

*Opinion No.
1277*

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DISTRICT OF COLUMBIA
TAX DIVISION

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AUG 18 3 35 PM '89
TAX DIVISION

FILED

WILLIAM B. WOLF, SR. ET AL :
Petitioners :
v. : Tax Docket No. 3714-86
DISTRICT OF COLUMBIA :
Respondent

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER AFFIRMING ASSESSMENT**

This matter came before the Court upon a petition for partial refund of real property taxes for Tax Year 1986 filed by the general partners of MidCity Investment Company, a limited partnership, and the answer of the District of Columbia. Based upon the evidence adduced at trial, and having resolved all questions of credibility, the Court makes the following:

Findings of Fact

1. Petitioners are the general partners of a limited partnership known as MidCity Investment Company. At all times relevant hereto, they owned real property in the District of Columbia described as Lots 2 and 3 in Square 164 improved by the premises known as 1001 Connecticut Avenue, N.W. The office building is located at the corner of Connecticut Avenue and K Street, N.W. above the Farragut North metro station. It consists of twelve floors. The top floor, which is recessed somewhat, holds the air

conditioning and engineer's office. The building was constructed about 1953. According to its owners, it has never been renovated.

2. For tax year 1985 the District's proposed assessment was \$14,620,500, with \$9,149,400 attributable to the land and \$5,471,100 attributable to the building. The Board of Equalization and Review reduced the 1985 assessment to a total of \$13,539,022, maintaining the land value as originally proposed, but reducing the value of the building to \$4,389,622. The decision of the Board for tax year 1985 was not appealed. For tax year 1986, the District of Columbia issued an assessment for the property in amounts identical to those originally proposed for tax year 1985. Petitioners appealed to the Board of Equalization and Review. The Board sustained the proposal. Petitioners paid the tax and timely filed this appeal contesting the Board's decision.

3. The assessment for 1985 was made by Robert L. Klugel, the Chief of the Standards and Review Section of the Department of Finance and Revenue of the District. Troy Davis was the commercial assessor for tax year 1986. To arrive at the proposed assessment for tax year 1986, Mr. Davis used a mass appraisal approach which is used by the assessor's office. In so doing, he considered at least two of the three accepted approaches to value: income and comparable sales. The third approach to value, replacement cost, is not useful in ascertaining the value of the land

component according to the assessor. Therefore, the assessor did not rely upon it. The assessor relied most heavily upon valuation by sales comparisons. To estimate the land value the assessor considered recent sales of land in the area of Connecticut Avenue, west of 15th Street, N.W., which is close to petitioners' property. The properties reviewed by the assessor are listed on the petitioner's exhibit #3. The sales most comparable to the subject include 1124 Connecticut Avenue, N.W. and the lot at Connecticut & M Street, N.W. (Lot 100 in Square 162). Of the remaining sales on the exhibit, the assessor also found those made in 1984 to be most comparable to the subject. The prices for the properties ranged from \$422.63 to \$1194.40 per square foot of land area. Petitioners' property was valued at \$690 per square foot of land area. Further comparisons were made by the assessor between the subject properties and the comparable sales figure on the basis of price per point of floor area ratio (FAR). The estimated value of the subject property at \$69.00/FAR is a conservative estimate in comparison to those reviewed by the appraiser. The assessor's estimate of value took into account differences in the location, size, configuration and other characteristics which make one property more valuable than another. All property owners in the square are similarly assessed except for differences dictated by such features. The subject property is at one of the best commercial locations in the

city. The estimate developed for the land by comparisons of sales is well supported.

4. In estimating the value of the building, the assessor used the comparable sales approach along with the income approach. He analyzed building sales west of 15th Street. Among these were 1250 Connecticut Avenue, 1000 16th Street, N.W. and 1625 K Street, N.W. Like the subject property, each of these properties are older buildings. The Connecticut Avenue property sold for \$156.82 per square foot of finished area; the Sixteenth Street property, for \$75.45 per square foot of finished area; and the K Street property, for \$107.48 per square foot of finished area. The value of the subject property was estimated by the assessor at \$93.53 per square foot of finished area. This figure represents a reasonable and conservative estimate of value in view of other sales and upon review of the indicated value obtained by the income capitalization approach.

