

Opinion  
No. 1286

CLERK OF  
SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
TAX DIVISION

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
PROBATE DIVISION

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FILED

THE WASHINGTON POST COMPANY,	:	
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Petitioner	:	
	:	
v.	:	Tax Docket Nos.
	:	3674-85, 3800-86
DISTRICT OF COLUMBIA,	:	3948-87, 4032-88
	:	(Consolidated)
Respondent	:	

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, MEMORANDUM OPINION AND JUDGMENT**

This matter came before the Court for trial upon consolidated appeals from real property tax assessments for tax years 1985, 1986, 1987, and 1988 pursuant to D.C. Code §§47-825(i) and 47-3303. Petitioner also seeks relief under 42 U.S.C. §1983. Upon consideration of the petitions, respondent's answers, and the evidence adduced at trial, and having resolved all questions of credibility, the Court makes the following:

Findings of Fact

1. Petitioner, the Washington Post Company (the Post), is the owner of the land and improvements thereon known as 1150 15th Street, N.W. in the District of Columbia, designated as Lot 82, in Square 197. Petitioner was obligated to pay the real property taxes assessed against the property for tax years 1985, 1986, 1987 and 1988.
2. The Post timely paid the subject taxes. These appeals were brought after an appeal to the Board of

Equalization and Review (the Board).

3. The Board sustained the proposed assessments for each tax year. The amount of the assessment for each year was \$52,440,000.

4. The allocation of value contained in the proposed assessments was as follows:

	<u>Tax Years 1985 &amp; 1986</u>	<u>Tax Years 1987 &amp; 1988</u>
Land	\$28,210,395 (\$255 per sq. ft.)	\$37,060,715 (\$335 per sq.ft)
Improvements	\$24,229,605	\$15,379,285
Total	\$52,440,000	\$52,440,000

5. The land area consists of approximately 110,629 square feet with a 368.1 foot frontage along 15th Street, and an average depth of nearly 300 feet that parallels the north side of the 1550 block of L Street. The lot is bounded on the east by an irregularly shaped alley, and abutted on the northern and southern ends of its 15th Street frontage by corner lots.

6. The improvements consist of four integrated buildings that were erected between 1949 and 1972 to a developed 3.9 FAR. The improvements contain approximately 513,484 square feet, excluding 4,470 square feet of off-site vault space under a public right of way. Approximately 40% of the building's area (197,368 square feet) is unfinished industrial space. There is a covered two-level deck which contains an additional 24,575 square feet of parking area.

7. The property is occupied solely by the owner. It is used for publishing, printing and distributing a

newspaper with a daily circulation of approximately 250,000 and a Sunday circulation of approximately 350,000. Therefore, the interior space is utilized for press rooms, machine shop, paper storage, engraving, layout, assembly and computers. There is a large open area on the fifth floor for the newsroom. The 6th and 7th floors are used for offices. The 8th floor contains some of the mechanical equipment for the building (e.g. air conditioning) and the corporation's offices. There are meeting rooms on the 9th floor. The press room occupies three stories, including the basement. The floors in this area are separated by removable steel plates. Of the approximately 513,484 square feet of the building, about 197,367 may be described as of the industrial/warehouse character.

8. An engineer with the Post prepared an estimate of the number of square feet in the building (Petitioner's exhibit E, attached exhibit B). The gross area is listed in the document, as 597,300 square feet. The document does not distinguish between finished and unfinished area. Approximately 85,000 square feet is unenclosed, which includes parking, a loading area, outside storage, garden court, cooling tower and roof heliport.

9. According to Mr. Edward J. Ames, the Director of Operating Services for the Post, the Post became aware that the District had data regarding the square footage of its property which was in error. About four to six months prior

to November 1987, petitioner hired Gensler and Associates, Architects to analyze the area of the facility. The architectural firm submitted its report to petitioner about November 11, 1987. Its conclusion was that area of the facility was 513,487.37, excluding parking covering 24,5475.5 square feet of land. The architect's report is in evidence as petitioner's exhibit CC. The fees incurred by petitioner for the architect to conduct the study were in the amount of \$28531.00.

10. There was correspondence between counsel for the parties regarding a survey of the property to resolve the question of its square footage. Before hiring Gensler and Associates, petitioner's counsel wrote Julia Sayles, an Assistant Corporation Counsel, inquiring about the qualifications and methodology which would be required for the District to agree to be bound by a survey. (Petitioner's exhibit EE). Another assistant, Arlene Robinson, responded by letter dated February 13, 1987 that she had conferred with Mr. Klugel (Chief Standards and Review of the Department of Finance and Revenue). She indicated that Mr. Klugel agreed to be bound by petitioner's engineers' measurements. However, according to Ms. Robinson, Mr. Klugel had insisted that the architect certify to the actual gross building area and provide a break down for finished and unfinished areas. According to the letter, Mr. Klugel also requested to be apprised of the instructions given to petitioner's architect

before taking the measurements. (Petitioner's exhibit FF). After the report was completed, respondent's counsel requested written confirmation that the dimensions reported by the architect were accurate. (See petitioner's exhibit HH.) The District's attorneys requested further breakdown of parts of the building categories, and petitioner's counsel indicated by letter dated October 14, 1988 that he was seeking to obtain the information. A breakdown was transmitted under a cover letter dated November 2, 1988. A stipulation of testimony was requested on the subject. The District stipulated to the accuracy of the Gensler report.

