

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

JUN 13 1986

FILED

ZINA G. GREENE,	:	
	:	
Petitioner,	:	
	:	
v.	:	Tax Docket No. 3561-85
	:	
DISTRICT OF COLUMBIA,	:	
	:	
Respondent.	:	

O R D E R

This matter came before the Court for trial on April 7 and 8, 1986. Petitioner challenges the commercial real property tax assessment against the subject property, Lot 29 in Square 2937, located at 5832 Georgia Avenue, N.W. for Tax Year 1985 pursuant to D.C. Code, 1981 ed., §§47-820 et seq. At the time of the assessment the subject property was being used as a nightclub (the IBEX Club), a restaurant, and several offices.

1. Petitioner, Zina B. Greene, owns the subject property.
2. For Tax Year 1985 petitioner's property was assessed by George S. Toll as follows:

Land	\$167,775
Improvements	<u>322,225</u>
Total Estimated	
Market Value	<u>\$490,000</u>

3. At the Board of Equalization and Review (hereinafter "the Board"), petitioner agreed with the assessor's land value estimate, but alleged that the total value of the subject property should be no more than \$218,000. The Board reduced the 1985 assessment by reducing the value of the improvements:

Land	\$167,775
Improvements	<u>157,225</u>
Total Estimated	
Market Value	<u>\$325,000</u>

4. Petitioner paid the resulting taxes due of \$6,597.50, and timely filed suit for refund on March 29, 1985, alleging in the petition that the correct assessment should have been no more than \$218,000. The land value was not contested.

5. At trial, petitioner alleged that the total estimated market value of the subject property was \$234,088.

6. In the March 21, 1983, appraisal report of the subject property by Joseph L. Donnelly and Thomas C. Horvath, respondent's Exhibit No. 2, the three traditional approaches to valuation were used and the following value conclusions were reached:

Reproduction Cost Approach - \$370,000

Income Approach - \$325,000

Market Data Approach - \$350,000

7. On page 30, the appraisal report states that the market data approach was considered to be the most reliable estimate of fair market value. Thus, a total value of \$350,000 was concluded consisting of \$170,000 for the site and \$180,000 for the improvements. The BER reduced value for the improvements at that time was \$157,225.

8. Three appraisal reports have been prepared for the subject property:

(1) July, 1977, by Joseph L. Donnelly (prepared for Zina Greene); Valuation: \$370,000;

(2) May 26, 1981, by Joseph L. Donnelly (prepared for Zina Greene); Valuation: \$370,000; and

(3) March 21, 1983, by Joseph L. Donnelly and Thomas C. Horvath (prepared for American Security Bank, John P. Von Beck, Esquire) Valuation: \$350,000; pursuant to the market data approach to valuation which was also used by the assessor.

9. Several of the same sales used by the assessor for Tax Year 1985 had been used by the appraiser, Donnelly and Horvath, for the March 21, 1983, appraisal:

- (1) Lot 40, Square 2978 (formerly Lots 10 and 808)
6323 through 6337 Georgia Avenue, N.W.
Sale Price: \$659,500
Rate per finished improvement area: \$30.74
- (2) Lot 801 and 807, Square 2931
5320 through 5322 Georgia Avenue, N.W.
Sale Price: \$77,500
Rate per finished improvement area: \$33.26
- (3) Lot 14, Square 2926
4914 Georgia Avenue, N.W.
Sale Price: \$128,000
Rate per finished improvement area: \$42.66

10. In analyzing all seven of the comparable sales used by them, Messrs. Donnelly and Horvath computed a range value of from \$20.22 to \$74.07 per square foot of finished improvement area. They concluded that the subject property should be valued from \$25.00 to \$30.00 per square foot of finished improvements area:

Finished Improvement Area x Rate Per Square Foot = Indicated Value

12,831 sq. ft.	x	\$25.00	=	\$320,775.00
12,831 sq. ft.	x	\$30.00	=	\$384,930.00
12,831 sq. ft.	x	\$27.00	=	\$352,852.00

Thus, the indicated value of the subject property by this Market Data Approach to Value is approximately \$350,000.00.

11. Lot 29 in Square 2937 contains 11,185 square feet. The gross building area is 13,263 square feet. The gross finished area or rentable area is 12,831 square feet.

