

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

JAN 12 1987

1415 H STREET ASSOCIATES :  
LIMITED PARTNERSHIP, et al. :  
 :  
 Petitioners, :  
 v. : Docket No. 3755-86  
 :  
 DISTRICT OF COLUMBIA :  
 Respondent. :

FILED

ORDER

This matter came before the Court for trial.

Petitioners, 1415 H Street Associates Limited Partnership, Kingdon Gould, Jr., and D. F. Antonelli, Jr., appeal the 1986 tax year assessment of real property located at 1415 H Street, N. W., lot 63 in square 220 in the District of Columbia (hereinafter referred to as the "Property") pursuant to D.C. Code §47-820. This Court has jurisdiction to hear this appeal pursuant to D.C. Code §47-3305 (1981), made applicable by Section 47-825 (1981).

Petitioners, the owners of the Property, are seeking a partial refund of real property taxes paid by them based upon the District assessment of the property for 1986 tax year. Petitioners ask the Court to reject Respondent's valuation methodology for arriving at the assessed value of the Property and to adopt instead the approach used by Petitioners' appraisal expert.

Respondent, District of Columbia (the District) valued the subject property for Tax Year 1986 at \$1,203,089 for the improvements and \$5,248,611 for the land at a total of \$6,451,700. Petitioners maintain that the fair market value of the property for the tax year in question should

be \$85,000 for the improvements and \$4,735,000 for the land resulting in a total assessment of \$4,820,000.

FINDINGS OF FACT

1. The tax in controversy is the real property tax for the land and improvements for the tax year 1986. The total 1986 real property tax was \$130,969.52 based upon the assessed value of the land at \$5,248,611.00 and the assessed value of the improvements at \$1,203,089.00.

2. The initial appeal from the real estate assessment was filed with the Board of Equalization and Review; and on May 31, 1985, the Board approved the proposed tax assessment.

3. The subject property is a nine-story concrete and brick parking garage containing 422 parking spaces with two stories located on the ground floor, a restaurant and gift shop. It includes approximately 150,039 square feet of gross building area above grade and is zoned C-4 with a developed FAR of 8.5.

4. Both parties agreed that the subject property, in its present state, was not put to its highest and best use, that being an office building. However, the property's present state was a good interim use until it could be developed to its highest and best use as an office building.

RESPONDENT'S APPRAISAL

5. Mr. Troy Davis, an assessor with the District of Columbia Department of Finance and Revenue, testified that he applied the Mass Appraisal Technique to value which encompasses the sales, income capitalization and replacement cost approaches to value. In his analysis, Mr. Davis considered all three approaches. He first considered

the replacement cost approach which he gave little weight since the building was not at its highest and best use. He then considered the income capitalization approach and determined that although the net operating income of the property was "handsome" this approach should be given little weight since the value was principally in the land. Mr. Davis finally applied the comparable sales approach which he considered was more appropriate since it was more market oriented in determining land value.

7. Mr. Davis further admitted that it is the policy of the Department of Finance and Revenue not to permit an assessor to place a negative value on any improvements when assessing a piece of property. This came in a form of a directive from the Department and is applicable even if the improvements are determined to be a detriment to the property.

Neither Mr. Davis nor any other assessor reassessed or appraised the Property after the initial assessment.

#### PETITIONER'S APPRAISAL

8. It is the Petitioners' position that the estimated market value of the Property is \$4,820,000.00, consisting of \$4,735,000.00 for the land and \$85,000.00 for the improvements. This value was determined by Mr. William Harps, the real estate appraisal expert qualified by Petitioners.

9. In reaching his estimated market value of the Property as of January 1, 1985, Mr. Harps considered the neighborhood in which the Property is located, the market trend indicators, the physical character and condition of the improvements, as well as the applicable zoning restrictions and appraisal principles customarily used.

Mr. Harps utilized the generally accepted and customary method of determining yield and discount rates to which Respondent did not take issue.

10. Mr. Harps testified that the purpose of his appraisal was to furnish the estimated market value of the Property for real estate assessment purposes as of January 1, 1985. His understanding of "estimated market value" as set forth in D.C. Code §47-802 is "One Hundred Percent (100%) of the most probable price in which a particular piece of real property, if exposed for sale on the open market with a reasonable time for the seller to find a purchaser, would be expected to transfer under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other."

