

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

TOM AND MARGUERITE KELLY, et al.,)

Petitioners)

v.)

Docket No. 2225

DISTRICT OF COLUMBIA, et al.,)

Respondents)

OPINION AND ORDER

The petitioners in this case are all taxpayers and owners of real property in the District of Columbia. They bring this as a taxpayer or class type action on behalf of themselves and all other real property owners in the District of Columbia who have had their property reassessed for Fiscal Year 1975 at a higher market value than in Fiscal Year 1974. ^{1/ 2/}

1/ The term assessment can be used interchangeably to refer to the yearly assessment bill every property owner receives or to the process of revaluation of property in which the market value is reassessed and the property is thereafter assigned a higher, lower or the same market value. In order to avoid any confusion the Court will use the term assessment to refer to the annual billing process and the term reassessment to refer to the revaluation of the property for market value purposes. Throughout this Opinion the Court will use the term cyclical reassessment to refer to an ABC-ABC or AB-AB type of reassessment program in determining market values.

2/ Originally, the petitioners consisted of taxpayers who had their market values increased and decreased as the result of the reassessment for Fiscal Year 1975. Subsequently, those original taxpayers having a decrease withdrew from this case and additional petitioners having an increase have been joined as petitioners.

The respondents are the District of Columbia,^{3/} Walter E. Washington, the Mayor-Commissioner of the District of Columbia, and Kenneth Back, the Director of the District of Columbia Department of Finance and Revenue.

I

There are approximately 136,000 taxable properties in the District of Columbia. The exact number is not relevant in this action. Of those properties, approximately 75,000 were reassessed for Fiscal Year 1975.^{4/} Petitioners contend that for Fiscal Year 1975 the respondents changed their method or criteria for selecting properties for reassessment without complying with the applicable provisions of the District of Columbia Administrative Procedure Act (hereinafter referred to as DCAPA). See D. C. Code 1973, §1-1501, et seq. Moreover, petitioners argue that the method of selection utilized by respondents for Fiscal Year 1975 violates the equal protection provisions of the Constitution. U. S. Constitution, Amendment V.

^{3/} The District of Columbia is a municipal corporation created by the Congress of the United States. D. C. Code 1973, §§ 1-101, 1-102.

^{4/} By way of explanation, it should be stated that the market value as of July 1, 1973, would apply for Fiscal Year 1974; that of July 1, 1974, for Fiscal Year 1975, and so forth.

The District is required to reassess all real properties once every year. D. C. Code 1973, §47-702. However, it has been held in this as well as other jurisdictions that when a taxing district is unable to make annual reassessments due to fiscal and manpower shortages, "a cyclical assessment program may be permissible, provided any inequalities resulting therefrom are of an accidental and temporary character". (Citations omitted.) District of Columbia v. Green, 310 A.2d 848, 855 (D.C. App. 1973).

It is important to note that the petitioners do not challenge the market values assigned to their properties for Fiscal Year 1975; for the purposes of this action it is conceded that the market value resulting from the challenged reassessments are correct. What they do challenge is the method of selecting the properties for reassessment. They have stipulated that the District lacks the resources to make an annual reassessment but argue that the District is required to use a cyclical reassessment program. For example, one-third of the properties would be reassessed for Fiscal Year 1972 (A); one-third for Fiscal Year 1973 (B); and one-third for Fiscal Year 1974 (C).

Petitioners further contend or had contended that prior to Fiscal Year 1975 the respondents used a cyclical reassessment program but that without completing the cycle they again assessed petitioners and at least some members of the class were reassessed more than once in a given cycle. They, accordingly, requested this Court to enjoin the respondents from using unequal assess-

ments as a basis for taxing property owners, and to enjoin respondents from making any assessments different from those existing on July 1, 1973.

Respondents' position is that they are not required to follow a cyclical method for reassessment but are only required to select properties for reassessment which are in need of re-assessment in order to obtain or maintain equalization.^{5/}

Additionally, they contend that they have not used a cyclical program in at least several years, therefore, they have no reason to comply with the DCAPA. They argue that their method of selection of property for reassessment does not violate the equal protection provisions of the Constitution.

