

Opinion
No. 1229

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|-------------------------------|---|-------------------------|
| SAFEWAY STORES, INCORPORATED, | : | |
| | : | |
| Petitioner, | : | |
| | : | Tax Docket Nos. 3221-83 |
| v. | : | |
| | : | through 3228-83 |
| DISTRICT OF COLUMBIA, | : | |
| | : | |
| Respondent. | : | |

OPINION AND ORDER

These eight cases, having been consolidated for trial, came before the Court for testimony and argument on May 7, 8 and 9, 1984. Each matter concerns the 1983 real property tax assessment on a property for which Petitioner Safeway Stores, Inc. is obligated to pay taxes. Petitioner owns three of the properties, the subjects of Tax Docket Nos. 3222-83, 3224-83 and 3227-83. The five other properties are leased under sales-leaseback arrangements, the subjects of Tax Docket Nos. 3221-83, 3223-83, 3225-83, 3226-83,^{*} and 3228-83. Petitioner argues that the properties were arbitrarily and improperly assessed. Reductions in assessed value are sought based broadly on two grounds. First, petitioner asserts that the better and proper approach to valuation was capitalization of income, a method applied by petitioner's expert. Petitioner thus argues that the District's use of the cost approach was arbitrary and produced inaccurate values. Second, petitioner claims that the District failed sufficiently to consider certain factors, including leases as encumbrances affecting value and split zoning of some properties.

The respondent contends that government assessors' primary reliance upon the cost approach was reasonable, and that petitioner has failed to prove the resulting assessments to be erroneous.

The Court exercises jurisdiction over these cases by authority of D.C. Code §§11-1201 and 47-3305 (1981).

^{*}/ In this instance, the landlord is [Safeway Holding Corp.], a wholly-owned subsidiary of petitioner.

FINDINGS OF FACT

The subject properties, their tax year 1983 assessed values and petitioner's contentions of value, are as follows:

No. 3221-83: Lots 860, 861 and 862 in Square 858, 610 H Street, N.E. (zoned C-2-A & R-4)

| | <u>Respondent</u> | <u>Petitioner</u> |
|--------------|---------------------|---------------------|
| Land | \$561,969.00 | \$450,700.00 |
| Improvements | 275,000.00 | 93,600.00 |
| Total | <u>\$836,969.00</u> | <u>\$544,300.00</u> |

No. 3222-83: Lot 5 in Square 4185, 1825 Michigan Avenue, N.W. (zoned C-1 and R-1-B):

| | <u>Respondent</u> | <u>Petitioner</u> |
|--------------|-----------------------|---------------------|
| Land | \$ 679,776.00 | \$568,700.00 |
| Improvements | 375,924.00 | 271,300.00 |
| Total | <u>\$1,055,700.00</u> | <u>\$840,000.00</u> |

No. 3223-83: Lot 834 in Square 903, 522 7th Street, S.E. (zoned C-2-A):

| | <u>Respondent</u> | <u>Petitioner</u> |
|--------------|---------------------|---------------------|
| Land | \$427,400.00 | \$150,500.00 |
| Improvements | 75,660.00 | 1,500.00 |
| Total | <u>\$503,060.00</u> | <u>\$152,000.00</u> |

No. 3224-83: Lot 25 in Square 1389, 4865 MacArthur Boulevard, N.W. (zoned C-2-B and R-1-B):

| | <u>Respondent</u> | <u>Petitioner</u> |
|--------------|-----------------------|---------------------|
| Land | \$1,636,579.00 | \$810,000.00 |
| Improvements | 197,921.00 | 100,000.00 |
| Total | <u>\$1,834,500.00</u> | <u>\$910,000.00</u> |

Respondent at BER
and at Trial */

| | |
|--------------|-----------------------|
| Land | \$1,636,579.00 |
| Improvements | 110,440.00 |
| Total | <u>\$1,755,027.00</u> |

No. 3225-83: Lots 6, 7 and 8 in Square 900, 228 7th Street, S.E. (zoned C-2-B):

*/ The lower figure for improvements corresponds with the responsible assessor's recommendation.

| | <u>Respondent</u> | <u>Petitioner</u> |
|--------------|---------------------|---------------------|
| Land | \$249,900.00 | \$142,800.00 |
| Improvements | 107,100.00 | 41,500.00 |
| Total | <u>\$357,000.00</u> | <u>\$184,300.00</u> |