12. Petitioner testified that she purchased the building and the land in 1976 and has invested at least \$250,000 into the subject property. She paid \$85,000 for the improved Lot 819 in 1976. In the following year she bought the adjacent parking lot on Colorado Avenue, Lot 831, for \$55,000 and through a subdivision Lot 819 and 831 became Lot 29. Further, at least \$110,000 of renovations and repairs have been made.

13. The improvement is a three-story building zoned C-2-A, which was built in 1919. On a small part of the building there is a level above the third floor, and the building has interior balconies.

14. Petitioner testified that she has a Master of Science in Urban and Regional Planning from the Illinois Institute of Technology in Chicago and further stated that she had worked on urban renewal projects from 1959 to 1963 as a project manager. She testified about her other experiences in city planning in California and Maryland but offered no testimony as to any expertise in appraising real estate in the District of Columbia.

15. Petitioner stated that she believed that when she spent \$110,000 on the property that she enhanced it by \$110,000.

16. According to petitioner there is a long-term, twenty year lease on the subject property at less than market rate. Petitioner presented no evidence of what she alleged to be market rates at the time of the assessment in order to show any variance.

17. Petitioner contended that her high cost of maintenance affected the rentability and marketability of the subject property. These costs included decorating, heating, air conditioning, and repairing dried out plaster walls and columns.

18. Petitioner further contended that this property was suitable for one use only, a nightclub, because the building was constructed with large foyers on each floor, a wide central staircase, fifteen foot ceilings, a commercial kitchen and on the 3rd floor, a two-story ballroom with a small balcony, concrete floors, and plaster walls and columns. She also stated that structural improvements could not be made because the building is constructed of concrete.

19. Petitioner rejected the cost approach to valuation. She did not follow the usual steps of beginning with the cost of the building, subtracting the depreciation and adding in the value of the land. Instead of the actual cost, petitioner used the 1977 BER reduced value.

20. Petitioner stated that she did not check for recent sales of properties in the general location of the subject property because she did not feel that there were any comparables in that area to this building. She contended that the use of the market data approach to valuation was inappropriate herein because of the uniqueness of the building and the lack of comparable sales. She argued that the buildings compared by the assessor were not similar to the subject property; that they were all one to three-story conventional structures which required minor, if any, structural changes to make them suitable for a variety of uses; and that the subject property was so unique that there were no buildings sold on the upper Georgia Avenue corridor of this size, construction type, limited use, and maintenance cost.

21. Petitioner's primary claim was that (1) the income approach to valuation rather than the market data approach to valuation should have been used by the assessor; and that (2) the assessment would have been lower had the income approach to valuation been used.

22. Petitioner's reasons for considering the income approach appropriate herein were that she knew that the building's value was only as an income-producing property.

23. For Tax Year 1985, petitioner valued the property herself at \$234,088 using the income approach to valuation. Based upon the 1983 Income-Expense Form figures, petitioner submitted the following revised details of her method of valuation:

Annual Rental (1983)		\$ 48,745	
Less: Actual Vacancy & Collection Losses		(-) 2,539	
			<u>46,206</u>
Less: Operating Expenses			
Administration	\$ 2,630		
Utilities (unreimbursed)	87		
Insurance and licenses	2,057		
Maintenance, repairs			
(unreimbursed) reserve	3,741		
Property Tax	3,430		
	<u>\$ 16,945</u>		<u>(-) 16,945</u>
Net Income before Recapture		\$ 29,261	
Capitalization at an overall rate of <u>12.5%</u>		<u>\$ 234,088</u>	
		<u>\$29,261 = \$234,088</u>	
		<u>.125</u>	

24. Since petitioner did not contest the land, she therefore, advocated a value of \$66,313 for the improvements at trial:

\$234,088	Petitioner's total estimate of value
- 167,775	Uncontested land assessment
<u>\$ 66,313</u>	Petitioner's Tax Year 1985 improvements allegation

25. She adopted the format of the March 21, 1983, appraisal report. Her figures which differed were as follows:

	<u>Donnelly & Horvath</u>	<u>Petitioner</u>
Estimated Annual Rental	\$ 52,128	\$ 48,745
Vacancy and Collection Loss	\$ 2,606	\$ 2,539
Effective Gross Income	\$ 49,522	\$ 46,206
Total Operating Expenses	\$ 8,656	\$ 16,945
Net Income Before Recapture	\$ 40,865	\$ 29,261
Estimated Value	\$326,928	\$234,088

26. Mr. Toll, the assessor, testified that he considered the highest and best use to be the current commercial, retail, and office use.