5. The assessor obtained from Mr. Klugel, an estimate of the stabilized net income for the property. This number was \$1,797,588. Mr. Klugel obtained the figure by examining the income and expense statements for the subject property for 1983, and earlier years and the income streams for numerous other office buildings in the city. Mr. Davis conferred with Mr. Klugel before accepting the figure. After going over the data with Mr. Klugel, he agreed with the figure indicated by the Chief of Standards and Review. Mr. Davis had also examined the income for the

subject property for at least two years and market data for other income producing properties in the city. Mr. Davis and Mr. Klugel also reviewed equalization charts. Mr. Davis capitalized this income figure and obtained an estimated indicated value of \$14,620,500. Although this income approach to value was given weight by the assessor, he did not give it more weight than the comparable sales approach. Considering both approaches to value, the result was justified. Mr. Davis acknowledged and rejected the replacement cost approach because of the age of the building and the variables involved.

6. To obtain the estimated value to be assigned to the building, the value was subtracted from the total figure. This is known as the "building residual" method, which is a standard technique used by the assessors. Mr. Davis followed standard assesement techniques in his anaylsis.

7. The Chief of the Standards and Review Section monitors the work of the assessors, considers their various proposals and attempts to assure equalization by spreading the tax burden among the property owners. In accomplishing this work it is sometimes necessary to make changes in the results reached by the line assessor. In this case the line assessor concurred with the conclusions reached by Mr. Klugel after reviewing all the available date. Therefore, he utilized the figure developed by Mr. Klugel in his overall analysis. Mr. Klugel has had 24 years expearence with the Department of Finance and Review.

8. In making the assessment for tax year 1985, Mr. Klugel, who made that assessment, had available only the income and the expense statements for the property up to 1982. For tax year 1986, he also had the owners' income and expense statement for 1983, as well as the information about income streams for other office buildings in the city. He also had leasing information for the subject property. Based upon the information, he felt the change from the Board's results in the prior year was justified as did Mr. Davis.

9. Petitioners sought to demonstrate an estimated fair market value of \$10,356,360. This figure represents the assessed value for tax year 1984. William Wolf, Jr., one of the general partners in the partnership which owns the subject property, testified in support of using this figure as the estimated fair market value. Mr. Wolf has an ownership interest in a number of office buildings and has practiced real estate law since 1951. He served on the board of a bank, and he has had experience in reviewing documents in connection with loans on real property. Mr. Wolf has a broad range of experience with commercial real estate; however, he does not represent himself to be an appraiser. He did not contend that he has ever worked as an assessor. To arrive at his conclusion that the property was worth \$10,356,360 as of the valuation date (January 1, 1985), the witness accepted the value for tax year 1984 (valuation date January 1, 1983), because he had

to start somewhere. This selection appears arbitrary considering the intervening higher valid assessments. Next, he concluded that the value of the property did not increase between January 1, 1983 and January 1, 1985. This conclusion is not supported by facts established from credible evidence at trial. On the contrary real property values have been increasing in the area at a significant rate. The witness also employed a formula utilized in the income approach to value. He used the actual income for a single year instead of an annual stabilized net over a period of several years. He used the income for calendar year 1984 in seeking to arrive at an estimated value for the property as of January 1, 1985. No adjustments were made by the witness to reflect income potential for the property because he believes it to be irrelevant. However, the witness conceded that an investor would look at 5 years of income and expenses to make projections. The witness also failed to make an adjustment for the substantial income loss for the property due to the substantial rent concession given his law firm. The failure to project the potential income for the property is inconsistent with the income approach to value. The failure to make adjustments for rents substantially below market which could be achieved within a reasonable period ignores the income potential for the property. Therefore, this analysis should be rejected. The witness did not undertake any

other approaches to value. He was unable to divide the value he suggested between the land and building.