Respondents also contend that the Court lacks jurisdiction to entertain this action, and that the petitioners are not entitled to injunctive relief, and that the Court is barred from enjoining the assessment or collection of taxes by D. C. Code 1973, §47-2410.

There were extensive pretrial hearings in this case which were later followed by a trial which lasted over two weeks.

^{5/} By equalization, the respondents mean that point where all properties in the District have been assigned a market value which is equal to or almost equal to the true market value. Necessarily, it is virtually impossible to reach a point where the assigned market value for a given fiscal year equals the actual or true market value since the assessment figures are based on a reappraisal made almost a year prior to the fiscal year.

The parties thereafter submitted proposed findings of fact together with legal briefs.

After considering the facts as found by the Court, together with the legal arguments of the parties, this Court concluded that the Court had jurisdiction, that the respondents failed to follow the provisions of DCAPA, that the respondents violated the equal protection laws of the Constitution in their method of selecting properties for reassessment, and that petitioners were entitled to the injunctive relief notwithstanding the provisions of D. C. Code 1973, §47-2410.

When this Court found that it could not enter its Opinion and final Order before July 1, 1974, it entered an Order enjoining the respondents from making, approving or in any other way utilizing an assessment different than that made for Fiscal Year 1974. (See Order dated June 28, 1974.) The purpose of that Order was to stay any action by the respondents pending this Court's final order. As pointed out in that Order the Court, while finding that the violations complained of by the petitioners existed, still was faced with the question of an appropriate remedy. Moreover, the Order entered by the Court did not actually prevent respondents from taking any action for Fiscal Year 1975 since the Court understands that the assessment bills are not scheduled to be sent to taxpayers until September, 1974.

II

This Court has jurisdiction to hear this case pursuant to D. C. Code 1973, §§11-101, 11-1202. Those provisions give the Court exclusive jurisdiction to hear any case involving District of Columbia taxes including an action to enjoin the assessment or collection of those taxes. See District of Columbia v. Green, supra. Cf. Washington Theater Club, Inc. v. District of Columbia Department of Finance and Revenue, 302 A.2d 231 (D.C. App. 1973).

III

Based upon the testimony and evidence presented to the Court, this Court makes the following findings of fact:

1. Petitioners are taxpayers of the District of Columbia who own taxable property in the District of Columbia which has been valued for assessment purposes for Fiscal Year 1975 at higher than the valuation for assessment purposes of July 1, 1973, for the same property.

2. The respondent, District of Columbia, is a municipal corporation. The respondent, Walter E. Washington, is Mayor-Commissioner of the District of Columbia. The respondent, Kenneth Back, is Director of the Department of Finance and Revenue, an agency of the Government of the District of Columbia.

3. Petitioners brought this action as a taxpayers' suit and as an uncertified class action on behalf of all persons

owning taxable property, residential and commercial, in the District of Columbia which has been revalued for assessment purposes for Fiscal Year 1975 at a valuation higher than the valuation for assessment of July 1, 1973, for the same property.

4. Members of the class on behalf of whom petitioners sue are so numerous that joinder of all members is impracticable.

5. All questions of law or fact affecting the right of the members of the class to equal protection under the Fifth Amendment to the United States Constitution and the statutes of the District of Columbia are common to all members of the class.

6. The claims of the petitioners are typical of the claims of all members of the class, and the petitioners fairly and adequately represent and can protect the interests of all members of the class.

7. Prosecution of separate actions by members of the class would create a risk of inconsistent or varying adjudications or adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members of the class not party to the litigation.

8. Respondents have acted on grounds generally applicable to all members of the class.

9. The questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class type action is superior to

other available methods for the fair and efficient adjudication of the controversy.

10. (a) Petitioners do not represent and do not seek relief on behalf of any owners of real property in the District whose property was razed or destroyed since its valuation for assessment purposes on July 1, 1973.

(b) Petitioners do not represent or seek relief for any property owners on whose property new buildings have been constructed or other new structures added since their valuation for assessment purposes on July 1, 1973.

