorted interpretation. The period during which market value is analyzed, no less than the period denominated as the tax year, should be discernible with some certainty by the assessor and the taxpayer. To sanction the use of sales data overlapping from one assessment cycle to the next would create room for government manipulation of assessed values.

The comparability of sales used by the assessor also is questionable. It is not expected that sales used for comparison will concern property identical to that being assessed. Nonetheless, the Court is obligated in a trial de novo to determine market value based upon sufficient and reliable evidence. Trial testimony and filings in this case indicate that sales of properties acquired as part of development land packages were used for comparison. Included were sales of properties for which condemnation was imminent to allow government acquisition.[1/]

In contrast, the developmental scope is much more limited for the subject properties because they are not adjacent. The property standing between them is used as an office building, and has been for some time. The respondent has presented no evidence that this parcel would or could be acquired to assemble the subject properties for development.

While some of the sales used do appear to be appropriate for comparison with respect to timing and development potential, the validity of the entire assessment is called into question because of the use of other data not in compliance iwth the regulatory standard of "reasonably comparable properties . . . recently sold," 9 DCMR §307.3 (1982), and the statutory scheme of valuation under D.C. Code §47-820 (1981).

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1/ The Court is not persuaded that the condemnation distinction is disposed of as simply as the respondent would have it. Respondent states in proposed findings and conclusions that "the standard to be applied [in] condemnation actions in arriving at value is identical to that used in assessing real property for tax purposes," citing District of Columbia v. 13 Parcels of Land, 534 F.2d 337 (D.C. Circ. 1976). The case cited does not state the proposition urged by the District. At most, it merely supports the concept of market value as "a rough equivalent of value to the owner," but disregarding certain personal aspects affecting the owner's view of value. 534 F.2d at 338.

## II. The Expert's Approach

Petitioners' expert determined value based on the income approach but it too lacked a satisfactory foundation for this Court to conclude proper value. The income approach "bases assessed value on the amount that investors would be willing to pay to receive the income that the property could be expected to yield." 9 DCMR §307.5 (1982). Under this method, income is capitalized at a rate estimated to represent an investor's return; the resulting income stream is taken as indicative of value.

The petitioners' expert, F. Alden Murray, Jr., simply capitalized the actual lease income received by owners of the subject property. The resulting appraisal and testimony exhibits a number of deficiencies. For one matter, the ground level of improvements on the Heller property is occupied by a liquor store. No income statements were submitted for the store. Sheldon Kraus, president of the corporation which owns the store, is also one of the owners of the subject property in Tax Docket No. 3201-83. Despite this, the petitioners' expert did not make an effort to evaluate the circumstances of the lease to determine whether the income to the property owners reflected the level of income that might be expected from an arms length transaction. Nor was detailed analysis made, for either of the subject properties, of the terms of the various leases and their effect on distribution of costs and benefits between owners and tenants, or the effect of "escape" clauses permitting the owners to cut the lease term short.

Thus, assuming that the income approach is applicable in the instant cases,[2/] petitioners' expert testimony failed to provide a sufficient foundation for determining the subject properties' "income earning potential," a valuation factor under D.C. Code §47-320 (1981).

The Court does not in these matters reach the question of the appropriate use of actual lease income for assessment purposes,[3/] except to note that such income may be a relevant factor under D.C. Code §47-820 (1981).

CONCLUSIONS

The Court finds the evidence presented in filings and at trial of these cases -- including the original assessments and supporting documentation and testimony -- inadequate to determine the value of the subject properties. It is important to note that, although normally substantial weight would be given to the decisions of the Board of Equalization and Review,[4/] such a course would not be appropriate in the instant actions. In contrast to the Board, the Court has had the

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2/ The government is not bound to use a particular method of valuation for the type of property involved here. District of Columbia regulations provide assessors a choice of methods. 9 DCMR §307.2 (1982).

3/ The record in these cases, including pleadings, evidence submitted at trial and arguments of counsel, is poorly suited to determination of such a question here. Moreover, the result reached in these cases neither requires nor warrants resolving, in the narrow context of this case, a question with such broad impact.

4/ Notwithstanding that this proceeding is in the nature of a trial de novo, it is statutorily designated an "appeal" of the Board determination. E.g., D.C. Code §§47-825(i), 47-3303 (1981). The Court has exclusive jurisdiction" to review the validity and amount of all assessments of tax made by the District of Columbia . . . ." D.C. Code §11-1202 (1981). (Emphasis added.) Therefore Board determinations appropriately are given substantial weight, particularly where the District of Columbia's defense is predicated upon the figures arrived at by the Board.

benefit of the testimony of the assessor, as well as other testimony and documentary evidence not presented to the Board, and the opportunity to review these matters within the context of a trial de novo. In light of this disparity in the bases for decision, and the findings that have been made as a result of this trial, the Court cannot attach the same significance to the Board's determination that it normally would merit.

Under D.C. Code §47-3303 (1981), made applicable to annual real property assessments by D.C. Code §47-825 (1981), "[t]he Court may affirm, cancel, reduce, or increase the assessment." In accordance with the Court's evaluation of the weight and sufficiency of the evidence here presented, the tax year 1983 assessments for the subject properties shall be cancelled. The tax year 1982 final assessments shall apply for tax year 1983 and for any succeeding year until a lawful revaluation, in accordance with the principle enunciated in District of Columbia v. Burlington Apartment House Co., 375 A.2d 1052 (D.C. 1977).

Wherefore, it is this 26th day of April, 1984,

ORDERED that the tax year 1983 assessments for the subject properties be, and hereby are, cancelled; and it is

FURTHER ORDERED that the petitioners within 20 days of the date this order is signed shall present an order for refund of taxes for tax year 1983.

JUDGE IRALINE G. BARNES

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