10. There were a number of physical characteristics for the building described by petitioners' witness in its direct case. A part of the property is utilized by metro, which represents an advantage and disadvantage to the owner. The extent to which this fact depresses the value of the building was never ascertained. Moreover, he indicated that this is not a factor in the income stream. The witness noted that the top floor is used for the engineer's office and for the air conditioning system. Again, the extent to which this factor alters the value of the building was not established. The electrical system does not meet the needs of many businesses. How this factor and the others set forth bear upon the estimated value which petitioners advance was not explained. Further petitioners did not show that these factors were not taken into consideration in the District's initial assessment for the year in question. It was shown that some of the rents for the building were at a level which could not be increased because of existing leases. This situation would affect the income potential for the building. However, the evidence shows that there were a substantial number of leases for the building which were to expire in 1987, 1988, 1989 and 1990. There were also some month to month leases. As Mr. Klugel, pointed out, an increase in income should be anticipated for the spaces under the circumstances. Again, the witness did not seek to ascertain a stabilized net income figure.

11. For purposes of this proceeding, the District's Chief of Standards and Review developed an entirely new assessment for the subject property. He did so by adding \$398,430 to the net income for the property. He reassessed the property using additional information obtained since the appeal to the Board. He stated, however, he was not "backing off" from where the assessment was in tax year 1986. Adjustments were made by Mr. Klugel on all space in the building which he considered to be out of line with the market or for space under month to month leases. Additional information was obtained from the rent rolls which had not been utilized in the assessment for tax year 1986. Only property owners who appealed their assessments were subject to revaluation with this type of additional information. Not all of the adjustments to income made by the assessor appear to be justified. The taxpayer offered persuasive evidence that the adjustment to the Lewis & Thomas Salz lease was not appropriate. The premium rent suggested by Mr. Klugel does not take into account that a substantial part of the space is in the basement and is not prime space. The adjustment to certain space on the third floor does not recognize that the space has no windows, which reduces its value. The small size of the space further depresses its value. Similarly, a small space on the 5th floor for which the assessor seeks to assign a higher rental value has no windows and cannot command the price assigned by Mr. Klugel. The space for which an

adjustment is sought on the 8th floor represents a tenant concession made when the tenant was asked to move to accomodate another tenant. The rejection of the owner's actual experience and the projection of income figures which cannot be achieved given the characteristics of the building result in an unrealistic projection of income. This projection was utilized by the witness in his capitalization of income approach. Since adjustments of the magnitude suggested are not justified on this record, the value indicated by the capitalization of income would not be valid. While the witness testified that the result reached by the capitilization of income approach was checked against comparable sales and found to be valid by Mr. Klugel, the lower original assessment was also checked against comparable sales by the assessor and found to be comparable. This representation becomes questionable under the circumstances. Additionally, in the later assessment, Mr. Klugel did not show that he took into account in reassessing the property factors which he had taken into account for all other properties on the valuation date. He had noted the problems in the market for 1982 and 1983. Interest rates had been high, and landlords were required to give tenants concessions because of the excessive office space available in the market. Mr. Klugel deemed it important at the time of the original assessment that these factors be taken into account and that substantial

departures not be made from the prior assessments. How these factors were taken into account in Mr. Klugel's most recent estimate of value has not been explained adequately. Thus, there appear to be a number of defects in Mr. Klugel's latest proposed assessment which prevents the Court from accepting it.

Conclusions of Law and Order

The taxpayer attempted to show that no assessment was made for the property for tax year 1986 because the same assessment for 1985, which had been rejected by the Board of Equalization and Review, was repeated. Although the assessment for both years was the same, the evidence shows that the property was assessed again in tax year 1986. The fact that the new assessor relied in part upon information developed by the prior assessor does not alter the validity of the assessment. He made an independent analysis, conferred with his superior, and concurred in the results. Further, additional information was taken into consideration when the assessment was made for tax year 1986. The new value was based upon comparable sales reviewed by the assessor with consideration given to the income capitalization approach. The assessor used only the net income figure developed by the prior assessor after discussing it with him. The law requires a new valuation after an invalid assessment. District of Columbia v. Burlington Apt., 375 A.2d 1052, 1055 (D.C. 1977). However, the fact that the assessor considers information forming a part of the prior assessment does not render the assessment

invalid. See Brisker v. District of Columbia, 510 A.2d 1037, 1040-1041 (D.C.1986). Under the facts of this case, the Court is satisfied that a new assessment was made.