11. Petitioners do not represent or seek relief for any property owners whose properties are involved in exceptional administrative actions, or which are changed in value for reasons not involved in this action, as stipulated between the parties.

12. Petitioners do not seek to represent the approximately 15,000 owners of real property in the District whose valuation for assessment purposes for Fiscal Year 1975 was lower than the valuation for assessment purposes for Fiscal Year 1974. The interests of those owners-taxpayers are adequately represented by the District of Columbia.

13. On Monday, April 22, 1974, the following legal notice was published by counsel for petitioners in the Washington Star-News at page D-5 and in the Washington Post at page C-8 and on Wednesday, April 24, 1974 in the Washington Law Reporter:

14. Petitioners Tom and Marguerite Kelly were notified after January 26, 1974, that the valuation for property tax assessment on their single family residential property in Square 814, Lot 800, known as 420 Constitution Avenue, N.E., had been increased by 31.7 percent from \$51,600 to \$68,000.

15. Petitioners Val E. and Jean L. Lewton were notified after January 26, 1974 that the valuation for property tax assessment on their single family residential property in Square 972, Lot 52 known as 404 10th St., S.E., had been increased by 114.26 percent from \$18,182 to \$39,000.

16. Petitioner Muriel Nellis was notified after January 26, 1974, that the property tax assessment on her single family residential property in Square 1972, Lot 805, known as 3539 Albemarle Street, N. W., had been increased by 36.6 percent from \$48,950 to \$66,370.

17. (a) It was stipulated that each of the petitioners, if called, would give similar testimony to that given by those petitioners who did testify.

(b) Each of the other petitioners and all of those similarly situated has had or will have its, his or her valuation for assessment purposes increased in similar amounts.

18. (a) The respondents have revalued for assessment purposes approximately 75,000 taxable properties in the District of Columbia for Fiscal Year 1974 based on market values of the properties as of calendar year 1973, raising the market values of approximately 60,000 properties and lowering the market values of approximately 15,000 properties.

and Year 1975. For the purposes of calculation...

19. There are approximately 100,000 properties in the District of Columbia...

24. The respondents intend not to reassess annually all of the approximately 136,000 taxable properties for Fiscal Year 1976 on the grounds of lack of resources and manpower.

25. Respondents have revalued for assessment purposes approximately 75,000 owners of taxable property in the District of Columbia for Fiscal Year 1975, increasing the valuation for assessment purposes on approximately 60,000 and decreasing the valuation for assessment purposes of approximately 15,000.

26. Unless restrained by this Court, the respondents do not plan to reassess for Fiscal Year 1976 only those properties which were not reassessed for Fiscal Year 1975. Respondents may in fact reassess some or all of those properties which have been reassessed for Fiscal Year 1975, and may reassess some or all of those properties which had not been reassessed in Fiscal Year 1975.

27. Respondents have fixed standards or criteria for the selection of properties for reassessment purposes for Fiscal Year 1975 different from the standards or criteria laid down in D. C. Code Title 47, Section 702:

Assessment of real estate in the District of Columbia for purposes of taxation shall be made annually. . . .

in that the criteria or standards fixed by respondents for the selection of properties for reassessment purposes in Fiscal Year 1975 are other than "annual".

28. For a number of years, representatives of the Department of Finance and Revenue, in appearances before

committees of Congress, by official releases, and statements to the City Council as well as in an informational pamphlet entitled "Your Real Estate Assessment" had led the public to believe that real properties were selected for reassessment by use of a cycle.

29. A "cycle" has a well-understood meaning in standard dictionaries, common usage, and decided court cases, and the understanding of petitioners as applied to a cycle for selecting properties for revaluation for assessment purposes, viz: that it is a period of time, whether 4, 3 or 2 years, during which time every property is revalued for assessment purposes once and only once, in a regular rotation, which is repeated in each subsequent cycle, and that each cycle has a fixed beginning and end.

30. Representatives of the Department of Finance and Revenue alternatively said there was no cycle employed in Fiscal Year 1975 and a cycle would not be employed for Fiscal Year 1976 or that a "cycle" meant an indefinite period of time, which had no beginning or end, and during which "cycle" some properties would be revalued more than once and other properties would not be revalued at all - further that some properties, the same classes of properties frequently, would be on different "cycles", e.g. "cycles within cycles".

