

apinca
710 1372

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

RECEIVED
DISTRICT OF COLUMBIA
TAX DIVISION

L'ENFANT PLAZA PROPERTIES, :
INC. :

Petitioners, :

v. :

DISTRICT OF COLUMBIA :

Respondent.

SP

FILE

Tax Docket
No. 3650-85

O R D E R

This matter came before the Court for trial. Petitioners, the fee simple owner of real property located at 400 - 10th Street, S. W., Lot 866 in Square 387 (hereinafter the "subject property"), challenged the real property tax assessed against the subject property for Tax Year 1985 pursuant to D.C. Code § 47-820 (1981 ed.). Respondent, the District of Columbia, valued the subject property for tax assessment purposes for Tax Year 1985 at \$33,585,000, consisting of \$13,659,624 for land and \$19,925,376 for improvements. Petitioners appealed to the Board of Equalization and Review which reduced the assessment to \$27,023,589. Petitioners timely paid the tax of \$548,578.86, and timely filed this appeal.

The Petitioners maintain that the fair market value of the subject property as of January 1, 1984 should be determined by the use of the income capitalization method. They urge the Respondent to modify the assessment record card to reflect a value of \$20,700,000 for Tax Year 1985, of which \$13,000,000 shall be allocated to the land and \$7,700,000 shall be allocated to the improvements. Petitioners further seek a refund with interest of the

100-100000-100000

excess taxes collected for Tax Year 1985 and any subsequent tax years until a lawful reassessment has been performed.

Respondent, however, argues it is not clear whether Petitioners' expert, Donald V. Urquhart, M.A.I., applied market (economic) rents in his calculation of a stabilized income in using the Income Approach to determine what the property would command in the open market. Respondent maintains that Petitioners' selection of the higher capitalization rate should not be given credit. To the contrary, their expert, Anthony Reynolds, M.A.I., assessed value of the property for January 1, 1984 of \$28,700,000 as the true market value of the property for Tax Year 1985. Upon consideration of all the evidence adduced at trial, the pleadings and arguments of counsel, the Court makes the following:

FINDINGS OF FACT

1. The subject property is located at 400 - 10th Street, S. W., Lot 866, Square 387 in the District of Columbia.

2. Petitioner L'Enfant Plaza Properties, Inc. (hereinafter referred to as "L'Enfant Plaza") is the successor by merger, as of June 30, 1974, to L'Enfant Plaza East, Inc. Both corporations are or were incorporated in and operating in the District of Columbia. The principal office of both corporations is or was 490 L'Enfant Plaza East, S. W., Washington, D. C. L'Enfant Plaza is the owner of the improvements and lessee of the subject property, Lot 866 in Square 387, in the District of Columbia, improved by premises known as 400 - 10th Street, S. W.

3. Petitioner, L'Enfant Plaza Corporation, is a corporation organized and existing under the laws of the District of Columbia with a principal place of business at

490 L'Enfant Plaza East, S. W., Washington, D. C. L'Enfant Plaza Corporation is the owner of the subject real estate, Lot 866 in Square 387.

4. On or about March 1, 1984, Petitioners received a notice of assessment dated February 27, 1984, stating that the assessment on the subject property for Tax Year 1985 was \$33,585,000.

5. The appeal to the Board of Equalization and Review, in Appeal No. 85-579, was timely filed on April 10, 1984. An oral hearing was held before the Board of Equalization and Review.

6. By decision dated May 19, 1984, the Board of Equalization and Review informed Petitioners of its decision to reduce the assessment resulting in a total assessment of \$27,023,589.

