SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

FILED

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Superior Court of the
District of Columbia
Tax Division

KLAUS KLATT, Petitioner,	)	
v.	)	DOCKET NO. 2116
DISTRICT OF COLUMBIA, Respondent.	)	

FINDINGS, CONCLUSIONS AND OPINION

This case furnishes an appropriate occasion to restate the principles governing the review of D. C. real estate taxes on residential property, and to re-emphasize the heavy burden undertaken by taxpayers seeking to prove that their assessments are too high.

The issue. For the fiscal year 1971, petitioner's residence at 3533 Yuma Street, N. W. was assessed $5,518 land and $24,832 building, total $31,350, up from $24,018 total for the prior year. The assessment was sustained by the Board of Equalization and Review, and this appeal followed.

Contending that the property is worth $40,000, and using the conceded (Tr. 30, 41) assessment level of 55% of market value, petitioner seeks to have the assessment reduced to $22,000 total, and seeks a refund of taxes paid on the $9,350 differential.

The law and required approach. The statute, dating back to 1902 and codified for convenience as D. C. Code 47-713, requires that real estate be "listed and assessed at not less

than the full and true value thereof in lawful money."[1] This is interpreted by the Department of Finance and Revenue to mean "conservative market value". CCH D.C. State Tax Reporter, par. 20-322. The use of market value as the controlling criterion has never been questioned in the courts, and is the "central appraisal concept". Friedman, Encyclopedia of Real Estate Appraising (Prentice-Hall, 1959) p. 17. In determining the "full and true value" under the statute, subjective, individualistic, aesthetic considerations (much stressed by petitioner) are no substitute for estimates based on the hard realities of the market.[2]

After the separate assessment of the land and improvements as to each lot of residential property by the Board of Assistant Assessors, who presumably have no reason to overassess or discriminate, taxpayers have their appeal to the Board of Equalization and Review, D. C. Code secs. 47-604, 705, 708. On further appeal to the court, it follows as of course that "the burden of proof is upon the taxpayer". D. C. v. Morris, 81 U.S. App. D.C. 356, 357, 159 F.2d 13 (personal property taxes); cf. Tax Division Rule 11(d).

In coming to court, then, owners of residential real estate who believe themselves aggrieved by assessments should be prepared to support their ideas of market value with concrete

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1/ See also, D. C. Code 47-705, under which the Board of Equalization and Review must determine the value of each tract or lot "in lawful money", and "separately estimate the value of all improvements"; and D. C. Code 47-708, under which the same Board equalizes valuations to achieve true "value in money". Of course, the flexibility of the tax rate (currently $3.10 per $100), see Code secs. 47-501 and 501a, takes care of the legalistic problem about the uniform discount applied to market value.

2/ In the form on which taxpayers appeal to the Board of Equalization and Review, they are properly instructed to "be prepared to offer evidence of Market Value". Form PP-150 (Rev. 11/68).

evidence bearing on the "reasonable value in exchange, under conditions requisite to a fair sale negotiated between willing, informed buyers and sellers". Friedman, op. cit., p. 19, and cf. ch. 9, "Appraisal of Residential Property".

Testimonial evidence. Petitioner, a licensed architect, appeared and testified pro se as the only witness contesting the assessment. His facts show that his property is assessed at a higher valuation than some properties of neighbors, but it also clearly appears from the record that the houses in the area are "heterogeneous" (Tr. 72) in character, with construction dating back to 1875, and instances of small houses built at the turn of the century. Although petitioner's main complaint seems to sound in discrimination, there is no evidence that properties comparable in value to his are assessed at a lower figure.

Petitioner also presents a variety of intangible and subjective factors, not related to dollar amounts, intended to derogate the value of his residence. Some of the houses within his "ugly" view he characterizes as "boxes"; his primary view overlooks two older houses, as to which "the only value which I can see * * * would be in the land." (Tr. 9.) At some distance, he can see the "four storey high brick boxes of the Bureau of Standards". (Tr. 10.) He fears future troubles from an allegedly high-pressure gas line and the projected location of the subway along his street, as well as the fact that his house stands on filled land and a sloping lot and has moved to an extent "not any way consequential". (Tr. 10 - 14.) There has been either one or two sanitary sewer back flows affecting petitioner and others in the immediate vicinity; a condition as to which petitioner is complaining and attempting to get D. C. relief.

Somewhat more to the point -- market value -- petitioner claims that his is a one and one-half storey wood and shingle house in a two storey brick neighborhood, with a flat roof "hardly appreciated by run-of-the-mill house appraisers" (Tr. 15), all-glass exterior at the back looking out on (as established by respondent's witnesses and uncontroverted) petitioner's swimming pool, patio, and 7-foot brick wall at the property line. It is an "unusual", "custom", or "dream" house in petitioner's opinion, built on a lot bought in 1966 for $9,700, completed in February, 1967 and insured for $50,000.

Discussion

This court sits in civil tax cases, inter alia, to provide "effective exploration, review, and resolution of legitimate differences that may arise" out of the assessing process. Pepsi-Cola Bottling Co. v. D. C., 119 U.S. App. D.C. 73, 76, 337 F.2d 109 (personal property tax, also based on "full and true value", D. C. Code 47-1202); see also Matrone v. D. C., 77 U.S. App. D.C. 295, 135 F.2d 654.

Far from bearing his burden of proof, petitioner in this case has presented no evidence upon which the court could reduce the assessment of $31,350 as made. Summary dismissal at the conclusion of petitioner's evidence would have been an appropriate action, based upon the foregoing findings of fact and conclusions of law,[3/] thus sparing the time of respondent's witnesses. A similar observation applies to some of the other appeals from real estate assessments coming before the court.

3/ Under the statute, the court must make "separate findings of fact and conclusions of law", and must "render its decision in writing." D. C. Code 47-2403, 47-2405 and 47-710.

However, brief reference to the expert testimony of Joseph V. Starke, Senior Assessor, D. C. Real Estate Division, and Carl H. Lewis, D. C. Assessor, should be made, in order to illustrate the kind of evidence on which valid estimates of value are reached. Mr. Starke, seeking "fair market value", went through and consulted his "sales card" on the house, analyzed sales of detached houses in the vicinity, found a house similar to petitioner's which sold in 1965 for $55,500 in a market which continues to go up and is worth $60,000 and assessed $22,035 today, considered obsolescence, used Boeckh's Manual and a D. C. Real Estate Assessment Manual, and arrived at a value -- land, $12,000, improvement $45,000, total $57,000, to which the 35% factor was applied. Mr. Lewis, in support, found on detailed examination that petitioner's improvements would cost $51,155.96 to reproduce today, to which land value of $12,000 is added, totalling $63,155.96, rounded to $63,000.

Summing up, respondent's witnesses have faithfully sought out and determined the elements going to make up an expert appraisal for purposes of ad valorem tax (market value or a percentage thereof) -- they have made surveys and neighborhood analyses, separately valued the land and improvements (using the cost approach, inter alia, for the building, which is, for the "vast majority of assessments, the only economically feasible approach"), based on specific property files. See Friedman, op. cit., "Ad Valorem Tax Appraisal", pp. 736 - 776, and . 768.

Decision will be entered for respondent.

Robert M. Weston
Judge