11. The District's assessment records had reflected that the subject property had 739,873 square feet of gross finished area. The gross building area is shown on the record as 978,755 square feet. A part of the confusion concerning the area of the building arises from the lack of floor area for the three floors used for the press room which are not separated by permanent flooring. Mr. Troy Davis had responsibility for the 1986 assessment for the subject property. He also filed a response to the 1986 appeal. Mr. Davis was responsible for the assessment of all office buildings between Connecticut Avenue and 12th Street and Massachusetts Avenue and Pennsylvania Avenue. Mr. Davis had inspected the building in 1984. He relied upon the area listed in the District's records. It was not readily apparent to him when he made the 1986 assessment that there was an

error in the floor area listed. Although Mr. Davis became aware of the contention that there was a dispute regarding the floor area after the 1986 assessment, he did not do the assessment after 1986. For 1986, Mr. Davis' supervisor instructed him to use the same assessment and allocation between land and improvement that had been used in the prior year.

12. Anthony Reynolds testified as an expert real estate appraiser for petitioner. He is well qualified in his field. His qualifications were stipulated to by respondent. Mr. Reynolds' qualifications as an expert are set forth in petitioner's exhibit M. Those qualifications as listed are incorporated herein by reference.

13. Mr. Reynolds appraised the property, and he determined that the estimated market value of the property on the valuation date for each tax year at issue was as follows:

<u>Tax Year</u>	<u>Estimated Market Value</u>
1985	\$75,000,000
1986	88,000,000
1987	92,000,000
1988	98,000,000

Thus, the property was assessed at well below its market value (\$52,440,000) by the District for each taxable year in question. Mr. Klugel reported that he was reluctant to revalue the subject property each year because of its unique characteristics as a building in the Central Business District and because of the absence of comparable properties sold in the area.

14. On the other hand, Mr. Reynolds provided what he termed "equalization values" at well below the values assessed by the District. Mr. Reynolds suggested that this means what the property should be assessed for. Mr. Reynolds retained the District's assessment for the land and added to it what he determined to be "equalization values" for the improvements of \$5,165,605 for each year. Thus, he found the total "equalization value" to be as follows:

<u>Tax Year Value</u>	<u>Land Allocation</u>	<u>Improvements Value</u>	<u>Total Equalization</u>
1985	\$28,210,395	\$5,165,605	\$33,376,000
1986	28,210,395	5,165,605	33,376,000
1987	37,060,715	5,165,285	42,226,000
1988	37,060,715	5,165,285	42,226,000

It was Mr. Reynolds' opinion that the values for the land as established by the District were in equalization with comparable properties, while the District's values for the improvements were not.

15. The subject property is not developed to its highest and best use. The highest and best use would require demolition of the existing building, assemblage of adjacent lots, and construction of an office building to the highest developed area permitted above ground. The building is only 40% of the gross above ground area which may legally be built. Both sides agree that the building has only a nominal value. It was Mr. Reynolds' opinion that the average buyer would destroy the building as there is no compelling reason to retain it and every reason to get rid of it. It is a proper

appraisal theory to appraise such land as if vacant. Therefore, he appraised the property as if vacant based on its highest and best use.

16. Mr. Reynolds used a comparable sales approach to determine the land values. He did so because in his opinion buyers rely upon this approach in determining the value of properties like the subject. Comparable sales were also plentiful. Comparisons of the subject were made by the expert with land sales, including those where the structure marginally contributed to the value of the property. He selected land sales in the downtown D.C. area as close as possible to the subject. He did not deem it appropriate to look at industrial sites. For each value date, Mr. Reynolds used land sales which were as nearly contemporaneous as possible. He also attempted to use those which were geographically near and which had with the same legal use. Thus, he looked at land sales in the Central Business District zoned C-4. The land sales compared appear at pages 11 through 15 of petitioner's exhibit MM. Mr. Reynolds concluded based on the comparisons made that the land value as of January 1, 1984 was \$677.94 per sq. ft. and \$67.97 per sq. ft. of floor area ratio (FAR)<sup>1</sup>. For January 1, 1985, he concluded that the value was approximately 17% more than the prior year. He concluded that the figure was \$795.45 per sq. ft. of land and \$79.55 per sq. ft. of FAR. For January 1, 1986, he reached a

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<sup>1</sup>This refers to floor area above ground.

value of \$831.61 per sq. ft. of land and \$83.16 per sq. ft. of FAR. For January 1, 1987, the witness concluded that the estimated market value of petitioner's lot was \$885.84 per sq. ft. of land and \$88.58 per sq. ft. of FAR. In each case, the witness concluded that the value was depressed because of the size and depth of the subject. If the subject were of typical size and depth, according to the witness, the values would have been for each of the years as follows: \$1,016.40 per sq. ft. for 1984; for 1985, \$1,192.58 per sq. ft.; for 1986 \$1,246.79 per sq. ft.; and \$1,328.10 per sq. ft. of land for 1987. The total estimates of the land value of the property found by petitioner's expert reflect consideration of the property's excessive size and depth, its location and the dates of the comparable sales.

17. The expert allocated \$5,000,000 to the value of the improvement for each tax year. The witness felt that some interim use might be made of the property as some buyers of comparable properties had retained the building. Although the value of the improvement would be the same under Mr. Reynolds' estimates, the percent of market value of the building decreases in relationship to the land value each tax year.