No. 3226-83: Lot 512, in Square 2580, 1747 Columbia Road, N.W. (zoned C-2-B):

| | <u>Respondent</u> | <u>Petitioner</u> |
|--------------|-----------------------|---------------------|
| Land | \$1,569,180.00 | \$348,800.00 |
| Improvements | 680,820.00 | 312,400.00 |
| Total | <u>\$2,250,000.00</u> | <u>\$661,200.00</u> |

No. 3227-83: Lots 808 and 809 in Square 2905, 3830 Georgia Avenue, N.W. (zoned C-2-A and R-4):

| | <u>Respondent</u> | <u>Petitioner</u> |
|--------------|---------------------|---------------------|
| Land | \$715,613.00 | \$358,900.00 |
| Improvements | 244,217.00 | 172,100.00 |
| Total | <u>\$959,830.00</u> | <u>\$531,000.00</u> |

No. 3228-83: The tax year 1983 fair market value of Lots 815, 822 and PAR-0234-0031, 645 Milwaukee Place, S.E. (zoned C-2-A and R-5-A):

| | <u>Respondent</u> | <u>Petitioner</u> |
|--------------|-----------------------|---------------------|
| Land | \$ 449,603.00 | \$224,600.00 |
| Improvements | 619,399.00 | 107,100.00 |
| Total | <u>\$1,068,990.00</u> | <u>\$331,700.00</u> |

In each of these cases, the petitioner timely filed an administrative appeal to the Board of Equalization and Review and paid the real estate tax due on the properties. The facts of each case are as follows:

No. 3221-83, 610 E Street, Northeast

The property in this case is legally described as Lots 860, 861 and 862 in Square 858 and is zoned C-2-A and R-4. Petitioner Safeway leases the property, pursuant to a sales-leaseback arrangement, from Resolution Realty, at a rate of

\$73,144.97 per year with rent paid on a monthly basis. As of the valuation date for tax year 1983, January 1, 1982, the petitioner operated a Safeway store on the property. The base term of the lease runs through January, 1985, and petitioner has six five-year options for renewal. A Safeway official, Pamela K. Grier, testified that Safeway has no unilateral right to terminate the lease, but may offer to repurchase the property at the amortized value of the original purchase price. The lease is a triple net lease, requiring the lessee to be responsible for taxes, insurance and repairs on the property.

Rodney W. Dubozy, the government assessor, valued the building by estimating reproduction cost less depreciation, based upon observation and the Marshall & Swift cost service. Mr. Dubozy testified that he inspected the general area of the building's interior and that he saw income and expense forms for the property for 1981. He testified that he did not have before him income and expense data for properties with similar lease arrangements in order to value the building using the comparable sales approach. He determined the reproduction cost figure to be in the range of \$30.00 to \$35.00 per square foot. Mr. Dubozy stated that he valued the land according to a comparable sales method, although there were no other land sales in the immediate H Street area that he considered to be arms length transactions during 1981. He did not assign separate values to commercially -- and residentially -- zoned portions of the land.

Petitioner's expert witness, Theodore Wade, reviewed rental figures of other area properties and estimated economic rent for the subject property at \$94,566, as compared to actual contract rent of \$73,145.97. Using a capitalization rate of 16 percent and taking the lease into account as an encumbrance, Mr. Wade reached the opinion that the property's value is \$544,300, which is \$292,669 less than the assessed value.

No. 3222-83, 1825 Michigan Avenue, Northeast

The property in this case is legally described as Lot 5 in Square 4185, of which 67,038 square feet are zoned C-1 and 39,117 square feet are zoned R-1-B. Safeway owns the entire property, having executed a repurchase in 1972 for \$113,805.58. The property is improved by a Safeway store, built in 1957 and expanded in 1967, which is operational. Petitioner presented testimony that the property has several problems, including brick deterioration, constant need for plumbing repair, and potholes near the loading dock.

