



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 property.

c. Petitioners are obligated to pay all real estate taxes assessed against the subject property.

d. The Respondent is a municipal corporation created by the United States Congress Section 1-101 of the District of Columbia Code.

e. On or about March 1, 1987, Petitioners received a notice of assessment dated February 27, 1987, a copy of which is attached to the Petition in Tax Docket 4083-88 as Exhibit "A", incorporated by reference and made a part hereof, stating that the assessment on the subject property for Tax Year 1988 was \$43,031,000.

f. The appeal to the Board of Equalization and Review was timely filed on April 15, 1987, and a copy thereof is attached to the Petition in Tax Docket 4083-88 as Exhibit "B", incorporated by reference and made a part hereof. Oral hearing was held before the Board of Equalization and Review and by decision dated May 6, 1987, a copy of which is attached to the Petition in Tax Docket 4083-88 as Exhibit "C", incorporated by reference and made a part hereof, notified Petitioners of its decision to sustain the assessment.

g. On or about March 1, 1988, Petitioners received a notice of assessment dated February 27, 1988, Petitioners received a notice of assessment dated February 27, 1988, a copy of which is attached to the Petition in Tax Docket 4202-89 as Exhibit "A", incorporated by reference and made a part hereof, stating that the assessment on the subject property for Tax Year 1989 was \$43,031,000.

h. The appeal to the Board of Equalization and Review was timely filed on April 15, 1988, and a copy thereof is attached to the Petition in Tax Docket 4202-89 as Exhibit "B", incorporated by reference and made a part

hereof. Oral hearing was held before the Board of Equalization and Review and by decision dated May 21, 1988, a copy of which is attached to the Petition in Tax Docket 4202-89 as Exhibit "C", incorporated by reference and made a part hereof, notified Petitioners of its decision to sustain the assessment.

i. The taxes and assessment in controversy are real estate taxes and assessment for Tax Year 1988 in the following amounts:

Total Assessment:	\$43,031,000.00
Total Taxes:	\$ 873,529.30

j. The Tax Year 1988 taxes in the amount of \$873,529.30 have been paid in full. First half taxes in the amount of \$436,764.65 were timely paid on September 15, 1987. Second half taxes in the amount of \$436,764.65, were timely paid on or before March 31, 1988.

k. The taxes and assessment in controversy are also real estate taxes and assessment for Tax Year 1989 in the following amounts:

Total Assessment:	\$43,031,000.00
Total Taxes:	\$ 873,529.30

l. The Tax Year 1989 taxes in the amount of \$873,529.30 have been paid in full. First half taxes in the amount of \$436,764.65 were timely paid on September 15, 1988. Second half taxes in the amount of \$436,764.65, were timely paid on March 31, 1989.

2. The improvements to said lot 866 consist of an office building furnishing also retail, parking, storage and service station areas. It is part of the monumental L'Enfant Plaza Complex in Southwest Washington and is called the "North Building". The owner of the "North Building", The L'Enfant Plaza Corporation, also owns the adjacent Center Building and the Hotel and East Building which along with the independently owned South Building make up the complex whose most prominent route of access is the colorful

L'Enfant Promenade from Independence Avenue.

3. The challenged assessments for the tax years 1988 and 1989 were made by Troy R. Davis, Commercial Real Estate Assessor, District of Columbia Department of Finance and Revenue. They amounted to an increased assessment of approximately 18.5 million dollars over the judgment of Judge John Fauntleroy for tax year 1987 and over the assessors own 1987 assessment in the sum of nearly 9 million dollars.

4. These cases are the fourth and fifth challenges made to assessments in respect of the subject premises for the last five years.

(a) For 1985 the property was assessed at \$33,585,000. This was reduced by Judge Iraline Barnes (Tax Docket 3650-88) to \$20,700,000.

(b) For 1986 the property was assessed at \$33,585,000. This was reduced by Judge John Fauntleroy (Tax Docket 3806-86) to \$23,200,000.

(c) For 1987 the property was assessed at \$34,082,000. This was reduced by Judge John Fauntleroy (Tax Docket 3941-87) to \$24,500,000.

None of these tax division cases were further appealed.