18. Since the assessments made by the District are allocated between land and improvements, Mr. Reynolds estimated what he called "equalization value" between land and improvements. He pointed out the fact that the four nearest corner lots to the subject are assessed at a value higher than

non-corner lots. The assessments used by the District in the area were \$410.00 per sq. ft. of land for corner lots for tax years, 1985 and 1986; and \$380.00 per sq. ft. for non-corner lots. For tax years 1987 and 1988, land was assessed at approximately \$550.00 per sq. ft. for corner-lots, and at \$500.00 per sq. ft. for non-corner lots. The witness accepted the District's assessed value of the land for the subject at 67% of the value applied to typical non-corner lots across the street from the subject. It was the expert's opinion that the reduction for unusual depth of 10% and the reduction for unusual size of 23% applied by the District was appropriate. It was the opinion of petitioner's expert that the land assessments for the subject were in equalization with the properties in the area.

19. Mr. Reynolds considered separately whether the improvements were in equalization with the assessments for other improved real property. The witness compared the property with three others having similar uses in various parts of the city. These properties were located in N.E. and S.E. In spite of their locational differences, the witness considered the properties because they have a similar use, (i.e. printing). There was a substantial difference between the assessed values per sq. ft. of the buildings examined. Therefore, the witness considered other properties which had a substantially equal amount of unfinished space and finished office space. Such buildings had a wide variety of uses,

including storage, carbarn, telephone company and department stores. These buildings were also located in various parts of the city including N.W., N.E. and S.E. The witness calculated the weighted average of the assessments for all of these properties. He decided to give twice as much weight to the properties which were used for printing than he did for those in the second group. In other words, he counted the properties used for printing twice and the others once in arriving at an average of \$8.15 per sq. ft. of building area. The reason for the double count as opposed to some other multiple was not adequately explained. No consideration was given by the witness to the physical condition and structure of the buildings nor locational differences in arriving at \$10.00 as the appropriate building assessment rate for the subject by the exercise described. By multiplying this figure by the 513,484 square feet of the building, except the parking area, the expert arrived at a value of \$5,134,840 as the appropriate assessment for the improvements. A separate calculation was made by the witness for the parking garage of the subject. He undertook to compare this part of the subject property to warehouses and a nearby parking garage. Warehouses and parking garages reviewed by this witness were assessed at between \$.01 and \$2.80 per square foot. The witness determined again an average for the facilities. The witness then selected a 50% negative adjustment factor for the Post building because the structure is not enclosed and has no

plumbing and heating as the other properties did. Again, the magnitude of the adjustment factor was not fully explained. The witness determined an average assessment for the properties reviewed. From this, he estimated the rate for the subject which he felt would bring it in equalization during the four year period to be \$1.25. Multiplying \$1.25 by the number of square feet in the garage, he came to a value of \$30,719.00 which he added to the value indicated for the rest of the building (\$5,134,840) for assessment purposes. For convenience, the total figure was rounded upward to \$5,165,605.

20. The witness outlined the assessments for office properties nearby. However, he admitted that the buildings were not similar to the subject and that they do not indicate a proper assessment for the subject. Dividing the square foot of building area for each of the buildings by the total assessment, the witness reached the assessment per square foot of building area. He felt that these figures for these nearby office buildings were supportive of his conclusions.

21. There is a recognized approach for determining the fair market value of the building. The method is to value the land as if vacant and then value the total property. The land value is then subtracted from the total value. The residual is considered to be the value of the building.

22. The witness indicated that all of the properties across the street and adjacent to the subject are

assessed at less than fair market value. However, the witness had not appraised nor determined the fair market value of the buildings. He indicated that he would not advise anyone to rely on his study to support that proposition. He had not inspected any of the buildings in the last ten years. Mr. Reynolds candidly admitted that he could not translate into a percentage the relationship of the assessment of nearby properties to the fair market value of the land and the improvements. When asked what percent of sales price the assessed values of the buildings which sold represented, the witness responded probably 70%. However, he stated that he could not pick a specific percentage because it would vary. For the relationship that the subject's assessment bore to similar structures, the petitioner's expert referred again to the comparisons made between the building used for printing and other properties similar in terms of space used for storage, warehouses and parking garages which he used to determine the assessed value of the improvement.

23. Mr. Troy Davis works for the Department of Finance and Revenue. He has been a commercial real estate assessor for ten years. He did the 1986 assessment. He used a mass appraisal technique which correlates the three approaches to value. The cost approach is the most valid when improvements are new, and there is little obsolescence. The petitioner's building was built sometime ago. It is not the highest and best use of the land. The cost approach was

not deemed appropriate to value the subject. The income approach was rejected by the District's assessor because the property is owner occupied. It is also a special use property. The type of information necessary to determine value by the income approach is not available under the circumstances. Mr. Davis stated that he looked at the property in as many ways as possible in an effort to obtain accuracy and equalization. He examined downtown office sales as one way of justifying the assessment. He was satisfied that the real value of this property was in the land. He attempted to equalize it with all properties in the Central Business District, and he was satisfied that he had done so. The land allocation was based on a 6.7 developed FAR. Mr. Davis' calculations were based upon the erroneous floor areas figures. In examining the matter again, Mr. Davis was of the view that the market value is not dependent on the gross building area.

24. The assessment proposed for 1986 by Mr. Davis is the same as Mr. Klugel proposed in 1985. Mr. Klugel instructed Mr. Davis to use the same method and to make the same allocations. Had Mr. Davis redone the valuation rather than following Mr. Klugel's instructions, he would have made a different allocation of 95% to the land. It was his opinion that the land was worth \$600 to \$700 per sq. ft., and the building value was worth a nominal sum. This opinion is based upon the highest and best use of the property.