31. Respondents offered no evidence indicating that an attempt was made to communicate to the public the actual method used for selection of real properties for reassessment.

32. It is significant that after the decision in District of Columbia v. Green, supra, there is no reference in the document entitled "Your Real Estate Assessment" to the criteria actually used by respondents in selecting properties for reassessment.

33. The petitioners, four of whom are newspapermen and three of whom are attorneys, all formed the impression that the City was on a cyclical reassessment program.

34. The petitioners would not feel unfairly treated if all properties are revalued for assessment purposes annually.

35. The respondents do not plan to reassess annually before Fiscal Year 1977.

36. An "annual tax revaluation cycle" means a revaluation for assessment purposes in which every property is revalued for assessment purposes only once in one year with a definite beginning and end to the one year cycle, which is the year itself.

37. It was stipulated that each of the petitioners, if called to testify, would testify that he was unaware of the system of selection of properties for valuation for assessment purposes as described by Respondent Back.

38. Respondents did not use for Fiscal Year 1975 and do not intend to use for Fiscal Year 1976 a cyclical reassessment program.

39. Representatives of the Department of Finance and Revenue testified that they used three criteria in selecting residential neighborhoods and non-residential categories of

property for revaluation. Those criteria are the median ratio, the coefficient of dispersion, and the last year of reassessment. In fact, with respect to residential property, while reference may have been made to the three criteria, many other factors were employed to select residential neighborhoods for reassessment such as the advice and recommendation of the Land Value Advisory Committee, the results of field reviews, and recommendations of private realtors and appraisers.

40. In the case of non-residential categories little or no use at all was made of the three criteria; and no clear reasons were given for the selection process of those properties.

41. By their nature, commercial properties are valued based upon income produced by those properties rather than comparative sales which made use of two of the criteria: median ratios and coefficients of dispersion, are of no use at all.

42. The selection of commercial property appears somewhat arbitrary. The testimony was not clear as to whether or not large office buildings were reassessed "every year" or according to their inclusion in residential neighborhoods or every so many years.

43. No records are kept from which the employees of respondents can tell accurately which properties were actually reassessed and when. The map, on which a color system of recording when residential neighborhoods were valued, is admittedly reconstructed from an original map which is colored in annually and not retained. No system exists showing what one criterion or group of criteria was used to select any one

neighborhood. With respect to commercial property, records were incomplete. No witness representing the respondents could successfully interpret petitioners' Exhibits 21-24 inclusive to say exactly when categories of commercial property were reassessed or parts of categories.

44. The task of a taxpayer finding out when similar categories of property would be or have been reassessed is hopeless. There is no one place or one person or group of persons who could supply such information.

45. The Land Advisory Committee is a group of real estate men, appraisers, brokers, mortgage bankers, and real estate developers and agents. They give advice as to how to value land and improvements and which neighborhoods and categories of commercial property to reassess in a given year. The possibilities for conflict of interest are substantial. No regulations or guidelines control their work or the parts of the City on which they give advice.

46. Some of the Land Advisory Committee members are the competitors of other real estate owners whose property their advice affects. They may have interests of their own whether as lenders, appraisers, brokers, owners or tenants which are inevitably affected by their advice.

47. Petitioners' Exhibit 24 was incontrovertible proof that at least those 9,000 properties had not been revalued for three years. Petitioners showed that Neighborhood 40 met the criteria for reassessment and had an adequate number of comparable sales. Presumably, the properties in this neighborhood

were overvalued according to the testimony and market values were falling. The effect of this failure to revalue was to require owners to pay a tax higher than indicated by the true market value.

48. The flaws in the system are many and obvious. No exact system exists for selecting just those properties each year which are the farthest above or below some theoretical point of equalization. Even if a neighborhood or category of commercial property is chosen for reassessment, it is impossible to do more than deal with the mean or average of all the properties in a neighborhood or category. Individual properties within the neighborhood or category will inevitably not be among that group of properties whose value is farthest above or below the mean or average. While properties outside the neighborhoods or categories will inevitably be among those properties whose value is farthest from the mean or average.