The subject office building sited on a lot containing 51,741 square feet of land contains 452,183 square feet gross building area (GBA). The building's total net rentable area (NRA) of 344,886 square feet is utilized as follows:

Office Space	251,238 sq. ft.
Retail Space	9,361 sq. ft.
Storage Space	4,468 sq. ft.
Exxon Service Station	15,195 sq. ft.
Parking Garage	64,624 sq. ft. (175 spaces)

7. The taxes and assessment in controversy are real estate taxes and assessment for Tax Year 1985 in the following amounts:

Total Assessment:	\$27,023,589.00
Total Taxes:	\$ 548,578.86

8. The Tax Year 1985 taxes in the amount of \$548,578.86 were timely paid in full. The first-half taxes in the amount of \$274,289.43 were timely paid on

September 14, 1984, and second-half taxes in the amount of \$274,289.43 were timely paid on March 29, 1985.

9. The subject property is improved with an office building completed in 1968. Both parties agree that the current use of the subject property is its highest and best use.

10. Mr. George Altoft was called by the Petitioners as a hostile witness. Mr. Altoft was a senior assessor during Tax Year 1985 with the Department of Finance and Revenue, Standards and Review Division for Tax Year 1985. He testified that he made the Tax Year 1985 land assessment for the subject property. Mr. Altoft testified that he used the mass appraisal technique to value the land.

Mr. Altoft testified that he increased the land value of \$20.00 per square foot of land per point of FAR to \$35.00 "because [in his opinion] it [20.00] was too low". And, when asked which comparable land sales were used in the valuation of the subject property, Mr. Altoft stated that he did not use any comparables in valuing the subject property.

11. The Petitioners also called Mr. Robert Klugel, Chief of Standards and Review Division, Department of Finance and Revenue, as a hostile witness who testified that he assessed the subject property for Tax Year 1985 and that he used the mass appraisal technique after checking all three appraisal approaches to valuation. Mr. Klugel testified that he arrived at a fair market value for the subject property using this approach. But Mr. Klugel did not use this value. Instead, he reduced this fair market value to 90 percent.

In "checking" the mass appraisal technique, Mr. Klugel testified that he used no comparable sales

11-11-85

at all.^{*/} And in "checking" with the capitalization of income method, Mr. Klugel testified that he used a potential net operating income which he admitted was double the actual net operating income.

12. Mr. Klugel admitted that the taxpayers had timely submitted the income and expense forms to the District of Columbia for 1982 and 1983. Mr. Klugel admitted that the subject property had a long and stable income history. The District, however, ignored this actual operating history of the subject property in establishing the Tax Year 1985 assessment.

13. Petitioners called Mr. Donald V. Urquhart, M.A.I., S.R.P.A., who, after voir dire, was qualified by the Court as an expert witness. Mr. Urquhart testified as an expert both as to the value of the subject property and as to the validity of the method by which the assessors derived the assessment of the subject property.

Regarding the methods used by the assessors to determine the assessment, Mr. Urquhart testified that no market indicia were used by the assessors and that no aspect of the subject property itself was considered by the assessors. The assessors failed to consider economic trends in the market place (such as the types and terms of mortgages being written as of the value date) and the use of the subject property as an investment on which an investor would expect a positive cash flow. In addition, the assessors failed to consider the actual leases for the

^{*/} Moreover, neither Mr. Altoft nor Mr. Klugel could produce any document evidencing sales that could have been used in making the subject assessment. Two tables, one of land sales west of 15th Street, N. W. and one of office building sales from 1978 to 1984, were produced as those purportedly used to make the assessment but Mr. Altoft admitted that both tables were prepared after the Tax Year 1985 assessment of the subject property was made.

subject property, the potential of the property, the costs to remodel the subject property to achieve market rents.

In his own valuation of the subject property, Mr. Urquhart considered all three methods of valuation, the cost approach, the comparable sales approach and the income capitalization approach. He determined that the cost approach was not applicable. Mr. Urquhart used primarily the income capitalization approach in valuing the subject property, also examining sales in the District of Columbia.

Relying on the income history of the property and surveying the Southwest D. C. Market for market rental data, Mr. Urquhart estimated the fair economic rent for the subject property. He determined that the fair economic rent was close to or at the actual rents as of January 1, 1984.