25. Mr. Davis used \$30.00 per sq. ft. of FAR for the land component of petitioner's land. Mr. Davis adjusted by 25% (upward) the \$30.00 figure because the property is a certain size. Rounded he reached \$38.00 per sq. ft. of land as his value. For the corner lots, a 10% adjustment was made. The witness knew that the \$477.00 per sq. ft. was fully supportable. Mr. Davis examined land sales within 2 1/2 blocks of the subject which sold in the high range of \$1014.16. Mr. Davis applied the building residual technique in determining the value of the building. By this technique, first the total value was determined. The land value was determined and deducted from the total to arrive at the value of the building. Mr. Davis determined that the value of the land exceeded the total assessed value for the property. Mr. Davis used a number of units of comparison (e.g. total value per sq. ft. of land area and value per sq. ft. of gross finished area). The major point of comparison used by assessor was the total assessment divided by the land area.

26. Robert Klugel is the Chief Standards and Review of the Department of Finance and Revenue. His duty is to value properties for tax purposes and to assure equalization of such properties. The department's efforts are directed towards achieving actual market values and equalization. The goal of equalization is to achieve equal treatment and equal sharing of the tax burden by property owners. According to Mr. Klugel, the assessment is based upon and refers to the

entire property. An allocation is made between the land and the improvement as required by law.

27. The District uses a mass appraisal technique. This is a method utilized by taxing jurisdictions to estimate the value of a multitude of properties in a given class by comparing the physical and other characteristics with indicators of value. The final value reached is compared to the class. The mass assessment technique utilizes all downtown land sales and makes adjustments to arrive at basic locational rates. Additions and subtractions are made for certain other factors (e.g. corner lots, inside lots, alleys). This methodology, properly used, leads to equalization. Other adjustments which the assessor deems applicable are made also. Studies are conducted by the Standards and Review which receives all sales transactions recorded. Mr. Robert L. Klugel was ultimately responsible for all challenged assessments in this case and for the equalization of assessments.

28. In 1983 Standards and Revenue established land patterns for assessors to use throughout the city. When they began there was little in the file to review. There was no indication as to how values had been determined previously. In 1985, the Department decided to review office buildings and hotels throughout the city. They assigned a value to the properties for 1985. The subject property was not intended as one to be reviewed. Sale transfers pertinent for

consideration with this property were not studied until after suit was filed.

29. Mr. Klugel's concern and the concern of the Department of Finance and Revenue is for equalization, i.e. that each property bears its fair share of the financial burden of the District government. The mass appraisal technique is designed to do that. This technique utilizes standard methodology which employs known indicators of value and allows for statistical testing for verification. Respondent's Exhibits J and K illustrate the operation of the mass appraisal technique and its effect on equalization. These exhibits detail commercial land sales in the downtown area of the District (Neighborhood 10). For each listed property the following information is shown: address, zoning, FAR (permissible density), sale date, sale price, square foot of land area, sales price per point of FAR, and sales price per square foot. The sales prices per square foot and per point of FAR are known indicators of value which can be employed meaningfully, fairly, and anonymously, in assessing large numbers of properties. This methodology does not compare one property with another property. Instead, it uses known indicators of value of all properties to arrive at equitable assessments.

30. The effectiveness of the mass appraisal technique is tested through assessment/sales ratio studies which compare the assessed valuations of certain real property

with sales of those properties which were made close to the valuation date for the tax years involved. Mr. Klugel made assessment/sales ratio studies of all office building properties in Neighborhood 10, comparing sales made during calendar years 1984, 1985, 1986 and 1987 with finalized assessments for tax years 1985, 1986, 1987 and 1988. Since the valuation date for tax year 1985 is January 1, 1984, sales made during calendar year 1984 would be the closest to the valuation date. The assessments used were those which had been finalized by the Board of Equalization and Review. Office building properties are appropriate comparable sales for the subject as evidence indicated that the highest and best use of the subject property is an office building. The average assessment/sales ratios were as follows: tax year 1985, 72.4 percent; tax year 1986, 64.9 percent; tax year 1987, 68.1 percent; and tax year 1988, 70.1 percent. (See Respondent's Exhibit G).

The ratios were prepared for all sales recorded. The sales in this study are compared against the assessment for the property after action by the Board of Equalization and Review. Adjustments in the assessments may have been made by the Board. The Department is required to determine how far from 100% of market value they were in estimating fair market value. Respondent's exhibit G was prepared in November 1988. Some of the sales contained in this report are for properties having improvements of nominal value like the subject. Sales

in the Central Business District are included.

31. The Post introduced extensive assessment/sales ratio studies also. (Petitioner's Exhibits LLLLLL through PPPP) which were published in the D.C. Register for tax year 1985 (31 D.C. Reg. 3115, June 22, 1984); 1986 (32 D.C. Reg. 2649, May 10, 1985); tax year 1987 (33 D.C. Reg. 3590; June 13, 1986); and tax year 1988 (35 D.C. Reg. 3410, May 6, 1988). These studies compare "preliminary [proposed] assessments" for tax years 1985 through 1988 with sales which occurred in calendar years 1983 through 1986. Sales occurring between January 1, 1983 and December 31, 1983, are compared with tax year 1985. Since the assessments are proposed, and not finalized by the Board, not surprisingly the median (middle) ratios are higher than the average assessment sales ratios for "finalized" assessments contained in Respondent's Exhibit G. For tax year 1985, 42 sales of commercial properties in Neighborhood 10 resulted in a median ratio of 90.7 percent; 38 sales of vacant land in Neighborhood 10 resulted in a median ratio of 78.4 percent. Similarly, for tax years 1986, 1987 and 1988 the results were as follows for Neighborhood 10:

	<u>Number Sales</u>	<u>Median Ratio</u>
Tax Year 1986	29 Commercial	89.7%
	33 Vacant land	68.3%
Tax Year 1987	16 Commercial	80.4%
	56 Vacant land	97.1%
Tax Year 1988	35 Commercial	84.4%
	59 Vacant land	77.8%

These published studies cover every neighborhood in the city

and contain separate categories for single-family residential, condominium, and multi-family, as well as the aforementioned commercial and vacant land categories. The assessment/sales ratio studies are conducted, prepared and published in an effort to achieve equity in assessments through assessment uniformity.