27. He testified that he recommended a reduction in the value of the improvements to the Board because of some of the factors noted in petitioner's Board appeal and the unique characteristics of the subject property.

28. Mr. Toll testified that the market data approach to valuation was appropriate herein. He used this approach

Annual Rental (1983)		\$ 48,745
Less: Actual Vacancy & Collection Losses	(-)	<u>2,539</u>
		46,206
Less: Operating Expenses		
Administration	\$ 1,630	
Utilities (unreimbursed)	87	
Insurance and licenses	2,057	
Maintenance, repairs		
(unreimbursed) reserve	9,741	
Property Tax	<u>3,430</u>	
	\$ 16,945	(-) 16,945
Net Income before Recapture		\$ 29,261
Capitalization at an overall rate of <u>12.5%</u>		<u>\$ 234,088</u>
		<u>\$29,261 = \$234,088</u>
		.125

24. Since petitioner did not contest the land, she therefore, advocated a value of \$66,313 for the improvements at trial:

\$234,088	Petitioner's total estimate of value
<u>- 167,775</u>	Uncontested land assessment
<u>\$ 66,313</u>	Petitioner's Tax Year 1985 improvements allegation

25. She adopted the format of the March 21, 1983, appraisal report. Her figures which differed were as follows:

	<u>Donnelly & Horvath</u>	<u>Petitioner</u>
Estimated Annual Rental	\$ 52,128	\$ 48,745
Vacancy and Collection Loss	\$ 2,606	\$ 2,539
Effective Gross Income	\$ 49,522	\$ 46,206
Total Operating Expenses	\$ 8,656	\$ 16,945
Net Income Before Recapture	\$ 40,866	\$ 29,261
Estimated Value	\$326,928	\$234,088

26. Mr. Toll, the assessor, testified that he considered the highest and best use to be the current commercial, retail, and office use.

27. He testified that he recommended a reduction in the value of the improvements to the Board because of some of the factors noted in petitioner's Board appeal and the unique characteristics of the subject property.

28. Mr. Toll testified that the market data approach to valuation was appropriate herein. He used this approach

because there were sufficient sales of commercial properties in the area of the subject property at the time of the assessment.

29. Mr. Toll rejected the cost approach because he believed that cost manuals would have had difficulty classifying the subject property.

30. Mr. Toll rejected the income approach to valuation because he believed that he had a sufficient number of commercial property sales in the portion of Georgia Avenue where the subject property is located and considered this method to be a more accurate approach to valuing real estate, inasmuch as the value of any commodity is determined by what willing buyers and sellers will pay and receive for that commodity.

31. Mr. Toll questioned the application of a 12.5 percent capitalization rate by petitioner which he considered to be too high. He testified in his experience, a more current and accurate rate was in the 7 to 9 percent range.

32. Mr. Toll testified that when assessing the subject property, he took into account such factors as renovations and repairs that had been performed on the subject property and rent that was paid by the tenants. He also testified that the work done on the property added long-term value to the real estate.

33. Mr. Toll testified that he recommended a reduction to the Board of Equalization and Review because he had further time to study the subject property. He recommended the decrease after a further look at the property's age, height, location, floors, possible functional obsolescence, and unique features. Mr. Toll suggested to the Board that a value of between \$157,225 and \$182,225 which is a per square foot rate of \$12 to \$14 per square foot would be proper for the improvements.

34. Mr. Toll stated that he considered the rental history, occupancy, vacancy, and rental rate at the time of the assessment in his analysis. He considered the subject property unique because it is noticeable and conspicuous on a noted intersection, larger and taller than most of the buildings in the area, imposing, and has a different floor plan.