5. Mr. Davis examined rent rolls which included pass through data and published and unpublished statistical data as well as other information supplied by the owner. He rejected the owners figures as too high when compared with those of typical office buildings. From the general data he abstracted what he considered

to be appropriate factors. For gross income he chose \$22.00 a rentable square foot. For vacancy and credit loss estimate he selected 5 percent; for operating expenses, \$5.50 a square foot of rentable area. These he multiplied by the net rentable area, 280,262 square feet. As capitalization rate he selected from the upper range of calculations made by the Finance Division .1003. He selected this figure because he estimated an annual increase in value of 5 percent on similar properties. He then proceeded to obtain a capitalization figure from the stabilized net operating income,

(a) for 1988	Income	\$6,165,764
	- Vacancy & Credit	<u>308,288</u>
		\$5,857,476
	- Operating Expenses	<u>\$1,541,441</u>
	Net Operating Income	\$4,316,035
	divided by	
	Capitalization Rate	<u>.10003</u>
		\$43,031,254

(b) for 1985, the same.

These income method figures he compared with studies of office building market data and found them appropriate. This became his assessment for 1988 and 1989.

6. The first issue to be resolved calls for a mixed finding of fact and conclusion of law. Such involve a determination whether Mr. Davis's assessments for tax years 1988 and 1989 amount, in the face of the 1985, 1986, and 1987 decisions of this Court, to assessments made in accordance with law. If the assessments were not bona fide the 1987 assessment of Judge Fauntleroy of \$24,500,000 remains in effect. If the current assessments were bona fide the Court must try the case de novo and itself arrive at

the subject property's fair market value.

This Court finds and concludes that the District's present assessments of \$43,031,000, though a huge increase over the '85, '86 and '87 evaluations, was made in accordance with legal requirements and is not void. In so finding and concluding the Court has considered the manner in which the assessments were made, use of market data, attention to the income method of appraisal and the demeanor of Mr. Davis as a witness. The Court also takes into account the recovery of the taxpayer from the blow caused by the departure of the major tenant, Intelstat, and the need to grant concessions to new lessees. It also has noted that Petitioners expert has estimated the value at 32.5 million dollars for 1988 which may not be as formidable as the new assessments but nevertheless represents a substantial increase over the Courts 1987 figures.

7. Support to the instant challenges to the assessments was offered by the expert testimony of Ryland E. Mitchell III, C.R.E., M.A. Support for the assessment came from the expert testimony of Morris E. James A.S.A. The evaluation of Mr. Mitchell was \$32,500,000 for 1988 and \$34,000,000 for 1989. That of Mr. James was \$42,069,000 for 1988 and \$43,735,000 for 1989. Both used the income and the market data approaches to appraisal but after consideration rejected the cost method.

8. In following the income method of appraisal the central differences between the experts arise in three areas.

(a) There is a variance of approximately one million

dollars in the figure used for operating expenses,

Assessor - \$1,541,441  
Mitchell - \$2,475,000  
James - \$1,472,266

(b) There are differences in capitalization rate

Assessor - .1003  
Mitchell - .11  
James - .1095

(c) There is a difference in the way parking revenue has been accounted.

9. The operating expense variance and the parking issue have a common root. As the District perceives the subject property for real estate tax purposes it is a separate lot improved by a particular structure. To the owner it is a part of a hotel, office building and retail complex consisting of three connected buildings all under his common ownership. The parking is handled by an agreement between the owner and Colonial Parking. Revenues therefore are accounted as received by the Center Building. There is no access except through the Center Building. There is no vehicular access between North Building and the outside. Similarly operating expenses for the complex are paid by the owner. It is not therefore a matter of adding up bills but is a question of allocating out of bills paid the portion which should be attributed to the particular lot.

10. As far as the parking revenue is concerned this arrangement of accounting for it in the Center Building has not been challenged during the litigated years of 1985, 1986, and 1987. Mr. Davis raised no question when he made the 1988 assessment. It

was not raised until this appeal. If the District of Columbia which levies taxes on the Center Building as well as the North Building wishes the parking income apportioned to the North Building let it say so in the future. The Court will not compel such a course in the present appeal.

11. As far as the operating expense variance is concerned the greater the amount, the lower the assessment. The burden is on the appealing taxpayer to offer proof sufficient to overcome the assessment. In respect of the taxpayers generalized figures of operating expense items, the concessions of Mr. Mitchell on cross examination and the testimony of Mr. James, the AOBA/BOMA figures and the Assessor's Averages undermine the petitioners operating expense figures to the extent of \$400,000. The Court finds the petitioners operating expenses elucidated by Mr. Mitchell overstated by \$400,000.

12. The capitalization rates were developed by the experts and the assessor by similar methods, i.e. reference to other sales, data contained in published reports, the Elwood formula and the Band of Investment Technique. The assessor found .1003, Mr. Mitchell .11 and Mr. James .1095. The Court considers the calculations of Mr. James more detailed and reliable and selects the .1095 rate.