49. (a) No credible evidence was presented to show that the system used produced what respondents refer to as equalization. The documentary evidence of equalization on its face for Fiscal Year 1975, using only the criteria of median ratios and coefficients of dispersion, shows no significant difference with respect to residential properties from Fiscal Years 1974 and 1973. With respect to commercial properties there was no way to show equalization at all. Further, with respect to commercial properties, since their valuation is based on income, comparable sales were admittedly inadequate to prove or disprove equalization. In any case, no credible evidence of equalization of commercial properties was offered.

(b) No records were kept in any case to show which properties had been reassessed, and why, or why the non-revalued properties had not been reassessed.

(c) The existence of the Land Advisory Committee flaws the selection process, in any case, because of the existence of conflicts of interest in their advice. Respondents have no record of what advice was taken or rejected and why. Petitioners' Exhibits Nos. 83-81, and 31 show that the Committee's advice was frequently, if not usually, followed.

50. In selecting properties for revaluation for assessment purposes, the District purported to follow three basic criteria, including:

(1) The sales-assessment ratio by neighborhood for the most recent calendar year;

(2) The coefficient of dispersion by neighborhood for the most recent calendar year;
and

(3) When the property was last revalued for assessment purposes.

(a) The District failed, however, by their own admission, to follow such criteria exclusively, and in fact often based their decisions on which neighborhoods to select for revaluation on general market information taken from newspaper articles and purely oral communications.

(b) No record was kept by the respondents of which of the criteria they relied on in selecting either neighborhoods or particular properties for reassessment.

(c) None of the officers of the District who testified as to criteria used in selecting neighborhoods or properties for reassessment could testify as to which criteria were used in any particular case, but could only give the conclusory rote answer that they used the three criteria.

(d) The best records of revaluation of neighborhoods for assessment purposes are large, wall maps of the City on which neighborhoods are colored in as they are done. Apparently, those maps were not retained.

(e) No witness could testify precisely as to the meaning of many of the written statements on the maps, and the testimony of the witnesses was frequently contradictory as to what certain statements meant.

(f) The work program of the District for Fiscal Year 1975 was to remain "flexible" and was always subject to change based on oral recommendations of the Land Advisory Committee, individual assessors or private persons. No record was to be kept of changes made in the program or why they were made.

IV

Although this Court has made specific findings of facts (Part III, supra) it is felt that further elaboration of those facts is necessary in view of the nature of the legal questions presented herein and the extraordinary relief granted by the Court. Those matters set forth in this Part of the Opinion are to supplement the Court's findings and constitute additional findings of fact.

A. The Selection Process Used by Respondents
Prior to Fiscal Year 1975.

It is, or at least was, the position of the petitioners that prior to Fiscal Year 1975, the respondents used a cyclical reassessment program. Petitioners argue that respondents are collaterally estopped from presenting contradictory evidence as to the method of selecting properties for reassessment prior to 1975 because a finding of a cyclical reassessment program has been made by both the trial and appellate courts in District of Columbia v. Green, 101 Wash. L. Rep. 1737, 1749, 1761 (Super. Ct. 1973) affirmed 310 A.2d 848 (D.C. App. 1973).

This Court cannot find in those opinions a specific finding of fact that, for Fiscal Year 1974 or prior thereto, the respondents actually used a cyclical reassessment program in selecting properties for reassessment based on market value. As the Court of Appeals pointed out, there are three factors which are used to arrive at an assessment (bill) for real estate taxes. First there is the market value (sometimes referred to as estimated market value) which is the "fair market value of a particular property as determined from time to time by District assessors". Second is the debasement factor which "is the percentage of market value upon which the tax will be levied". Last is the tax rate which is expressed in terms of dollars per hundred of the property's assessed value. The court then went on to refer to the "planned cyclical reassessment program, conceived and orally implemented by the Director of Finance and Revenue" but in using that language it was referring to the stair step approach used by the respondents in increasing the debasement factor on

residential properties from 55% to 60%. 301 A.2d at 851. Based on the above, it does not appear that respondents are collaterally estopped from presenting evidence or arguing that the selection process prior to Fiscal Year 1975 was other than cyclical.