35. Mr. Toll also used the comparable sales method. All of the sales occurred before the valuation date; the range of sales was between April, 1980, and December, 1983. Such factors as location, size, height, use, and condition were compared and adjusted. The sales were determined to be voluntary, arms-length and close in time to the valuation date. They all had the same zoning as the subject property, C-2-A, all had commercial-retail use, and some were vacant. None of the comparable sales used had a ballroom, but one of them which was a car dealership, Lot 40, Square 2978, had a ceiling as high as petitioner's ballroom ceiling of 12 to 15 feet. Some of the comparables had been used as warehouses at one time - Lots 802 and 803, Square 2932, and Lot 40, Square 2978. Mr. Toll testified that a property may be comparable to a nightclub without functioning as one.

36. Respondent's Exhibit No. 8, at trial, showed a listing of the sales transactions used by Mr. Toll with the characteristics of each broken down by square, lot address, date, price, lot area, year built, building use, building condition, renovation date, zoning, gross building area, and rentable area.

37. In order to place the subject property within this range, Mr. Toll considered such factors as functional obsolescence, age, height, size, location, and the number of floors.

38. Respondent's Exhibit No. 10 showed a listing of the price per square foot of gross finished area or rentable area of the sales properties used including that of the subject property.

39. Mr. Toll tested different rates per square foot of building area. He had a range of value of \$29.27 per square foot of net rentable or gross finished area above ground up to \$98.46 per square foot for the same area. The subject property, using the Board's adjusted assessment was \$25.33 per square foot of net rentable or gross finished area.

40. Mr. Toll also testified that he took into account the equalization of the subject property with surrounding properties in order to assure a fair tax burden among them.

CONCLUSIONS OF LAW

D.C. Code, 1981 ed., §47-802(4) sets forth the definition of "estimated market value" for District of Columbia real property assessment and tax purposes.

(4) The term "estimated market value" means 100 per centum of the most probable price at which a particular piece of real property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would be expected to transfer under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.

D.C. Code, 1981 ed., §47-820(a) provides that in determining estimated market value any factor having a bearing on market value must be considered. There is no statutory or common law mandate that respondent must follow any one particular approach in valuing real property in this jurisdiction. D.C. Code, 1981 ed., §47-820 provides as follows:

In determining estimated market value for various kinds of real property the Mayor shall take into account any factor which might have a bearing on

the value of the real property, including but not limited to, sales information on similar types of real property, mortgage, or other financial considerations, reproduction cost less accrued depreciation because of age, condition, and other factors, income earning potential (if any), zoning, and government imposed restrictions.

(Emphasis supplied).

D.C. Code, 1981 ed., §47-820(a) gives the Mayor considerable flexibility in the means for ascertaining estimated market value. He may "take into account any factor which might have a bearing on the market values * * *." Without limiting the words "any factor," the statute specifies six factors that must legitimately be considered:

- (1) "sales information on similar types of real property";
- (2) "mortgage or other financial considerations";
- (3) "reproduction cost less accrued depreciation";
- (4) "income earning potential";
- (5) "zoning"; and
- (6) "other government restrictions."

The burden of proof is on the petitioner to prove that assessments are arbitrary, excessive or otherwise erroneous and unlawful. Superior Court Tax Rule 11(d). See also, Wynes 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, the petitioner must show the assessed value to have been erroneously determined.

The Court concludes that petitioner failed to demonstrate that respondent made an erroneous determination; consequently, petitioner has not met her burden of proof. Petitioner did not demonstrate that the assessment was either excessive or out of equalization.

Petitioner presented evidence of a long-term twenty year lease on the property. The assessors are charged with valuing the fee simple estate, including both the leased fee and the leasehold estate. It is not axiomatic that the assessment is to be reduced because of a long-term lease. The value of all interests in the property must be evaluated and the existence of a favorable or unfavorable lease does not limit the ability of the tax assessor to compare the encumbered properties with similar properties not so encumbered. Where rents do not represent current market values, as alleged by petitioner, they are not helpful in valuation for assessment purposes. Board of Supervisors of Fairfax County v. Wassif, 290 S.E. 2d 822, 825 (Va. 1982). The assessment on the property should not be reduced merely to reflect the long-term lease under which petitioner rents the property below market rates.

Although petitioner contended that her maintenance costs were higher than "typical" commercial or office buildings, she produced no evidence of what she considered to be a typical building or its typical costs. Although she claimed that structural improvements could not be made to the subject property without excessive expenditures, the evidence indicated that both she and the current tenant had made some internal improvements. While she contended that the subject property had a single use only, her various tenants over the years had put the property to different uses. In fact, a nightclub, a restaurant, a social hall, and offices are current uses of the building.