Robert Weaver, the government assessor, used the cost approach to value the improvements and the market data approach to value the land. He arrived at a square foot figure of \$35 for the building. He testified that he did not use the income analysis method because it was a special purpose property and because there is a dearth of sales of this type of property in the Washington area. In using the Marshall & Swift cost service, he made and obtained responses to inquiries concerning Washington area costs. Using the market data approach, he determined that land in that area generally was in the range of \$6.00 to \$7.00 per square foot, and stated that little adjustment was needed to estimate value for the subject property based on others. Sales that he deemed comparable were all commercially-zoned; some were smaller parcels which he judged to be sufficiently comparable. Mr. Weaver valued both commercial and residential land at \$6.40 per square foot. he testified because

of consistent use of the entire property for commercial purposes, in conjunction with a longstanding zoning variance, and his opinion that there was no foreseeable change in the use of the property for a number of years. He stated that assessing in this manner accords with a practice of valuing land in light of its most probable use. Mr. Weaver testified that he did review the income and expense statements but reasoned that they reflected an income level insufficient to support construction and maintenance of the store. He also was influenced by the fact that the statements showed rental income, rather than gross receipts of the operations, and his finding that rent figures that might be used for comparison were for properties different in type than the subject property.

Mr. Wade, as petitioner's expert, used an economic net rent of \$134,376 and capitalized at 16 percent to arrive at his opinion of value, \$840,000, which represents \$215,700 less than the assessed value.

No. 3223-83, 522 7th Street, Southeast

This property is legally described as Lot 834 in Square 903 and is zoned C-2-A. No store was being operated there on the valuation date of January 1, 1982. Petitioner has leased the property since 1961 from Fourth Monitor Realty, which is not affiliated with Safeway. The lease's base term ends in August, 2011, and petitioner has six five-year options. Petitioner presented testimony that with this lease, as with others entered by Safeway, petitioner has plans to exercise all of its options. Its current rent is \$8,037. As with other Safeway leases in this group of cases, the petitioner may offer to repurchase the property in the event of casualty, condemnation, or cessation of grocery operations.

Assessor Rodney W. Dubozy testified that he received income and expense statements for the property, but chose

that the capitalized income figures would not represent fair market value. He acknowledged that he could have made adjustments to the actual rent to estimate fair market value, but that he did not attempt to do so. He stated that he did not have the lease and therefore did not consider it, and that in his view encumbrances usually should be considered in valuing property but he did not make this a consideration. Mr. Dubozy further testified that political ramifications may influence assessment, in that he had heard of circumstances in which assessors had responded to pressure to maintain Safeway stores in certain areas for residents' benefit. He testified that he did not rely on any such political considerations.

By way of Mr. Wade's expert testimony, petitioner advanced a value of \$152,000, based on capitalization of estimated economic rent of \$27,175 per year at a 16 percent rate, and adjustments to account for the lease as encumbrance. Petitioner's asserted value is \$351,060 below the assessed value.

No. 3224-83, 3865 MacArthur Blvd, Northwest

This property is legally described as Lot 25 in Square 1389. It includes 35,418 square feet zoned C-2-A, and 29,397 square feet zoned R-1-B. The original improvements were constructed in 1958 for \$213,103.42, and an addition was constructed in 1971. Operational problems of the store represented in petitioner's testimony included constant leaks and required roof repair, a sinking lot, poor access to the loading dock, and recurring plumbing difficulties.

Quinton Harvell assessed the structure for the government by means of the cost approach; he made reductions for depreciation, using the Marshall & Swift information concerning supermarkets. For the land, he examined sales of other properties west of Rock Creek Park. Mr. Harvell

said on the stand that he did not use the income approach for several reasons: income and expense information had not been submitted, few if any market sales existed of supermarkets or properties of this nature, he considered the property to be of special purpose or unique, and he considered rental income unreliable to indicate value because the property was occupied by the original owner. Mr. Harvell admitted that he originally determined an assessed value of \$197,921 for improvements and later recommended that the amount be lowered to \$118,448. He testified that he does not believe the value of the building to be any lower than \$118,448 for tax year 1983. Land sales used by the assessor were in differing locations; he testified that adjustments were required, and that where improvements existed on the comparison properties, they were about to be razed at the time of sale.

Mr. Wade for petitioner contended that the property's true market value for tax year 1983 was \$810,000, which is \$546,027 less than than the assessment value suggested by the government in administrative proceedings and at trial. Mr. Wade applied a 16 percent capitalization rate to estimated economic rent of \$144,942 per year.