#### Conclusions of Law

Petitioner seeks relief under Constitutional and equal protection principles based on the claim that the assessments for the improvements were systemically disproportionately assessed. This is the basis for petitioner's claim that it is entitled to attorney's fees and costs pursuant to 42 U.S.C. §1983. Petitioner also seeks expert witness fees and architectural expenses as a part of the cost in connection with the §1983 claim. Petitioner has requested injunctive relief against future assessments of the nature of those complained of.

This Court has concurrent jurisdiction with Federal Courts to entertain actions brought pursuant to 42 U.S.C. 1983. See Arkansas Writer's Project, Inc. v. Ragland, 481, U.S. 221 (1987). Whether a state court is required to exercise jurisdiction in such cases is not clear. Id. at 234. Before the Court disposes of the §1983 claims on the merits, it should be satisfied such claims are an appropriate part of the action challenging the claimed over assessment in taxes.

The Civil Rights Act of 1871, was enacted to secure for the emancipated slaves and others the rights guaranteed by the newly ratified Fourteenth Amendment of which 42 U.S.C. §1983 is a part, (known as the Ku Klux Klan). The statute states in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom or usage of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

The essential elements of a section 1983 claim are that the conduct complained of was engaged in under color of law and that such conduct subjected petitioner to a deprivation of rights secured by the Constitution and laws of the United States. Obviously, the first element for a §1983 claim is present in this case. It is undisputed that the assessments were under color of law. However, the second essential requirement to pursuit such a cause has not been established.

The assessment and collection of taxes is a government function which requires the use of imprecise measures of valuation. In recognition of imprecision accompanying the process, an elaborate appellate mechanism is available to correct the errors and excesses of the tax assessor. The process of assessing, levying and collecting

taxes is so important that Congress has prohibited the Federal Courts from issuing an injunction which would interfere with the state's collection of taxes. See 28 U.S.C. §1341. A similar provision of the D.C. Code bars the issuance of an injunction against the assessment and collection of any taxes by the District of Columbia or its agents. D.C. Code §3307 (1981). An exception has been acknowledged where the complainant shows, in addition to the illegality, that there exist special and extraordinary circumstances sufficient to bring the case within some area of equitable jurisprudence. See District of Columbia v. Green, 310 A.2d 848, 852 (D.C. 1973) citing Miller v. Standard Nut Margarine Co., 284 U.S. 498, 509, 52 S. Ct. 260, 263, 76 L.Ed. 422 (1932). The D.C. Code provisions and its Federal counterparts are intended to prevent state governments and their equivalents from being impeded in any manner in the all important revenue-collection process. These statutes leave to the appeals process redress for an aggrieved taxpayer.

There is no showing that the administrative and legal remedies are Constitutionally inadequate to afford relief for any over- assessment. Such remedies have been deemed to satisfy any Constitutional claims of deprivation of property, although available only after the deprivation has occurred. See Parratt v. Taylor, 451 U.S. 527, 544 (1981). The fact that the remedies available do not afford relief as extensive as that provided by §1983 does not render the

remedies Constitutionally deficient. Id.; C.F. Rosewell v. LaSalle Bank, 450 U.S. 503 (1981). An action pursuant to 48 U.S.C. §1983 alleging Constitutional violations in state tax matters falls within the scope of the anti-injunction statute. It has been held that basing a complaint upon an alleged violation of civil rights or of the Federal Constitution will not avoid the prohibition contained in 28 U.S.C. §1341. Hickman v. Wugick, 488 F.2d 875, 876 (2d. Cir. 1973); Huber Pontiac, Inc. v. Whitler, 585, F.2d 817, 819 (7th Cir. 1978); Gray v. Morgan, 371 F.2d 172, 175 (7th Cir. 1966); Brooks v. Nance, 801 F.2d 1237, 1239 (10th Cir. 1986); King v. Sloane, 545 F.2d 7,8 (6th Cir. 1976); Mandel v. Hutchinson, 494 F.2d 364, 366 (Cir. 1974). The broad restriction on judicial interference with collection of taxes also extends to and bars declaratory relief. Brooks v. Nance, 801 F.2d at 1239; California v. Grace Brethern Church, 457 U.S. 408 (1982). Suits for damages are barred as well. Brooks v. Nance, 801 F.2d at 1239; Marvin F. Poer & Co. v. Counties of Aleded, 725 F.2d 1234, 1236 (Cir. 1984). The thrust of such statutes prohibiting interference in the tax area, even for alleged Constitutional reasons, defers redress to the administrative and appellate process established for that purpose.