Having determined the economic rent for the subject property as of the valuation date, Mr. Urquhart then examined the terms for all of the leases for the subject property, including the nature of the tenant, base rent and length. After examination of the operating history, Mr. Urquhart derived a stabilized gross income, a stabilized figure for vacancy and credit loss and concluded a stabilized effective gross income of \$4,896,787.

Mr. Urquhart then examined the expenses of the subject property and market expenses for other properties with which he was familiar. The building in question was established and therefore had a stable expense history. Mr. Urquhart testified that in stabilizing the expenses for the subject property, idiosyncrasies of the subject property had to be taken into account. For example, in management expenses, the management of the subject property

had been very effective, both in maximizing the base rent for leased space in the building and in minimizing the vacancy and credit loss for the property. In addition, Mr. Urquhart testified that the building had some physical features (primarily because of the era in which it was built, its architectural style, and its age) that required expenses in a certain range. Real estate taxes were not included as an expense item in his analysis because Mr. Urquhart testified that they were disputed as the subject of this suit and had been dealt with in his capitalization rate. Mr. Urquhart concluded from this analysis that the stabilized operating expenses for the subject property would be \$8.56 per square foot for a total of \$2,398,035.

The stabilized operating expenses were then deducted from the stabilized effective gross income to yield a net operating income of \$2,931,058.

14. In concluding his value for the subject property from the income capitalization approach, Mr. Urquhart derived a capitalization rate. He derived this rate from the local Washington, D. C. market and from the nation-wide publications which published capitalization rates derived from sales. Mr. Urquhart testified that he worked closely with bankers during the relevant time period and was therefore familiar with the market place, including mortgage lending and economic trends. Since investors would be considered the willing buyer in the "willing buyer/willing seller" analysis, Mr. Urquhart testified that he also examined investments which would compete with real estate for investors' dollars, including their rates of return and risk.

Mr. Urquhart testified that the Investment Bulletin reported mortgage rate averages of 12.22% for the relevant

12/15/2011 10:10:10 AM

time period. He also testified that in the Washington, D. C. market, capitalization rates for the same periods ranged from 13% to 17%.

From this examination of national and local trends and competing investments, along with his familiarity with the local market, Mr. Urquhart concluded a capitalization rate of 12.19%. To this rate Mr. Urquhart added the tax rate of \$2.03 per \$100 of assessed value for Tax Year 1985, to yield a total capitalization rate which he rounded to 14.2.

15. Mr. Urquhart concluded a value of \$20,700,000 for the subject property, as of January 1, 1984, using the income approach. This value was obtained by applying his total capitalization rate of 14.2 to the stabilized net operating income of \$2,931,053, yielding the result of \$20,700,000.

16. Mr. Urquhart also testified that, in support of his primary approach using income capitalization, he looked for comparable sales similar enough to the subject property to develop a comparable sales approach to valuing the subject property. Mr. Urquhart testified, however, that there were no sales that could form the basis of a reasonable comparison in Southwest. And there were no land sales in Southwest. Even sales outside of the Southwest area required extensive adjustment because of location. However, in Mr. Urquhart's opinion, the sales outside of Southwest were insufficient to complete the comparable sales approach to valuing the subject property but did not contradict the value of the subject property derived using the income capitalization approach.

17. In testing his conclusion of value for the subject property, Mr. Urquhart completed a cash flow

analysis of the subject property. Applying the stabilized net operating income he had derived for the subject to the real estate taxes and mortgage requirements at the then-prevailing market rates for mortgages, Mr. Urquhart concluded that if an investor purchased the property for the value that he ascribed to it, the property would have a positive cash flow sufficient to render it competitive in the market place for investors' dollars.