No. 3225-83, 226 7th Street, Southeast

The subject property is legally described as Lots 6, 7 and 8 in Square 900 and is zoned C-2-D. Safeway leases the property from Life Insurance Company of Virginia since January 1951; the base term extends to April 1991, with four five-year options. Annual rent is \$6,930.60. Petitioner operates a store on the property, and cites as a problem the fact that there is no parking and deliveries must be made on the street.

The tax year 1983 assessor, Mr. Dubozy, presented testimony about this property in conjunction with the subject properties in Case Nos. 3221-83 and 3222-83

He thus represented that he employed the cost approach less depreciation, rather than an income stream analysis, because the actual rent did not appear to be a basis for estimating fair market value, he did not have the lease document, and his concern with achieving equalization caused him to prefer the cost method.

Expert testimony was offered by petitioner toward establishing a value of \$184,300. Mr. Wade again based his estimate on capitalization of income at 16 percent, using an economic rent figure of \$42,840 per year and making an adjustment to arrive at the property's value as encumbered. Petitioner's estimate of value is \$172,700 less than the government's assessed value.

No. 3226-83, 1747 Columbia Road, Northwest

The subject property is legally described as Lot 512 in Square 2580 and is zoned C-2-B. Petitioner leases the property from a wholly-owned subsidiary, Safeway Holdings, Inc., since December 1972. The base term runs through December 1997, and petitioner has six five-year options. Current contract rent is \$14,968.32 annually. The original building on the lot was constructed in 1951, and a second structure was constructed in 1981.

Assessor George S. Toll, Jr., relied upon the cost approach for improvements, consulting the Marshall & Swift Service, e.g. for guidance with respect to depreciation. He testified that he did not recall if he had the income and expense statements, and he did not rely on income analysis because he found insufficient sales of similar properties. In using the market data approach for land, he compared some properties smaller in size than the subject property; he testified that he made upward adjustments for size, but did not recall how much because little adjustment was required.

Petitioner's expert contended that the market value was \$661,200, founded upon a 16 percent capitalization rate, economic rent of \$122,041.50 per year, and the leasehold viewed as an encumbrance affecting value. If this opinion were accepted, the resulting valuation would be \$1,588,800 below the assessed value.

No. 3227-83, 3830 Georgia Avenue, Northwest

The subject property is legally described as Lots 808 and 809 in Square 2905, of which 13,200 square feet are zoned R-4 and primarily used for parking, and 51,969 square feet are zoned C-2-A. The land was purchased in 1961 for \$185,600. Safeway constructed original improvements in 1963 for \$322,931, later made an addition, and repurchased the property in December 1981 for \$135,000. Operational problems for the store have included potholes, as well as sidewalk and brick exterior deterioration.

As the government assessor, Mr. Toll valued the property according to a cost approach for the improvements and comparable sales approach for land. The two lots, which are separated by an alley, were considered separately. Mr. Toll assigned a value of \$12.50 per square foot for commercially-zoned land and \$5.75 per square foot for residentially-zoned. He examined land sales in the Georgia Avenue commercial strip, all improved as of the time of sale, but on which the buildings were later razed. In assessing the structure, Mr. Toll testified that he did not use the income approach because he did not find that comparable rental income figures were available. He did not recall that he had the lease or knew what Safeway was paying in rent or the lease terms. He testified that the cost approach does not include consideration of encumbrances such as leases, although these might be relevant considerations under the income or market data approaches.

Petitioner presented expert testimony that the property had a value of \$531,000 using the income approach with a 16 percent capitalization rate on estimated economic rent of \$84,944 annually.

No. 3228-83, 645 Milwaukee Place, Southeast

The subject property is legally described as Lots 812, 915, 822 and PAR0234-0031 in Square 2905. One portion is zoned C-2-A and another R-4. Safeway has leased the property from Arrow Realty Corp., not affiliated with the petitioner, since 1957. The base term extends to January 1987, and petitioner has four five-year options. Annual rent is \$34,580. Petitioner initially bought two lots in 1955 for \$171,000, and the third was purchased for \$42,899. Original improvements were constructed in 1957 and an addition in 1967. The land is improved both by a Safeway store and by a fast food business. Petitioner offered testimony that the store on the property has operational problems such as deteriorating brick, and restricted access to the loading dock -- requiring the use of 13 parking spaces while delivery is made.