Moreover, petitioner's proof has failed to establish that respondent engaged in a policy designed intentionally to deny petitioner or members of a specific group of which petitioner is a member of equal protection of the law. What

is alleged and established is that errors may have been made during the tax assessment process. However, mere errors in judgment by public officials will not support a claim of discriminatory treatment. The good faith of government officials and the validity of their actions are presumed, and when assailed, the burden of proof is upon the complaining party. Sunday Lake Iron Co. v. Wakefield, 247 U.S. 350, 353 (1918); Charleston Assn' v. Alderson, 324 U.S. 182, 191 (1945); Snowden v. Hughes, 321 U.S. 1, 8-11 (1944). Petitioner must show that it was the victim of intentional discrimination even where arbitrary and capricious administration of a statute is alleged. E. & T. Realty v. Strickland, 830 F.2d 1107, 1114 (11th Cir. 1987). A standard which would allow any discrimination in the application of tax provisions of the D.C. Code to give rise to a Constitutional claim would subject the essential taxing power of the District to intolerable supervision. This would be contrary to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment and §1983 were intended to assure. See Ohio Oil Co. v. Conway, 281 U.S. 146, 159 (1930). To hold the District liable under §1983 for the actions of the tax assessors, there must be a finding not only that the District employed the tortfeasor, but also that the District had an "official policy" which caused the assessor to appraise petitioner's property in the manner that occurred. The doctrine of

respondeat superior, standing alone, is insufficient. Monell v. New York City Department of Social Services, 436 U.S. at 692, 694.

Remedies for asserting rights to challenge tax assessments may not be circumvented by invoking §1983. See Spencer v. South Carolina, 316 S.E. 2d 386, 389 (S. C. 1984).

A claim under §1983 can not be utilized simply to recover attorney fees and costs not recoverable by the statutory remedy. This was not the purpose intended when §1983 was enacted. Brown v. Hornbeck, 458 A.2d 900, 902 (Md. Sp. App. 1983). Petitioners have failed to demonstrate their entitlement to relief under §1983 legally or factually in this case. Therefore, any claim to relief under this statute must be denied.

In these consolidated appeals, the petitioner concedes that its property has been assessed substantially below its estimated market value. For tax years 1985, 1986, 1987, and 1988 the assessed value for petitioner's property was retained at \$52,440,000 by the District. Petitioner's property had an estimated fair market value during those years, according to petitioner's expert, of \$75,000,000 in 1985; \$88,000,000 in 1986; \$92,000,000 in 1987; and \$98,000,000 in 1988. Petitioner's property was valued by the District during those years at 69.92% of market value in 1985; 59.59% of market value in 1986; 57% of market value in 1987; 53.51% of market value in 1988.

Under present law, the assessed value for all real property is required to be the estimated market value of the property as of January 1st of the year preceding the tax year. D.C. Code §47-820(a)(1981). The basis for the petitioner's challenge to the assessment is that the value allocated to the improvement by the District was assessed and taxed at a substantially higher percent of value than the improvements of other properties of the same class. Petitioner's expert witness was of the opinion that the building assessment for the subject property should be \$5,165,557 or \$9.60 per sq. ft. for the building and the parking lot combined. Petitioner's expert arrived at the assessed value for the subject improvement by examining the assessments of other properties. For the major improvement, he selected three properties which he deemed to be comparable. He could not utilize what he considered the three prime comparables because their rates of assessments were so disparate. He considered other properties which had approximately equal amounts of unfinished space and finished office space. The witness gave most consideration to three properties, Washington Times, Security Storage and Garfinckels. These properties, with exception of the Washington Times, are not of similar use. They also have locational differences. The only two points of comparison were materials and physical condition. Thus, no consideration is given to other factors that influence value as specifically set forth in the statute. The range of the assessed values

for the three properties was quite broad. However, the average was \$9.63. It appears that the witness rounded upward to get \$10.00 per square foot as the appropriate rate for assessing of the subject. This exercise does not translate into estimated market value, which is the basis for assessing real property in the District of Columbia.

When the assessments for the other properties were made, presumably, the District gave consideration to various factors, including sales information on similar properties, mortgage, other financial considerations, reproduction cost less accrued appreciation, condition, zoning, government imposed restrictions, income potential if any, and other factors bearing on the subject. The foregoing factors are required to be considered by the District in determining assessed value. D.C. Code §47-820. Geographical, physical and financial conditions of different properties affect values. That is the reason for the requirement that the many factors listed be considered by the District in determining value. The expert witnesses assumed without further explanation that the three properties selected should have comparable assessments with the subject. While the Washington Times engaged in a similar business, without an inspection or other information regarding characteristics of the building, the expert's opinion that the two are comparable is unsupported. The limited factors considered by the expert in determining comparability for purposes of utilizing the assessed values to

apply to the subject is undermined by the absence of sufficient points of comparability and reasonable adjustments for any differences.

Petitioner's expert attempts to compare one assessment to another in a manner similar to the comparable sales approach to value. The comparable sales approach to value is a recognized approach to value in which recent sales of similar properties are compared and in which the price is adjusted to reflect dissimilarities with the subject. District of Columbia v. Washington Sheraton Corp., 499 A.2d 109, 113 (D.C. 1985). No authority has been suggested for the comparison of one assessment to another to determine the value at which a property should be assessed. Assuming the utility of such an approach, at the very least reasonable adjustments would have to be made by the appraiser for the numerous points of differences. See Id. Comparability entails similarities in size, height, structural framing, materials, land area, general location, condition, financial and other areas with adjustments for dissimilarities. It is not a reliable approach where adjustments for dissimilarities are numerous. See District of Columbia v. Washington Sheraton Corp., 499 A.2d at 113. Petitioner's expert's comparable assessment approach (if valid at all) is of doubtful utility absent true comparability and appropriate adjustments. Therefore, the Court is not persuaded by the expert's determination in this regard. For the foregoing reasons, the opinion of this issue

must be rejected. An expert's testimony may be rejected even when uncontradicted under these circumstances. Rock Creek Plaza Woodner, Ltd. v. District of Columbia, 466 A.2d 857, 859 (D.C. 1983).