13. In summary the Court finds as accurate the figures of Mr. Mitchell with two exceptions,

- (a) It lowers his operating expense by \$400,000; and
- (b) It uses the capitalization rate of .1095.

14. As disclosed by the Income Method the Court finds that the fair market values for 1988 and 1989 are:

1988	1989
\$34,840,000	\$36,850,000

15. In following the market data approach Mr. James estimated value to be

1988	1989
\$42,995,000	\$45,579,000

Mr. Mitchell estimated value to be

1988	1989
\$33,600,000	\$35,000,000

Both experts likewise used the market data approach regarding sales of land only in which they compared sale prices, sale prices per square foot and prices per square foot of FAR. The results were

Mitchell	1988	1989
	\$12,600,000	\$13,500,000
James	1988	1989
	\$17,825,000	\$19,196,000

16. In pursuing the appraiser's calculus analysis was made of a number of 1984, 1985 and 1986 sales. The office building sales ranged from \$113 a rentable square foot to \$225 a rentable square foot. The land only sales ranged from \$333 a square foot to \$650 a square foot and point of FAR from \$32.20 to \$75.96. Unfortunately the only building which could be considered truly comparable was the mirror South Building. Both sides advise that its sale cannot be considered as an arms length comparable sale because it was a sale/leaseback arrangement. As may be judged by the gross disparity between the experts' conclusions the market data approach is of little value except in the furnishing of a

range of values.

17. By reason of the above the Court depends upon the Income Approach and finds the fair market value and the correct appraisal of Lot 866 in Square 387 as of tax year 1988 to be \$34,840,000; and for tax year 1989 to be \$36,850,000; and the correct taxes for 1988 to be \$697,845.20; and for 1989 to be \$738,105.50.

#### CONCLUSIONS OF LAW

1. This Court under Titles 47-825(i) and 47-3303 (1981 ed.) has jurisdiction over the challenges to assessments against subject property for tax years 1988 and 1989.

2. Here the Court repeats finding of fact No. 6, but this time as a conclusion of law. The legal issue arises because of a series of cases where the assessor after reversal by the Board of Equalization and Review or even by the Court, relying on the rubric that assessment is to be made on an annual basis, simply repeated the invalidated assessment for the next year. In such event, it has been decided that the tax division has the discretion if it finds that there had been no valid reassessment to hold over in effect the assessment previously made on appeal. District of Columbia v. Burlington Apartment House Co., (en banc) 375 A.2d 1052 (1977), L'Enfant Properties, Inc. v. District of Columbia, Tax Docket 3650-85, Farragut Limited Partnership v. District of Columbia, Tax Docket 3721-86. Here the Court finds that Mr. Troy Davis followed sufficiently the steps necessary for valid reassessment, Brisker v. District of Columbia, 510 A.2d 1037 (D.C.App. 1986), even though the Court now disagrees with it. The continuation of Judge

Fauntleroy's 1987 assessment is hence not in order and the Court entertains the appeal. Wolf v. District of Columbia, 597 A.2d 1303, (D.C.App. 1991).

3. The Court has the power to affirm, cancel, reduce or increase the assessment, D. C. Code 47-3303 and to evaluate the evidence de novo, and is free to make its own independent evaluation of the evidence. Rock Creek Plaza - Woodner Limited Partnership v. District of Columbia, 466 A.2d 857 (D.C.App. 1983). It may adopt the rationale of one testifying expert over the other or even disregard the conclusions of both but may not arbitrarily reject such expert testimony. District of Columbia v. Washington Sheraton Corporation, 499 A.2d 109 (D.C.App. 1985). In this case the Court,

(a) considered, but following the advise of both experts regarding the Cost Method of appraisal found it unsuitable. Safeway Stores v. District of Columbia, 525 A.2d 207 (D,C.App. 1987);

(b) credited the testimony of Mr. James and the concessions made by Mr. Mitchell on cross-examination to the effect that Petitioners' figures for operating expenses had been overstated by \$400,000;

(c) credited the capitalization rate set by Mr. James: .1095;

(d) credited otherwise the figures of Mr. Mitchell in the Income Approach to the instant appraisal;

(e) reached the evaluations set forth in finding 14 and

17;

(f) found that the sums in Finding 14 are the fair market value for the subject property as define by Title 47-820(a), D. C. Code. Wolf v. District of Columbia, 597 A.2d 1303, (D.C.App. 1991).