Respondents argue that they did not use a cyclical reassessment program for determining market value and the evidence would support their argument. In fact, the evidence supports a finding that the respondents did not have any type of planned program for selecting neighborhoods or properties for reassessment.

While the facts support the respondents' argument that they did not use a cyclical reassessment program for prior fiscal years, it is unclear why the Director and other representatives of the Department of Finance and Revenue have made statements to Congress, to the City Council and to taxpayers of the City strongly implying that the District of Columbia was utilizing a cyclical reassessment program.

In testifying before Congressional Committees over a number of years, representatives of the Department of Finance and Revenue frequently referred to "cycles" in determining market values.

Below are just a few of those representations.

. . . The day we finished it [reassessment program] we started another reassessment cycle, and we have now reassessed the City again and are starting over the second time.

What we find with the present staff is that it takes us four years to reassess the City, and we think it is too long. (Matter in brackets and emphasis the Court's.) Hearings on H.R. 6453 before a Subcommittee of the House Committee on Appropriations, 89th Cong. 1st Sess., at 142 (1965).

. . . We are requesting here enough positions to do this reassessment once in every three years rather than once in every four. I wish we could do it once every other year. The law says we shall do it every year, but we can only do the best we can with what we have. (Emphasis this Court's .) Hearings on H.R. 6453 before a Subcommittee of the House Committee on Appropriations, 89th Cong., 1st Sess., at 143 (1965).

. . . However, we have missed all of this value increase in the four years the property has been continued to be taxed at the prior level of assessment. By shortening this cycle down to three years we will pick that up at the \$75,000 mark and get that for a year when we wouldn't have gotten anything. This is when the direct cash return from the speedup of the reassessment cycle occurs. (Emphasis this Court's.) Hearings on H.R. 6453 before a Subcommittee of the House Committee on Appropriations, 89th Cong., 1st Sess., at 144 (1965).

. . . This committee four years ago granted the necessary staffing to permit us to go to a three-year cycle. I believe this is still too much of a time lag in a rapidly changing real estate market and accordingly am requesting staffing in this budget to initiate the first step to reduce our reassessment cycle to two years. (Emphasis this Court's.) Hearings on H.R. 14916 before a Subcommittee of the House Committee on Appropriations, 91st Cong., 1st Sess., at 495 (1969).

. . . Over the years, additional personnel have been authorized which have permitted us to reduce the reassessment cycle to three years, and in fiscal 1970 additional positions were granted to allow us to begin to move toward a 2-year cycle. (Emphasis this Court's.) Hearings on H.R. 17868 before a Subcommittee of the House Committee on Appropriations, 91st Cong., 2nd Sess., at 211 (1970). Hearing on H.R. 17868 before a Subcommittee of the Senate Committee on Appropriations, 91st Cong., 2nd Sess., at 695 (1970).

. . . We have begun a major long range program to automate the real estate assessment process with the purpose of decreasing the assessment cycle from the present 3-year cycle to a 1-year cycle. (Emphasis this Court's.) Hearings on H.R. 11932 before a Subcommittee of the House Committee on Appropriations, 92nd Cong., 1st Sess., at 445 (1971).

. . . For a number of years we were on a 4-year reassessment cycle, which was much too long in our opinion. Additional positions have been granted and we now have the reassessment cycle to three years or less. Last year we told the Committee that we were going to work towards a 2-year cycle. If we can further computerize the operation, we are of the opinion that we can go to a 1-year cycle by using computers and ways that we didn't even know about a few years ago. (Emphasis this Court's.) Hearing on H.R. 11932 before a Subcommittee of the House Committee on Appropriations, 92nd Cong., 1st Sess., at 447 (1971).

. . . The reason is the program would permit us to keep our assessments closer in line with market values. If you reassess a property only once in three years, the market value of that property may have moved considerably in that period and you are losing the revenue that would have accrued if you were reassessing it each year. (Emphasis this Court's.) Hearings on H.R. 15259 before a Subcommittee of the House Committee on Appropriations, 92nd Cong., 2nd Sess., at 364 (1972).