A similar determination of value was made for the parking area for the subject by the expert. This determination was based upon an examination of a warehouse and parking garages which were not similar in location. Although the expert contended that the properties were structurally similar, the expert had to make a 50% adjustment because of marked dissimilarities. The 50% discount factor was not explained adequately. Nevertheless, the adjustment was made, and petitioner's expert determined that the area of the garage for the subject should be valued at \$1.03 per sq. ft. Adding the totals together for the building and the garage, he arrived at a value at which he concluded petitioner's property should be assessed.

The differences in the assessed values between properties does not measure the extent to which the properties are in equalization or not in equalization. To make that determination, it would be necessary to know the extent to which the assessed values differ from the estimated market values of the properties. Petitioner's expert was unable to provide with any reasonable degree of certainty an opinion as to the difference between the assessed value of other properties located near or adjacent to the subject and their

market values. The witness stated that if forced to pick a number, he would pick 70%. He also indicated that he would not want to pick a number because the percentages would vary. Although the witness was of the opinion that properties in the area might sell within the range of other properties which had sold in the area, he had made no inspection or appraisals of other properties and was unable to make such a determination.

Real property taxes must be related as nearly as possible to the value of a taxpayer's property as compared to the value of others in order to assure equalization. See District of Columbia v. Green, 310 A.2d 848, 855 (D.C. 1973). The ratio of the value of the taxpayer's property should parallel the amount he pays compared to the total taxes paid by all property owners. Id. Thus, equalization is considered in terms of value. The expert's opinion about equalization in this case is not based upon the actual value of the subject as related to the value of other properties. Rather, it is based upon a comparison of the subject property's assessed value to the assessed value of other properties. If it could be demonstrated that the District assessed petitioner's property at a percentage of market value different than other properties of the same class (e.g. by using a different debasement factor), this would amount to a violation of equal protection clause. Id. However, petitioner was unable to demonstrate that properties falling within the same class as petitioner's are being assessed differently. It is

unquestionable that the District cannot differentiate within a single class. District of Columbia v. Green, 310 A.2d at 857. That the District has so treated the taxpayer in this case has not been demonstrated by the evidence. The actual values of true comparables is unknown. Thus, the difference, if any, between the assessed value and the actual value of other properties as compared with the difference between the actual and assessed value for the subject cannot be determined.

Assessment/sales ratio studies can reflect the disparity and unequal tax burdens on properties within the same market value. See Green v. District of Columbia, 310 A.2d at 856. By dividing the actual fair market value (as determined by an arms-length sale of a property) by the assessed value of the property, assessment/sales ratio is developed. The differences between the two values is known as the co-efficient of dispersion. The higher the co-efficient of dispersion, the greater the difference between the assessed and the fair market value. The effectiveness of the assessor's mass appraisal technique is tested through assessment/sales ratio studies which compare the assessed values of properties with sales in close proximity to the valuation date. The studies are mandated by D.C. Code §47-823(c)(1981). We have the actual fair market value of petitioner's property for each of the tax years and the value as assessed by the District. An assessment/sales ratio can be

developed and a co-efficient of dispersion can be determined to ascertain the extent to which petitioner's property is equalized with others. Considering the estimated fair market value of the subject as determined by petitioner's expert and the published assessment/sales ratio studies (as determined before adjustments by the Board of Equalization and Review), petitioner appears to have been treated as favorably or more favorably than others in the study. It cannot be said that petitioner has been required to bear an unequal burden for taxes. Not only does it appear that he has not suffered unequal treatment in his property, it appears that he was more favorably treated than other taxpayers.

Petitioner's contention that it has been treated differently than other taxpayers is based solely upon the assessed value of the improvement, (rather than the whole property) as determined by the District. According to petitioner's expert, the value of the building is nominal as compared with the value of the land. The District's assessor supports this position. To the extent that the building should be valued at \$5,000,000, as suggested by petitioner's expert, the allocation made by the District to the improvement is in error. Petitioner maintains that the improvements are required to be assessed separately in this jurisdiction. In taking the position, petitioner relies on the case of 1111 19th Street Associates v. District of Columbia, 521 A.2d 260 (D.C. 1987). In that case, the Court of Appeals affirmed the

trial court's decision holding that land and improvements are severable elements of real property for purposes of assessment such that either could be deemed omitted property under D.C. Code §47-831. 1111 19th Street Associates v. District of Columbia, 521 A.2d 260, 268 (D.C. 1987). In 19th Street Associates, the Court was persuaded by various sections of the statute which require an allocation between land and improvements. The statute requires that the property be assessed with the value of the land and improvements identified separately. D.C. Code §47-821(a)(1981). It is also required that the Mayor compile a list of the preliminary assessments specifying the values of the land and the improvements. D.C. Code §47-823(1981). The fact that the Court relied upon these provisions in support of the decision that the District's failure to assign a value to an improvement could be treated under the provision of the Code covering omitted properties, does not necessarily lead to the conclusion that the improper allocation of value between land and improvements is grounds to challenge the taxes even though the overall value might be correct or substantially understated, as in this case. It must be considered that the tax levy is made each year on the "real property". D.C. Code §47-811. The assessed value of real property is the estimated market value as of the valuation date. D.C. Code §47-820(a). "Real property" is defined in the Code as real estate identified according to lot and square together with any