11. Mr. Harps testified that since the subject site contained 15,039 square feet with a FAR of 8.5, it is legally buildable for an office building which would contain a gross floor area above grade of 127,380 square feet. As a result, the highest and best use of the Property would be, at the appropriate time, the construction of an office building. Due to the glut in office building space and the present market conditions, the office building would probably not be constructed until the year 1989 or 1990. However, its present use as a parking garage is as good as any during this interim period. Based on the foregoing, Mr. Harps determined that the proper methodology to use in appraising the land was the sales comparison approach to determine the land value estimate as if unimproved.

12. Using this approach, Mr. Harps considered the sale of eight different parcels of land located in the general vicinity of the Property and initially translated the sales price for each into a price per FAR.

13. Since the present improvement upon the Property is not at its highest and best use, it would be required to be demolished. Mr. Harps obtained an estimate for the demolition of the existing improvement of \$380,000.00 and he determined the land value would be \$5,115,000.00, less the costs of demolition, for a net land value of \$4,735,000.00.

However, since the present improvement is considered to be a reasonable interim use, it may have some contributory value to the land. The improvement only has value if it contributes some value to the land. In order to determine that value, Mr. Harps employed the income approach and used a yield rate of 13.5% to discount the actual income derived by the owners for 1985-1987. Using this methodology, Mr. Harps arrived at a value for the improvements of \$85,000.00.

14. Additionally, Mr. Harps stated that the methodology used by the Respondent's assessor was wrong in reaching the value proposed for the 1986 tax year. Mr. Harps testified that one of the recognized and accepted doctrines of appraisal is the doctrine of consistent use. According to that concept, land cannot be valued on the basis of one use while valuing the improvements on the basis of another, which is precisely what the assessor has done in this case, violating the customary standard of appraisal practices. Additionally, Mr. Harps noted that when referring to the mass appraisal approach, the goal is to obtain an approximation of property value. However, a

reappraisal or assessment appeal appraisal must be conducted when an assessment is appealed by a taxpayer in order to obtain a more precise appraisal.

CONCLUSIONS OF LAW

The jurisdiction to determine the assessment value of Petitioner's property is granted by D.C. Code §§47-829, 47-3303 (1981 ed.) which authorizes this Court, in a trial de novo, to:

determine all questions arising on appeal and (to) make separate findings of fact and conclusions of law (in) decisions in writing ... affirm(ing), cancell(ing), reduc(ing) or increas(ing) the assessment.

Id., §47-3303.

D. C. Code §47-820(a) (1981 ed.) requires real property to be assessed at its "estimated market value" which D. C. Code §47-802(4) (1981 ed.) defines as:

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

D. C. Code §47-820(a) (1981 ed.) provides that in determining estimated market value any factor having a bearing on market value must be considered, including "income earning potential (if any)."

There is no statutory or common law mandate that respondent must follow any one particular approach in valuing real property in this jurisdiction. D. C. Code §47-820 (1981 ed.) provides:

In determining estimated market value for various kinds of real property the Mayor shall take into account any factor which might have a bearing on the value of the real property, including but not limited to, sales information on similar types of real property, mortgage, or other financial consideration, reproduction costs less accrued depreciation because of age, condition, and other factors, income earning potential (if any), zoning, and government imposed restrictions.

(Emphasis supplied.) However, the assessor must consider all three [approaches to value] and have a reasoned basis for picking one over the other." Safeway Stores, Inc. v. District of Columbia, 525 A.2d. 207 (D.C. 1987).

The burden of proof is on the petitioner to provide sufficient evidence to prove that assessments are arbitrary, excessive or otherwise erroneous and unlawful. Superior Court Tax Rule 11(d). See also, Wyner v. District of Columbia, 411 A.2d 59 (D.C. 1980); District of Columbia v. Burlington Apartment House Co., 375 A.2d 1052, 1057 (D.C. 1977) (en banc). It is not sufficient that the taxpayer present an alternative measure of value. To provide a basis for invalidating an assessment, petitioner must show the assessed value to have been erroneously determined.

The Court concludes that Petitioners have failed to demonstrate that Respondent made an erroneous determination as to the value of land for Tax Year 1986.