Petitioner's inability to sell the subject property over a six month period does not prove that the property warrants a lower assessment. The lack of market demand or the inability of her property to sell during such a short period does not dictate the establishment of a lower assessment value,

but it is a factor to be considered with all others in arriving at a proper assessment.

The Department of Finance and Revenue operated within its discretion in using the market data approach to value here. The use of this approach is especially relevant where, as here, sales of other commercial properties in the immediate area were available. The comparable sales used did not have to be encumbered with a long-term lease as was petitioner's property; that is, the existence of a favorable or unfavorable lease does not destroy the ability of the tax assessor to compare the encumbered properties with similar properties when such are available which are not so encumbered:

The fact that an unfavorable lease may make the property less desirable to prospective buyers does not affect its full cash value for taxation. (citing Swan Lake Moulding v. Department of Revenue, 478 P.2d 393 (Or. 1970)).

It is the value of the real property itself that is to be determined and the voluntary alienation of a leasehold interest does not destroy the comparability of the sale of other properties not similarly encumbered. The combined value of the lessor's and lessee's interests under a long-term lease is subject to taxation. Any equitable apportionment of the tax burden between the parties to the lease cannot be attributable to the taxing statute. Caldwell v. Department of Revenue, 122 Ariz. 519, 596 P.2d 45 (1979).

See also earlier cases Donovan v. City of Haverhill, 247 Ma. 69, 141 N.E. 564 (1923); Rowland v. City of Tyler, 5 S.W. 2d 756 (Tex. 1928); Petition of Ernst, 58 Misc. 504, 295 N.Y.S. 2d 712 (1968). Yadco, Inc. v. Yankton County, 237 N.W. 2d 663 (S.D. 1975).

In the Swan Lake Moulding case, supra, the Supreme Court of Oregon stated as follows in a matter in which the assessor was advancing the market sales approach as a method for determining the value of the full fee as if unencumbered and the taxpayer was arguing that only the income approach was applicable.

The most important difference between the parties and the appraisers testifying on their behalf is what consideration, if any, is to be given to the long-term leases on substantial portions of the property. Some of the leases had remaining terms of over 30 years, the appraisers testifying for the taxpayer stated that these leases had to be taken in account as they control the income potential and what the highest and best possible use would be if the land were unencumbered is only hypothetical. In fixing the true case value of land for property tax purposes the effect of existing leases on the value to the owner is disregarded. The basis for such a principle is that tax is levied upon the land and is a tax upon all the interest into which the land might be divided. Admittedly, a lease might decrease the price which the owner might receive; however, the tax is not merely on the owner's interest; the tax is upon all interests in the land, including the leasehold interest.

(Emphasis added).

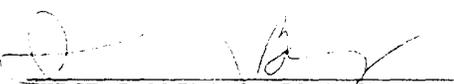
See also Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill. 2d. 428, 256 N.E. 334 (1979) and People ex Rel Gale v. Tax Commission of New York, 17 A.2d 225, 233 N.Y.S. 2d 501, 507 (Sup. Ct. 1962).

The comparable sales were chosen by location and use of the properties; they were all zoned C-2-A. The Court concurs with Mr. Toll that the comparable sales used did not have to be other nightclubs. Several were not comparable in size but they were comparable in use, location, and condition and adjustments were made where necessary.

Petitioner has failed to meet her burden of proof that the assessment placed upon the subject property was excessive. The Court finds that for all of the above reasons the market data approach to valuation used by the assessor was the best possible under the circumstances and that petitioner failed to offer competent evidence that the valuation was arbitrary.

Wherefore, it is this 12th day of June, 1986,

ORDERED that respondent's assessment for Tax Year 1985 for the subject property known as 5832 Georgia Avenue, N.W., (Lot 29 in Square 2937), is hereby affirmed.


JUDGE IRALINE G. BARNES

Copies to:

Irena I. Karpinski, Esquire
1330 New Hampshire Avenue, N.W., Suite 111
Washington, D.C. 20036

Urenthea McQ. Power, Esquire
Office of the Corporation Counsel, D.C.
1133 North Capitol Street, N.E., Room 238
Washington, D.C. 20002

Melvin Jones, Finance Officer, D.C.

R. Stanfield
6/18/86