improvements thereon D.C. Code §47-802(1)(1981). Thus, taxes are imposed on the estimated market value of the whole. The property should be considered as a unit for purposes of determining equalization. A taxpayer who seeks reduction of an assessment substantially below fair market value must prove that his share of the tax burden is substantially greater than the share allocated to others generally. See In re Appeals of Kents 2124 Atlantic Avenue, Inc., 166 A.2d 763, 769 (N.J. 1961). If proof is not shown of this fact, then the fact that the assessment of either the land or improvement component might be excessive would not be of consequence. Id. Petitioner has not proved that its share of the tax burden substantially exceeds the share of other taxpayers. To accept petitioner's position would only result in greater preferential treatment than petitioner has already enjoyed.

Petitioner is entitled to a trial de novo in appealing from a real property tax assessment. Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980). Petitioner has the burden of proving the assessments appealed from are incorrect. Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. 1986). Petitioner can meet this burden by showing that the District's valuation for the tax years in question were flawed. Id. The taxpayers are not required to prove the correct value of the property, but need only show the incorrectness of the District's assessment. Id. Petitioner have demonstrated that their property was assessed well below

its estimated fair market value. Therefore, respondent urges the Court to adopt the fair market values found for each tax year by petitioner's expert and increase the assessment. Both the facts and the law are open for consideration in this trial de novo, and the Court can grant the relief to which the party in whose favor it is rendered is entitled. District of Columbia v. Burlington Apartment House Co., 375 A.2d 1052, 1057 (D.C. 1977)(en banc). The Court can cancel, reduce or increase the assessment. Rock Creek Plaza-Woodner Ltd. v. District of Columbia, 466 A.2d 857, 859, n.1. D.C. Code §47-3303 (1981). Respondent requests the Court to increase the assessment equal to the estimated fair market value as determined by petitioner's expert. The problem with affording such relief in this case is that respondent's sales/ratio studies have shown that property in the same area as petitioner was being assessed at less than market value in spite of the statutory mandate. The values assigned by the District to petitioner's property is in the range of the others, particularly for tax years 1985 and 1986. Requiring reassessment of petitioner's property based on the estimated market values shown at trial would result in different treatment for petitioner's property than those shown in respondent's study. The ratio of total value to assessment, although below the average for other properties, is within the range indicated by the studies. The values should not be disturbed without regard to this evidence.

There is a flaw in the allocation between land and improvements of the subject. The District's witness agreed that the land value of the property was far below that which was determined. The District suggested a nominal value for the improvement. The petitioner's witness supports a value of \$5,165,605 for the improvement as a nominal amount. A nominal amount should be allocated to the improvement. Under the circumstances, the Court has a number of options to consider the Court can cancel the District's assessment leaving in place the last one carried out for statute. Brisker v. District of Columbia, 510 A.2d 1037, 1040 (D.C. 1986). It could also reopen the case and obtain its own witness to make an appropriate allocation. Id. There is sufficient information to make an allocation to the improvement based on its nominal value. Petitioner's witness determined that the land is valued at \$5,165,605. Respondent's witness conceded at trial that in 1986 he would have determined the value of the improvement to be about 5% of the total value, or he would have allocated 95% of the total to the land if he had not been instructed to repeat the prior value and allocation. The improvement value determined by petitioner's expert is appropriate. Under the circumstances it is appropriate to allocate \$5,165,605 as the improvement component and to allocate the remaining value to the land component. This valuation continues to result in an estimated land value below the property's estimated fair market value. It also retains

the total value of the subject in the same relationship to other properties as originally proposed by the District.

In view of the disposition of the issues, it is not necessary to reach the claims for attorney's fees and costs made by the petitioner under 42 U.S.C. §1983. It should be observed however, that the facts demonstrate that there were no intentional discriminatory actions on the part of the government assessors in assessing petitioner's property. Such relief is reserved for intentional discriminatory conduct not present here.

For the foregoing reasons, it is by the Court this 28<sup>th</sup> day of July, 1990,

**ORDERED, ADJUDGED and DECREED** as follows:

1. Petitioner's request for a reduction in the assessed value of its property hereby is denied.
2. Petitioner's request for an order declaring the procedures and methods used by the District arbitrary, capricious, erroneous and unlawful hereby is denied.
3. Petitioner's request for injunctive relief hereby is denied.
4. Petitioner's request for a refund hereby is denied.
5. Petitioner's requests for costs and attorney's fees hereby are denied.
6. It appearing that a different allocation between the value of the land and improvements of petitioner's

property is warranted, the District of Columbia is ordered to change its assessment records for the subject property for tax year 1985, 1986, 1987 and 1988 to reflect that \$5,165,605 allocated to the improvement for each year and the remaining portion of the \$52,440,000 shall be assigned to the land value.

7. Respondent's requests for a reassessment of the property, a reduction of taxes and a refund hereby are denied.

J U D G E  
Signed In Chambers

Copies mailed this \_\_\_\_\_ day of July, 1990, to each of the following:

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*Harold L. Thomas, Director*  
*Dept. Finance & Revenue*

*R. Starfield*  
*7/20/90*

*\* Signed at 1:50 PM. - 7/20/90*