Assessor Galen L. Myers reviewed income and expense statements and physically inspected the property. He testified that he used the cost approach in valuing the structure because it was an office policy to use that method for Safeway stores and other supermarkets. He reasoned that tremendous variations exist in store income. He conceded that a purchaser or investor likely would be concerned about the existence of a lease, but asserted that rental income from a sale-leaseback frequently differs greatly from the income the property would warrant from the perspective of cost valuation.

Petitioner's expert offered an opinion of the property's value as \$331,700, considering estimated economic rent of \$57,522 per year, capitalization at a rate of 16 percent, and adjustment for the existence of a long-term lease.

ANALYSIS AND CONCLUSIONS

In evaluating the cases presented, the Court turns first to the issues common to all or several of the cases.

At trial, the primary dispute was directed to determining the proper valuation method for improvements on the eight properties. Both parties conceded that the comparable sales approach was inappropriate for other than land value because of a paucity of comparable building sales.^{3/} Petitioner, through expert testimony, offered an income stream analysis and argued that the resulting opinions of value were accurate, while the District's assessed values were excessive. In addition, petitioner sought to prove that the assessors arbitrarily failed to rely upon the income approach because they were following an unwritten office policy favoring other means of valuation. Testifying for the respondent, the responsible assessors each described the manner in which they developed the assessments at issue. In each case, they focused on determining the reproduction cost and reducing it by an amount representing depreciation.

Each party also has contested specific aspects of the other's valuation process. Petitioner has argued first that in assessing properties rented to Safeway, the government unlawfully failed to consider leases as encumbrances affecting value. Second, the petitioner contends that assessors treated commercially and residentially zoned portions of Safeway store properties alike, without regard to potentially differing market values. Petitioners there argued that where the use is the same or similar for the whole property subject to split zoning, the actual zoning classification -- not a

^{3/} Petitioner and respondent each presented testimony and argued that there were no recent sales of improved property.

varying use -- is what influences market value and should be considered in assessment.

The District, on the other hand, has criticized the petitioner's income analysis, alleging that the overall capitalization rate used was too high -- lowering the petitioner's estimated value of the right to future rent. Respondent further contends that the reproduction cost approach reasonably has been preferred to the income approach, in light of the government's view that actual income for rental properties is abnormally low under Safeway's sale-leaseback arrangements. The cost approach also is said to be appropriate in valuing special-use properties such as the ones here. In weighing the evidence and evaluating the arguments, the government's assessments are presumed to be correct. The burden is on the petitioner to provide evidence sufficient to prove that assessments are arbitrary, excessive or otherwise erroneous and unlawful. See, e.g., Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980), District of Columbia v. Burlington Apartment House Co., 375 A.2d 1052, 1057 (D.C. 1977) (en banc). It is not sufficient that the taxpayer present an alternative measure of value. To provide a basis for invalidating an assessment, petitioner must show the assessed value to have been erroneously determined.

The attractiveness of the income approach, favored by petitioner, is evident; this approach normally produces a lower value than does the cost method. And authorities on the subject of property valuation as a rule prefer income capitalization to value income-producing property. American Institute of Real Estate Appraisers, The Appraisal of Real Estate 333 (8th ed. 1983). However, the government has broad discretion to evaluate property by any or all of the

three accepted methods -- the income approach, cost approach, or comparable sales approach. 9 D.C.M.R. §307.2 (1982). In these cases, the question arises whether District of Columbia assessors properly exercised discretion in relying upon the reproduction cost method. Petitioner portrays assessors' testimony as revealing a relatively inflexible "office" policy that the cost or sales approach be used. Yet even if such a policy exists, the petitioner may prevail only upon establishing that such a preference by assessing authorities is arbitrary, either intrinsically or as applied in the instant cases.

As petitioner points out, a statutory requirement exists to consider all relevant factors in valuing property. Under D.C. Code §47-820 (1981),

the Mayor shall take into account any factor which might have a bearing on the market value of the real property including, but not limited to . . . reproduction cost less accrued depreciation . . . income earning potential (if any), zoning . . .

This requirement does not, however, translate into a mandate that the District avoid relying chiefly on one method over another. Nor does its requirement that the government take account of "income earning potential" mean that the assessors must employ the income method, or perform a detailed analysis of leases. Petitioner elicited testimony from Rodney W. Dubozy, the assessor, for the properties in Tax Docket Nos. 3221, 3223, and 3225, that he failed to examine the leases for these properties. Yet he expressed the view that proper valuation requires consideration of encumbrances. Other assessors similarly acknowledged failure to consider lease terms for the other rented properties, subjects of Tax Docket Nos. 3226 and 3228. Testimony further established that in each of the eight cases, the cost method was selected over the income capitalization method.