18. Respondent presented its expert, Mr. Anthony Reynolds, M.A.I., who was qualified as an expert witness. Mr. Reynolds testified that as of the valuation date, the economic outlook in the District was "dismal" and there was an oversupply of office space. In addition to the general economic outlook, the subject property itself had many detrimental architectural attributes. Some examples were that the massive windows were uninsulated, the building contained excessive back-house space, the zoned heat and air conditioning was improperly zoned in view of the building orientation to the sun and the property suffered from wear and functional obsolescence. Although the subject property had been well-maintained, he concluded that its condition belied its age and the many tenants it had accommodated over the years.

Mr. Reynolds testified that he examined all three approaches to value but, like Mr. Urquhart, that he disregarded the cost approach as that approach would not be used or considered by willing buyers and willing sellers. Mr. Reynolds testified that he used the income capitalization approach and the comparable sales approach.

19. Mr. Reynolds testified that the actual rents at the subject property were very close to market rents for the property and that therefore only the contract rents

needed to be considered. He then derived a stabilized gross income based upon these rents of \$5,937,600. Mr. Reynolds' written report reflects that the actual rent collections were 98.87 percent of the stabilized gross income as calculated by Mr. Reynolds. Mr. Reynolds then subtracted a vacancy factor from the gross income of five percent to arrive at stabilized "collections" of \$5,640,720.

20. In his calculation of stabilized expenses for the subject property, Mr. Reynolds used expenses from row buildings and semi-detached buildings. Mr. Reynolds acknowledged that the subject property itself was free-standing and that he had not used other free-standing buildings as comparables for purposes of stabilizing his expenses for the subject property. He also acknowledged that in prior appraisal reports he declined to apply comparables because there were none that were applicable.

21. Mr. Reynolds stated that while the subject property had been particularly well managed, the subject property was also being less efficiently managed because of its design qualities. Thus, it would require more people to operate than a more efficient building. Notwithstanding this observation, Mr. Reynolds stabilized the "people service" expenses significantly below the actual operating expenses of the subject property. He then assumed, without stating any basis for his assumption, that these expenses could somehow be reduced. He added that if these expenses were reduced, there might be more trespassers at the property and a higher vacancy rate. Mr. Reynolds concluded stabilized operating expenses for the subject property to be in the amount of \$2,190,100.

Using the stabilized collections of \$5,937,600 and deducting from that the expenses of \$2,190,100,

Mr. Reynolds arrived at a stabilized net operating income (before real estate taxes) of \$3,450,620.

22. After reviewing the cash flow, Mr. Reynolds noted that under market conditions as of the value date, his analysis would yield a negative cash flow after debt service.

23. Mr. Reynolds testified that he had derived a capitalization rate for the subject property as of the value date. He acknowledges, however, that there were no sales comparable to the subject's contemporary office building property. Therefore, he used sales and the American Council of Life Insurance tables in obtaining this rate. He concluded a capitalization rate of 10.00% to which he added the real property tax rate of 2.03% to arrive at an overall capitalization rate of 12.03%. Dividing the net operating income of \$3,450,620 by the rate of 12.03 percent yielded a value for the subject property rounded to \$28,700,000.

CONCLUSIONS OF LAW

Superior Court review of a tax assessment is de novo, necessitating competent evidence to prove the matters at issue. Wyner v. District of Columbia, 411 A.2d 59 (D.C. App. 1980). The correct assessment of the subject property for Tax Year 1985 is the present market value -- the value of benefits associated with the ownership of the property -- as of January 1, 1984.

D.C. Code § 47-820(a) (1981 ed.) provides that in determining market value, any factor having a bearing on market value must be considered, including "income earning potential (if any)." There is no statutory or common law mandate that Respondent must follow any one particular

10/10/85

approach in valuing real property. The assessor must consider all three approaches to value (replacement, income and comparable sales) and have a reasoned basis for picking one over the other. Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207 (D.C. App. 1987).

The burden of proof is on The Petitioner to provide sufficient evidence to prove that the assessment is arbitrary, excessive or otherwise erroneous and unlawful. District of Columbia v. Burlington Apartment House Co., 375 A.2d 1052, 1057 (D.C. App. 1977) (en banc). It is not sufficient that the taxpayer present an alternative measure of value. To provide a basis for invalidating an assessment or a value proposed by Respondent's expert, Petitioner must show the assessed value to have been erroneously determined and/or not reflective of the property's true market value.