The petitioners sought to prove that the assessment for 1986 was incorrect. Petitioners have the burden of proving the incorrectness of the assessment. Brisker v. District of Columbia, 510 A.2d at 1039. They are not required to establish the correct value of their property. Id. Nevertheless, aside from their claim that no assessment was made, petitioners relied primarily upon their own assertion of fair market value to prove the incorrectness of the District's assessment. The facts show that the petitioners' valuation is flawed factually and legally. Their income approach to value is based upon a snapshot of a single year's income and expenses. This calculation is contrary to the authorities which require as a part of the formula, utilization of income potential. Safeway Stores, Inc. v. District of Columbia, 525 A. 2d 207, 213 (D.C. 1987); Distict of Columbia v. Sheraton Corp., 499 A.2d 109, 113-114 (D.C. 1985); Rock Creek Plaza-Woodner Ltd. v. District of Columbia, 466 A.2d 857, 858 (D.C. 1983). In arriving at an estimate of value, petitioners' witness also failed to consider any other approaches to value. The comparable sales approach was rejected by the witness without any reasoned basis. The District's assessors are required to take into account evidence relating to each

approach to value, although they may ultimately rely upon one approach for legitimate reasons. Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207, 209 (D.C.1987). The failure of petitioners' witness to consider any other methods of valuation in his analysis further undermines his results.

Petitioners bear the burden of proving that the assessment is incorrect or illegal. Id. at 211. Although petitioners called as witnesses both assessors who participated in the assessment for tax year 1986, a successful challenge was not made to the methodology employed by the assessors for the assessment being appealed. The line assessor considered all three approaches to value, relying most upon comparable sales for the land component and the comparable sales and income approach for the building component. Credible evidence was not adduced to rebut this assessor's claim of comparability nor his conclusions reached as to value. The conclusions were borne out by the income approach to valuation. The testimony elicited from the witnesses did not accomplish petitioners' purpose. Petitioners failed to prove the incorrectness or illegality of the 1986 assessment. Their alternative calculation of value is rejected for the reasons stated in the foregoing findings. From the foregoing facts, the Court concludes that the assessors applied the generally recognized approaches to value in

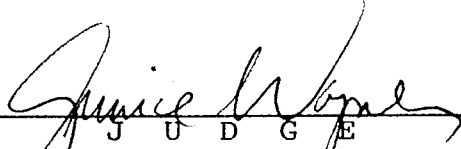
making the assessment for tax year 1986. See District of Columbia v. Washington Sheraton Corp., 499 A.2d at 113-114. The resulting assessment appears to be justified from the evidence. Therefore, the decision of the Board of Equalization and Review should be affirmed.

Respondent attempted to demonstrate a higher value for the property. In effect, the District reassessed the property for purposes of this litigation, utilizing some additional information available to it since the original valuation date. It is recognized that the trial court has authority to increase an assessment above the amount approved by the Board of Equalization and Review. Rock Creek Plaza-Woodner Ltd. v. District of Columbia, 466 A. 2d 857, 859 n.1 (D.C. 1983). How this proposition squares with with the principle that once assessed, property cannot be reassessed, need not be reached in this case. See 1111 19th St. Assoc. v. District of Columbia, 521 A. 2d 260, 261 (D.C. 1987) and Hunt v. District of Columbia, 71 App. D. C. 143 (1939). In this case, the reassessment had a combination of flaws as described in the findings which prevents the Court from accepting the results.

It is therefore by the Court this 18th day of August 1989,

ORDERED, that the original assessment made by the District of Columbia for tax year 1986 is hereby affirmed. It is further

ORDERED, that petitioners' claim for refund be, and hereby is denied.


J U D G E
Signed In Chambers

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