In determining whether these acknowledgments indicate the property was valued in violation of the D.C. Code §47-820 provision making "income earning potential" a factor, the Court considers that

[t]he income capitalization approach, like the cost and sales comparison approaches, requires extensive market research. Specific areas that an appraiser investigates for this approach are the property's gross income expectancy, the expected reduction in gross income from lack of full occupancy and collection loss, the expected annual operating expenses, the pattern and duration of the property's income stream, and the anticipated value of the resale or other real property interest reversions The rates or factors used for capitalization are derived by the investigation of acceptable rates of return for similar properties.

American Institute of Real Estate Appraisers, The Appraisal of Real Estate 52 (8th ed. 1983).

Although, as petitioner notes, the assessors could have undertaken the necessary investigation to rely on the income approach, petitioner has no foundation for the assertion that this course was required by D.C. Code §47-820. The statute declares a property's income potential to be a consideration. It does not require the government to use income data in the particular manner urged by the taxpayer, i.e., capitalization.

Indeed, the process petitioner seeks to impose -- while certainly feasible -- is fraught with unresolved issues of theory and application. There has been, for instance, a long-running debate over precisely what property interest is to be valued, resulting in a majority of jurisdictions favoring a summation-of-interests concept. Using this perspective, both the leasehold and the remaining fee interest are combined. Any "bonus" the lessee has in the amount by which agreed rent falls below current market rent is counted in as

a transfer of land value from the owner to the user. See J. Youngman, Defining and Valuing the Base of Property Tax, 58 Wash.L.Rev. 715, 727, n. 47 quoting A. Ring, The Valuation of Real Estate (2d ed. 1970).

Maryland is among the jurisdictions to apply the summation-of-interests theory. See Supervisor of Assessments of Allegany v. Ort Children Trust, 448 A.2d 947, 953, 955 (Md. 1982) ("[E]ven though the leasehold and the reversion have been assessed by the Tax Court to the . . . owner. That assessment represents the Tax Court's judgment of full cash value.")

Petitioner argues that the respondent did not use the income approach because it was too complex and would have required too much time.

Approaching the lease income as petitioner proposes presents a question as to what constitutes fair market rent; the assessor capitalizing lease income would have to ferret out comparable rentals for each property assessed. That task suggests the burdensomeness of widespread imposition of the capitalization approach -- the import of the precedent petitioner seeks. This is not to say that assessment must be free of complexity or responsibility. It is to say that the circumstances of these cases fail to reflect unreasonable or arbitrary decisions not to use the method advanced by petitioner.

Maryland precedent cited by petitioner as persuasive support is not to the contrary. In Supervisor of Assessments of Allegany County v. Ort Children Trust, 440 A.2d at 940, the property was

equipped with a long term lease of a flat rent which was reflective of the market when the contract was made in 1962.

Parties in the Allegheny County case agreed that the January, 1979, rent was half the current market rent. The only question addressed by the Court was whether the Maryland Tax Court was permitted at all to consider the contract rent amount, given that it was well below market level. The Maryland Court of Appeals held that such consideration was permissible. This principle is far narrower than what petitioner advances.

The Allegheny County circumstances differ from the instant cases involving leases. In particular, the facts clearly presented an arms length lease transaction, id. at 955, rather than a sale-leaseback arrangement inviting greater scrutiny to determine what income a prudent investor would anticipate.

As the respondent points out, this more critical view of income under sale-leaseback arrangements draws analogous support from other jurisdictions. In an Iowa case involving Safeway as taxpayer, the court found it proper for the assessor not to rely on the price obtained by Safeway as seller in a sale-leaseback transaction. City of Atlantic v. County Board of Review, 234 N.W. 2d 680 (1975), quoting L. Bamberger & Co. v. Division of Tax Appeals, 57 A.2d 242, 244, aff'd 62 A.2d 389 (N.J. 1948) ("The transaction is more in the realm of financial convenience than a transaction between a simple buyer and seller.") The Iowa statute explicitly ruled out consideration of "sale prices of property in abnormal transactions not reflecting market value" unless proper adjustments were made to eliminate value distortions. Although no such provision is found in District of Columbia tax statutes, the overriding concern of measuring fair market value supports a cautious approach with respect to lease income.