The actions taken by the Court were made in accordance with the appropriate statutes including 47-801 et.seq., 9 DCMR 300 et.seq. and the authorities herein above cited. The order follows.

#### ORDER

Upon the findings of fact and conclusions of law made in the case above and upon the Petitions filed herein, as amended, the Stipulations between the parties and upon consideration thereof and the evidence adduced at trial, it is by the Court this 17th day of April, 1992, hereby

1. ORDERED that Respondent be and hereby is, directed to reduce the assessment on Lot 866 in Square 387 for the purposes of District of Columbia real estate taxes for Tax Year 1988 from \$43,031,000 to \$34,840,000.

2. ORDERED that the Respondent cause the assessment record card for Tax Year 1988 on Lot 866 in Square 387 to be altered to reflect this Court's determination that the estimated market value of this property for purposes of the District of Columbia Real property taxation be reduced from \$43,031,000 to \$34,840,000.

3. ORDERED that the correct real estate tax on Lot 866 in Square 387 for Tax Year 1988 is \$697,845.20.

4. ORDERED that the Respondent be and hereby is, directed to refund to Petitioners Tax Year 1987 real estate taxes on Lot 866 in Square 387 in the amount of \$175,684.10 with interest on the first-half taxes of \$87,842.05 from the date of payment on September 15, 1987 to the date of refund, and interest on the second-half taxes of \$87,842.05 from the date of payment on March 31, 1988 to the date of refund, at the rate of six (6) percent per annum, the statutory rate as provided by law.

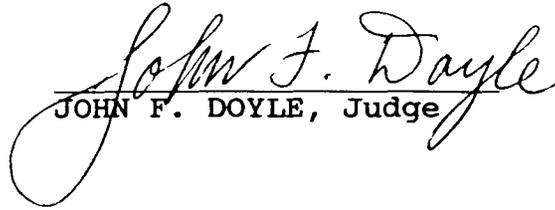
5. ORDERED that the Respondent be and hereby is, directed to reduce the assessment on Lot 866 in Square 387 for purposes of District of Columbia real estate taxes for Tax Year 1989 from \$43,031,000 to \$36,850,000.

6. ORDERED that the Respondent cause the assessment record card for Tax Year 1989 on Lot 866 in Square 387 to be altered to reflect this Court's determination that the estimated market value of this property for purposes of the District of Columbia real property taxation be reduced from \$43,031,000 to \$36,850,000.

7. ORDERED that the correct real estate tax on Lot 866 in Square 387 for Tax Year 1988 is \$738,105.50.

8. ORDERED that the Respondent be and hereby is directed to refund to Petitioners Tax Year 1989 real estate taxes on Lot 866 in Square 387 in the amount of \$135,423.80 with interest on the first-half taxes of \$67,711.90 from the date of payment on September 15, 1988 to the date of refund, and interest on the second-half taxes of \$67,711.90 from the date of payment on March 31, 1989 to the date of refund at the rate of six (6) percent per annum, the

statutory rate as provided by law.

  
JOHN F. DOYLE, Judge

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION FILED  
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L'ENFANT PLAZA PROPERTIES, INC., et al.	:	
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Petitioners	:	Tax Docket Nos. 4083-88
	:	4202-89
v.	:	
	:	
DISTRICT OF COLUMBIA	:	
	:	
Respondent	:	

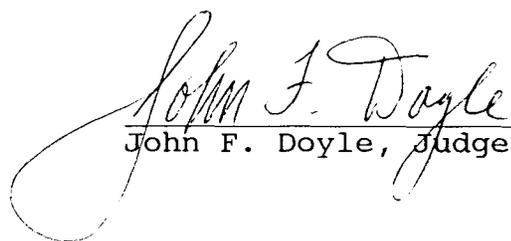
AMENDED ORDER

The Court amends its Order of April 17, 1992 by correcting the clerical mistakes in paragraph 4 and paragraph 7 so that the said paragraphs shall read as follows:

4. ORDERED that the Respondent be and hereby is, directed to refund to Petitioners Tax Year 1988 real estate taxes on Lot 866 in Square 387 in the amount of \$175,684.10 with interest on the first-half taxes of \$87,842.05 from the date of payment on September 15, 1987 to the date of refund, and interest on the second-half taxes of \$87,842.05 from the date of payment on March 31, 1988 to the date of refund, at the rate of six (6) percent per annum, the statutory rate as provided by law.

7. ORDERED that the correct real estate tax on Lot 866 in Square 387 for the Tax Year 1989 is \$738,105.50.

April 22, 1992

  
\_\_\_\_\_  
John F. Doyle, Judge

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