The Court finds that Petitioners have established by a preponderance of evidence that the value of the subject property as determined by applying the income approach is \$20,700,000 for Tax Year 1985. Upon review of the testimony and documentation presented, the Court concludes that income analysis was properly performed by Petitioners' expert, using income and expense data that has not been disputed, thereby producing an accurate estimate of market value.

The District's own expert valued the property at \$28,700,000; \$4,885,000 less than the proposed assessment of \$33,585,000. Thus, the Tax Year 1985 assessment of the subject property is invalid ab initio as not being made at 100 percent of the fair market value of the subject property and thus in violation of D.C. Code, Section 47-820(a) (1981 ed.). The Court finds that the Tax Year

1985 assessment of the subject property is arbitrary, erroneous and unlawful.

Even had the Tax Year 1985 assessment of the subject property been otherwise valid, the method used to derive it was invalid. By statute and regulation, assessors for the District of Columbia are required to consider all available information which may have a bearing on the value of the subject property including financial considerations, replacement costs less accrued depreciation, and income earning potential. D. C. Code § 47-820 (1981 ed.); 9 D.C.M.R. § 307.1 (1982). In assessing the subject property for Tax Year 1985, the assessor did not consider these factors for the subject property.

The assessors admitted that they did not use the actual operating history of the subject property. They determined that the expenses were "excessive" without making any adjustments for the physical features of the building, such as its age and architecture, that would make certain expenses larger. The assessors did not adjust the expenses for the disproportionate amount of unusable space because of the building design. Moreover, the assessors ignored the actual operating income of the subject property and substituted in their calculations an income almost twice that of the actual income experience of this stable income-producing property. There was no testimony that the

1985 assessment of the subject property is arbitrary, erroneous and unlawful.

Even had the Tax Year 1985 assessment of the subject property been otherwise valid, the method used to derive it was invalid. By statute and regulation, assessors for the District of Columbia are required to consider all available information which may have a bearing on the value of the subject property including financial considerations, replacement costs less accrued depreciation, and income earning potential. D. C. Code § 47-820 (1981 ed.); 9 D.C.M.R. § 307.1 (1982). In assessing the subject property for Tax Year 1985, the assessor did not consider these factors for the subject property.

The assessors admitted that they did not use the actual operating history of the subject property. They determined that the expenses were "excessive" without making any adjustments for the physical features of the building, such as its age and architecture, that would make certain expenses larger. The assessors did not adjust the expenses for the disproportionate amount of unusable space because of the building design. Moreover, the assessors ignored the actual operating income of the subject property and substituted in their calculations an income almost twice that of the actual income experience of this stable income-producing property. There was no testimony that the property was mismanaged or that the actual figures had been manipulated by Petitioners.

The District of Columbia Court of Appeals has consistently held that all three approaches to value must be considered. District of Columbia v. Washington Sheraton Corp., 499 A.2d 109, 113 (D.C. 1985); Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207 (D.C. 1987). In the

instant case, however, the assessors did not use even a single one of the three approaches. The assessors testified that they did not use the cost approach. They also testified that they did not examine any comparable sales.

It is well-established law in the District of Columbia that while all three methods must be considered, the preferred method for valuing mature income-producing properties is the income capitalization method. 1015 15th Street, N.W. Associates v. District of Columbia, Tax Docket No. 3266-83 (November 13, 1984; Barnes, J.). And, in the application of this method, the assessor must take into account the actual income and expenses of the subject property. Smith v. Board of Supervisors of Fairfax County, 4 V.L.R. 858, 868, 234 Va. ___, ___, ___ S.E.2d ___, (1987). Although the subject property is a mature and stable income-producing property, the assessors did not perform the income capitalization method at all. Even in their use of the mass appraisal technique, the assessors failed to take into consideration the actual net operating income of the subject property, using instead a figure almost double the actual income. The evidence establishes that the assessment of the subject property was arbitrary and excessive.