In addition to concern about the efficient ascertainment of value based on rental income, the District presented two bases for preferring the cost method and for not performing extensive lease encumbrance analysis. Neither basis has been demonstrated to be arbitrary. For one, the assessors testified that they were pursuing the goal of equalizing properties. This effort has a sound premise. The owner who has by poor judgment -- or some special motivation in the case of a sale-leaseback -- made a long-term lease, at rates that turn out to be below market, should not thereby obtain a lower property value and lower taxes than the owner who receives fair market rental. Petitioner correctly argues that appropriate adjustments could be made to arrive at fair market rent figures for a given property. But to the extent that income capitalization tends to produce lower (or even higher) values, it could prove to be an all-or-nothing proposition if equalization is to be attained. The fact remains that the city, having the huge task of annually reassessing all properties, has considerable discretion to select and apply valuation methods. To have exercised that discretion in a manner perceived as more efficient and less burdensome is hardly arbitrary.

The District further contends that Safeway stores may be categorized as specialized or special purpose properties. This contention cannot be refuted. For such properties, the reproduction cost method is considered especially useful, as is reflected by the standard definition of the method as

[t]hat approach in appraisal analysis which is based on the proposition that the informed purchaser would pay no more than the cost of producing a substitute property with the same utility as the subject property. It is particularly applicable when the property being appraised involves relatively new improvements which represent the highest and best use of the land or when relatively unique or specialized improvements are located on the site and for which there exist no comparable properties on the market.

American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers, Real Estate Appraisal Terminology, Byrl N. Boyce, ed. (1981).

No single standard delineates which types of improvements warrant a special or unique label and therefore a depreciated cost measure of value. See Youngman, 58 Wash.L. Rev. at 749-67. However, petitioner did not present any substantial evidence or argument directed toward rebutting the District's interpretation of Safeway stores as specialized improvements. Furthermore, the parties agreed that the properties were unique to a degree that comparable sales of improvements were scarce. This situation seems to mirror testimony in the Iowa case that

it was very difficult to dispose of an abandoned special Safeway store building due to few buyers and necessary remodeling costs.

City of Atlantic, 234 N.W. 2d at 883 (describing testimony of a Safeway property manager "with years of experience in acquiring suitable land and the building of these specialized structures"). Although specific facts have not been presented in this case to buttress the District's interpretation, its view remained largely unchallenged.

Proof of an alternative measure alone is insufficient to require that an assessment be invalidated.

In order to resolve petitioner's further contentions, the Court makes the following conclusions specific to each case.

No. 3221-83

The evidence presented, including the testimony of the expert and the assessor, demonstrates that a crucial omission was made in the government's valuation of the subject property. District of Columbia regulations establish that assessments

shall take into account all available information which may have a bearing on the market value of the real property including . . .

(a) Government imposed restrictions;

. . .

(f) Zoning;

(g) The highest and best use to which the property can be put; and

(h) The present use and condition of the property and its location.

9 D.C.M.R. §307.1 (1982).

Despite the subject property's split-zoning, the assessor, Mr. Dubozy, failed to consider that factor at all in calculating or adjusting his estimate of value.

Sound valuation technique requires that a contrast between zoning and use be considered as possibly affecting value, since "[I]t is the market value of the property which is to be valued, not the value of the property for a specific use or to a specific user." J.D. Easton, Real Estate Valuation in Litigation 87 (1982). Because zoning was not considered a factor, the assessment in the instant case is flawed, notwithstanding the fact that a variance may exist for the residential portion of the land.

Petitioner has not carried its burden of proving that other aspects of the assessment were incorrect.

No. 3222-83

The subject property of this case also is divided between two zoning classifications. As in the preceding case, the assessor, Mr. Weaver, valued both the commercial and residential parts using the same estimated square foot price. Consequently, the assessment cannot stand as originally determined.

The Court does, however, credit Mr. Weaver's testimony that he reviewed income and expense information and concluded that the income approach was not well-suited to valuing the subject property. He cited two reasons: first, that the rental income was unlikely to reflect fair market rent, and second, that he did not find comparable rent figures. The Court finds that petitioner has carried its burden of proof only with respect to adjustment for zoning.