Similar statements were contained in budget submissions to the City Council for Fiscal Year 1973. There, the Department of Finance and Revenue Report stated (p. 4-8):

The Department of Finance and Revenue has begun a long range program for automating the real estate assessment process for the purpose of accelerating the reassessment cycle. At the present time, the Department is on approximately a 3-year reassessment cycle and is in the process of decreasing this cycle to two years. (Emphasis this Court's.)

While it is true that the representatives of the Department also referred to their attempts to maximize equalization of properties in the District, the logical interpretation a taxpayer would reach was that the City was on a cyclical reassessment program in determining market value. Statements made both to Congressional Committees over a number of years and to the City Council all specifically refer to reassessing properties under a cyclical arrangement and clearly imply a cyclical reassessment program.

In an informational pamphlet apparently sent out to all real estate taxpayers in 1973 or 1974 entitled "Your Real Estate Assessment" (Pet. Ex. 2) by the Department of Finance and Revenue, it is stated (p. 1):

Full value. First, estimated full values of individual properties are determined by the Assessors's Office. Because of the large number of properties to review and the limited time and staff to review them, it has not been possible to review all properties in the City each year. At the present time your property is reviewed approximately once every two years. Thus, the change, if any, in your assessment following a review of your property reflects the impact of market forces over this period of time. (Emphasis this Court's.)

While finding, based upon the evidence offered by the respondents, that the District did not have a cyclical reassessment program for determining market values for Fiscal Year 1975 and prior thereto, the Court also finds that by its statements to Congress, the public, and directly to the taxpayers, the District left the distinct impression that it was on a cyclical reassessment program. Every taxpayer had reason to believe

that his or her property was being revalued once every four, three, or two years based on a cyclical reassessment program. Moreover, the representatives of the Department of Finance and Revenue have presented no evidence whatsoever which would indicate that they at any time attempted to clarify or explain what they meant by the term "reassessment cycle". This Court finds then that those public pronouncements amounted to a statement by the respondents that they were on a cyclical reassessment program and that therefore every real property taxpayer in the District of Columbia had the right to rely upon those representations and to act accordingly.

The Director testified in this case that the cycles used by the District do not begin and do not end. He stated thereafter that there are cycles within cycles and that some neighborhoods may have 2-year cycles and some 3-year cycles. Moreover, he and other representatives of the Department of Finance and Revenue have testified, for example, that in a 3-year period, some taxpayers may be reassessed once, others twice, others three times, and perhaps some not at all.

The facts are clear, there is no cyclical reassessment program in the District of Columbia and if there are any cycles that there are approximately 136,000 cycles; one for every parcel of property. The same applies for commercial as well as residential property.

B. The Selection Process in Use by the District.

The District employs what is called, a "flexible" system for selecting properties for reassessment. Instead of follow-

ing the inflexible or mechanical method of selecting properties such as a cyclical reassessment program, the District representatives allege that they attempted to select those areas reflecting the most activity and showing the greatest increase and sometimes the greatest decrease in market values. This type of selection is sometimes called "hot spotting".

The District is broken into 56 neighborhoods. In theory, the neighborhoods are supposed to be more or less homogeneous. Thus, again in theory, if some of the properties in the neighborhood are increasing in value, it is likely that other properties in the same neighborhood are also increasing in value.

In order to determine those neighborhoods ripe for reassessment, the respondents look at a number of factors. First, they consider three criteria, the median ratio, the coefficient of dispersion, and the date when the neighborhood was last reassessed.

A comparison of the latest assessed value and the sales values constitutes the assessment/sales ratio. The median ratio is a number derived from a series of assessment/sales ratios; the median being the assessment/sales ratio which has an equal number of assessment/sales ratios higher and lower than the median ratio. The coefficient of dispersion is used to express the disparity between the true values. Thus, "the higher the coefficient, the greater the difference between the last assessed fair market value and the fair market value indicated by sale". District of Columbia v. Green, supra, at 856.