Both the Petitioners' expert and the District's expert used all three approaches to value. They examined but rejected as inapplicable two of those approaches, the cost approach and the comparable sales approach. As to the cost approach, both experts agreed that the improvements were too old to make the approach of any value and that willing buyers and willing sellers in the market place would not use this approach in determining a selling price.

The experts also found the comparable sales approach of virtually no assistance in valuing the subject property. Petitioners' expert, Mr. Urquhart, testified that none of the sales were really comparable to the subject property and none were in Southwest. Although the District's expert began his testimony with the statement that he used both the income capitalization and the comparable sales approaches, he later admitted that he did not rely on any comparable sales or derive any conclusions as to the value of the subject property from them.

Both experts then relied on the income capitalization method. Petitioners' expert considered both the contract and market income and expense. The District's expert ignored the actual income and expenses of the subject property without giving an adequate basis for doing the same.

Mr. Reynolds testified that the economic outlook in the District was dismal and that there was an oversupply of office space. Mr. Reynolds also testified that the building, while well-maintained, showed the effects of its age. But, when determining the "market rent" for the subject property, Mr. Reynolds did not factor in any component for rent abatements or reductions to lure tenants to this older building in Southwest Washington during an office supply glut. Nor did Mr. Reynolds consider the potential rent with regard to the disproportionate back-house space engendered by the intrinsic design of the subject improvements. Thus, Mr. Reynolds' stabilized gross income, after a vacancy allowance in the amount of \$5,640,720, was excessive and derived in violation of the controlling legal precedent regarding the income capitalization method.

In calculating his stabilized expenses for the subject property, Mr. Reynolds made several sets of inconsistent assumptions. For example, Mr. Reynolds testified that the subject property had been particularly well managed. Because of this good management, the expenses had been minimized and the income maximized. In addition, the inefficient design of the subject property required more personnel to operate it. Despite these two valid assumptions about the expenses for the subject property, he stated that those expenses could be reduced and he therefore stabilized them at a much lower rate than the actual historical management expenses. Mr. Reynolds acknowledged that if these expenses were reduced there might be more trespassers and a higher vacancy rate at the subject property. No commensurate adjustment, however, was made in Mr. Reynolds' stabilized expenses for the subject property.

Mr. Reynolds did not take into consideration the unique physical attributes of the subject property in determining the stabilized expenses for the subject property. Mr. Reynolds testified that the subject property contained many detrimental architectural attributes such as inefficient heating systems and massive uninsulated windows. He made no adjustments nor gave any consideration to these factors for the higher heating and cooling expenses due to inefficient central heating/cooling system or the energy loss due to the large uninsulated windows. Further, when calculating his stabilized expenses for the subject property from market expenses, Mr. Reynolds also failed to build into his expense figures a fund for the repair and replacement of items in this building which was, as of the valuation date, twenty years old. Thus, the

Court determines that Mr. Reynolds' stabilized expenses in the amount of \$2,190,100 were understated. From this overstated gross income and understated expenses, Mr. Reynolds derived a net operating income before real estate taxes of \$3,450,620.

Petitioners' expert closely examined both the actual operating experience of the subject property and the market experience as of the valuation date. Mr. Urquhart examined each lease in effect in the subject property as of the valuation date. Mr. Urquhart examined properties located in the immediate vicinity of the subject property to determine a market rent as of the valuation date. After having closely examined these factors, Mr. Urquhart determined a stabilized gross operating income for the subject property, after vacancy and credit allowance, in the amount of \$4,896,787.