No. 3223-83

In this case, the evidence brought out at trial illustrates valuation by income analysis but does not prove the assessment to be incorrect. The assessor, Mr. Dubozy, properly exercised the discretion to use an accepted valuation method other than income capitalization. He reviewed income and expenses of the property, as well as sales data and real estate sales trends, and used the comparable sales approach to value the land as a means of ensuring equalization among properties. The Court finds no basis for disturbing the challenged assessment.

No. 3224-83

This case presents another instance of the assessor having ignored differing zoning classifications for the property. The subject property was classified in part as residential, in part as commercial. Yet the assessor, Mr. Harvell, valued it as if the entire parcel were commercially-zoned. Regarding this aspect of the assessment, the petitioner must prevail.

The assessor acknowledged at trial that commercial real estate in the area of the subject property would be valued higher than residential property. Thus, it was improper to develop a single value base reflecting commercial use only.

Petitioner brought out on cross-examination the assessor's view that small parcels generally have higher square-foot prices than larger lots. Neither this statement, nor testimony concerning selection of a valuation method, served to undermine the assessment. The Court credits the assessor's testimony that he gathered and relied upon data from the period leading up to the valuation date, that he had indications razing would occur on improved land for which he used sales data, and that he found inadequate comparable sales information for improvements and consequently used the sales approach only for the land.

No. 3226-83

The petitioner primarily showed what value would be assigned the subject property according to its expert's application of the income method. However, the assessor's determination to use an approach other than income capitalization does not invalidate the assessment in light of the property's special-purpose and the assessor's determination that there was a dearth of comparable land-and-improvements sales. In addition, the lessor is a wholly-owned subsidiary of the petitioner, raising questions about whether the transaction may be characterized as arms length and whether the income figures would be reliable indicia of market value.

Petitioner has not established that either the process or information used to arrive at the assessment was incorrect.

No. 3227-83

Unlike the other properties with split zoning, the subject property was assessed after consideration of zoning. The assessor, Mr. Toll, assigned different square-foot values to the commercial than to the residential portion of the property. This decision not to use the income approach was

not shown to be arbitrary; he favored the cost method because he found few comparable building rentals or sales in the vicinity. The basis for the assessment in this case remains sound.^{4/}

No. 3228-83

In this case, the assessor, Mr. Myers, on cross-examination testified that he understood there to be an "office policy" to use the cost approach in valuing grocery stores and other similar properties. The Court credits his testimony indicating that he could depart from that practice and use income analysis or method other than the cost approach.

Nor was the assessment proved invalid because of Mr. Myers' testimony that, in his opinion, a long-term lease may be considered by a purchaser in valuing the property. The fact remains that the government may select from among the accepted methods of valuation. And petitioner has failed to prove that proper application of the cost method requires taking into account the lease as affecting value.

SUMMARY

The petitioner has met its burden of proving error in the assessments in Tax Docket Nos. 3221, 3222 and 3224, only to the extent that assessors valued the entire properties as if commercial although portions were residentially classified. In these cases, the Court determines the assessments to be excessive.

^{4/} Mr. Toll acknowledged that he stated, in connection with the administrative appeal, that land value should not be changed because of Safeway's prominence and influence. This isolated statement does not suffice to carry petitioner's burden. The evidence did not present a basis for this Court to find that Mr. Toll did not perform his assessing duties with impartiality and ethics.

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In Tax Docket Nos. 3223, 3225, 3226, 3227 and 3228, the Court concludes that petitioner has failed to establish by a preponderance of the evidence that the assessments were arbitrary, erroneous or unlawful.

O R D E R

Wherefore, it is this 25th day of October, 1984,

ORDERED that for the assessments which are the subjects of Tax Docket Nos. 3221, 3222 and 3224, the respondent, no later than 15 days from the date this Order is signed, shall submit a proposed order to revise assessments to reflect differentiation between the value for commercially and residentially zoned portions of each of the subject properties, along with supporting documentation; and it is

FURTHER ORDERED that the petitioner no later than 25 days from the date this Order is signed present any objections or response to the respondent's proposed order; and it is

FURTHER ORDERED that the assessments which are the subjects of Tax Docket Nos. 3223, 3225, 3226, 3227 and 3228 be, and hereby are, affirmed.



JUDGE IRALINE G. BARNES

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