Troy Davis, the assessor for Respondent, testified that he assessed the land value using the Mass Appraisal Technique based upon the highest and best use of the same (i.e., office building). He then placed a "nominal value" on the interim use of the improvements (i.e., a garage).

In his analysis to determine the value of the land, Mr. Davis testified that he analyzed all of the downtown land sales which were documented in the "Commercial Land Sales Study East of 15th Street, N. W." (Resp's Exhibit No. 1). After reviewing the sales information provided in the Study, he concluded that the median per point of FAR was \$49.00 to \$59.00 per square feet. He then, in his judgment, assessed the subject land at \$41.00 per point of FAR which he considered to be very conservative. The Court finds no error in this approach to valuing the land; indeed, Petitioners' expert used a similar approach which, in his judgment, gave a slightly lesser value to land.

The approach used in valuing the improvements however raises some concern for this Court. Mr. Davis testified that he looked at comparable parking garages in the area as well as the income stream of the subject property in order to arrive at a value for the improvements. After considering his comparables, he arrived at a value of \$8.00 per square foot of gross building area (GBA) for the improvements. He stated that conclusion was reached after considering the principles of consistent use, the principle of equalization, comparable properties and the fact that the subject garage was enjoying a substantial income during its interim use.



Consistent Use Theory or Concept

Mr. Harps and Mr. Davis both testified that the "highest and best use" of the subject property would be as an office building. However, as a parking garage, during the interim period of approximately 4 years after which the subject would be demolished and then constructed into an office building, the subject served as a good interim use.

According to The Appraisal of Real Estate (8th edition), at page 29, interim use properties give rise to the "consistent use" concept. According to this text:

land cannot be valued on the basis of one use while the improvements are valued on the basis of another. Improvements that do not represent the land's highest and best use, but do have substantial remaining physical lives, may have an interim use adding temporary value or may have no value at all (or even negative value if substantial removal costs would be incurred).

There was overwhelming testimony that the subject improvement added substantial value to the Property. There was also overwhelming evidence that the subject improvement had a remaining physical life since Petitioners had been claiming annual improvement depreciation on its 1980 through 1984 Income and Expense Forms. (Respondent's Exhibits 7, 8, 9, 10 and 11 respectively.) Therefore, according to The Appraisal of Real Estate, supra, the subject property, although not at its highest and best use, could have a value during its interim use. This Court concludes that the subject property had an interim use adding some value to the land.

Additionally, The Appraisal of Real Estate indicates:

The relationship between the supply of and demand for land adaptable to a particular use is significant in determining highest and best use. If the more profitable use must be delayed because of insufficient present demand, the "interim use" will continue until or unless the value of the land as if vacant plus the cost of demolishing the existing improvements exceeds the total value of its current use. Supra, p. 29.

Petitioners argue that Mr. Davis' methodology was directly violative of the concept of consistent use as set forth in its own department guidelines. See Department of Finance and Revenue Real Property Assessment Manual, p.

VI-13, stating:

This principle [consistent use] states that the property must be valued with a single use for the entire property. It is improper to value a property on the basis of one use for the land and another use for the improvements.

The Court is persuaded that Mr. Davis' methodology in valuing the improvements was erroneous. It is not clear from the record just how Mr. Davis valued the interim use and its value, if any, to the land consistent with the application of the consistent use theory. His comparables were other garages. He gave consideration to the income generated and the yield of the subject improvements as a garage, while clearly valuing the land under its highest and best use as an office building. Finding that the Petitioners have met its burden as the challenge is to the assessed value of improvements, the Court is remanding the matter back to the Department to assess the improvements on the subject property for Tax Year 1986 consistent with its assessment of the land for the same tax year.

Accordingly, it is this 11<sup>th</sup> day of January, 1988,

ORDERED that appropriate assessment for the land value of the subject property for Tax Year 1986 is \$5,248,611.00, and it is

FURTHER ORDERED that assessment value of the improvements of \$1,203,089.00 is VACATED, and the matter remanded to the Department of Finance and Revenue to assess the improvements consistent with the manner used to assess the land.

SO ORDERED.

  
JUDGE IRALINE G. BARNES

*J. D. Wynn*  
1/12/88

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