In determining his stabilized expenses for the subject property, Mr. Urquhart closely examined the actual operating history of the subject property and market experience of similar properties for operating expenses. As the subject property was established and had a stable operating history, Mr. Urquhart examined the actual operating statements, rent rolls, leases and pass-throughs to the tenants. He also examined the operating history of similar buildings with which he was familiar. After examining this data, Mr. Urquhart determined a range of operating expenses for the subject property and chose the figure within each expense range that was most appropriate to the individual physical characteristics and actual operating experience of the subject property. Expenses in the amount of \$2,398,035 were then subtracted from the gross income for a net operating income before real estate taxes of \$2,931,058.

After concluding their net operating incomes for the subject property, both experts determined a capitalization rate. Mr. Reynolds testified that he derived his capitalization rate from sales and from the statistics of the American Council of Life Insurance (ACLI). But Mr. Reynolds admitted in his testimony that there were no comparable sales to the subject property and when the tables of the ACLI were actually examined, Mr. Reynolds' capitalization rate of 10.00% could not be found.

Petitioners' expert testified that he had derived his capitalization rate from a wide range of local and national investments, lending and market indicators. Mr. Urquhart, who worked closely with bankers in making loans for properties similar to the subject property during the relevant time period, testified from his experience in the market place, including mortgage lending and economic trends. As real estate was merely one investment competing for investors, Mr. Urquhart closely examined the subject property as compared with other investments available during the relevant time period. Using this investment analysis, together with established capitalization rates and interest rates from mortgages at the time, Mr. Urquhart derived a capitalization rate of 12.19% which he applied to the subject property. As the net operating income had been calculated before the payment of real estate taxes, the real estate tax rate was then added to this capitalization rate for a total overall capitalization rate of 14.2%.

Mr. Urquhart tested his concluding value by applying a cash flow analysis. As both experts acknowledged, a willing buyer of real estate would examine the cash flow of the property before he determined the price at which he would purchase it. Mr. Urquhart testified that for values

2025 RELEASE UNDER E.O. 14176

placed on the property by both the District's expert and the assessors, the subject property would have a negative cash flow. When confronted with this information, the District's expert admitted that with the value he had placed on the subject property, the subject property would yield a negative cash flow after debt service. The Court concludes that such a negative cash flow cannot represent the fair market value of the property. The Court concludes that the method of deriving from the capitalization of income method as applied by Mr. Urquhart was more reliable and a better indicator of value than the method applied by Mr. Reynolds.

The fair market value of the subject property as of January 1, 1984 is most appropriately determined by the use of the income capitalization method. In the application of the income capitalization method, the actual income and expenses of the subject property must be considered. The Court finds no compelling reason to disregard these facts. As neither the assessors nor the Respondent's expert considered the actual net operating income of the subject property, the values arrived at are invalid and do not represent fair market value. The Petitioners' expert was the only witness who took into account the actual income and expenses of the subject property. Therefore, the only valid opinion of fair market value of the subject property as of January 1, 1984 is that of taxpayers' expert at \$20,700,000.

WHEREFORE, it is this 20th day of September, 1988,

ORDERED that the Respondent shall modify the assessment record card to reflect the value of \$20,700,000 for Tax Year 1985, of which \$13,000,000 shall be allocated to the land and \$7,700,000 shall be allocated to the

improvements, and for all subsequent years until a lawful reassessment has been performed and shall refund to Petitioners, with interest, the excess taxes which have been unlawfully collected for Tax Year 1985, and subsequent tax years; and it is

FURTHER ORDERED that Petitioners present a proposed order for refund, with interest from the dates of payment, no later than ten (10) days from the date this Order is signed.

SO ORDERED.



JUDGE IRALINE G. BARNES

Copies to:

Gilbert Hahn, Jr., Esquire
Janet L. Eveland, Esquire
Tanja H. Castro, Esquire
Amram and Hahn, P.C.
1155 - 15th Street, N. W., Suite 1100
Washington, D. C. 20005

Lawrence B. McClafferty, Esquire
Assistant Corporation Counsel
1133 North Capitol Street, N. E., Room 238
Washington, D. C. 20002