In selecting the neighborhoods to be reassessed, representatives of the Department of Finance and Revenue first have a "review" of the various neighborhoods in the City. This is a study of all properties in the City utilizing the three criteria set forth as well as recommendations of the Land Value Advisory Committee. The review is not an actual physical review of the property but is in effect a paper study. Based upon the review, the representatives of the Department then decide which neighborhoods should be subjected to a "field review". A field review is an actual physical visit by District Assessors to a neighborhood or individual properties. Again, the assessors will consult with private realtors and appraisers when they visit the neighborhood in order to determine whether that neighborhood should be finally selected for reassessment. Thereafter, the Department may elect to reassess the neighborhoods originally selected at the time of the review or may drop some and elect to look into other neighborhoods.

Representatives of the Department concede that after having made the initial selection of neighborhoods at the "review", it is likely that those neighborhoods and properties will be reassessed after the field review. They also concede that neighborhoods or properties more in need of reassessment, in order to obtain equalization, may be passed over if not selected at the time of the initial review. This may result simply because the District does not have the manpower or resources to look closely at every neighborhood or every parcel of property.

It is clear that the Land Value Advisory Committee had considerable input in the selection of those neighborhoods and properties at the time of the initial review. An indication of the input that the Land Value Advisory Committee has in selecting neighborhoods or properties is demonstrated by the following colloquy between the Court and a representative of the Department of Finance and Revenue:^{6/}

Q Now, if I should ask you exactly how you selected a neighborhood, what items would you look for? What records would you look at?

A I would look at the assessment sales ratio studies, for number one, which gives us the two. We could look at the assessment record card, which is a card that we have with the history of that property on it, to find out when it was last reviewed. There we would, say, contact our Land Evaluation Committee for their recommendations.

Q How do you make contact with the Land Evaluation Committee?

A By letter.

Q And you retain copies of those letters?

A Yes, Your Honor, we do.

Q How do they respond back?

A Well, it's usually followed up by a telephone call from our office to see who will be in attendance, because the appraisers are hard sometimes to get to come in, and try to establish a time on the calendar where we could get a group of four or five of these men to sit down with us and decide these values.

Q And do you take one neighborhood at the time, or do you take groups of neighborhoods?

A Yes; we take a neighborhood at a time.

Q All right. I take it, then, what comes from this meeting might also be fed into the question of whether or not you should actually reassess a particular neighborhood?

^{6/} Testimony of Charles W. Fortney, Jr., Department of Finance and Revenue.

A Yes, Your Honor.

Q Now, I know I can turn and find the figures that are cited, for example, in Exhibit 15. That is, the coefficient of dispersion, median ratio, and so forth. Where would I find information concerning the input; that is, the result of these meetings of the Board?

A Well, I believe there's only notes kept for the Land Evaluation Committee.

Q It's not a verbatim transcript?

A No, sir.

Q Is there any written report that is filed and placed on the record?

A I think we have some reports, someone's notes, that's kept the notes and had them typed up for their recommendations.

Q Is this a recording secretary?

A No. No, it's just the appraisers notes that happened to be attending the meeting at that particular time.

Q Just personal notes?

A Yes, sir.

Q Are they required to maintain notes?

A No, sir.

Q So, they may or may not maintain notes?

A The Land Advisory Committee people, the ones that we have on there, do not give us their recommendations in writing; it's more or less a round table discussion, and selection, of more or less picking their brains to find out what they think of the various neighborhoods.

Q Would you say, though, that this type of meeting is an important factor in selecting the neighborhood?

A I think it is, Your Honor.

Q In addition to the median ratio and the coefficient of dispersion?

A Yes, it is, Your Honor, because the men are in the field of appraising and a lot of times they know of where sales are taking place way before we even receive them in our office.

Q But am I correct that, to the best of your knowledge, there is nothing that you can present to me at this time that would show to me or be able to demonstrate what type of input was made as a result of those meetings, because there are no notes?

A Not that I know of, Your Honor.

Q So, that is something that is lost?

A It's always been a round table discussion, the same way with the selection of these neighborhoods. We take the supervisors and try to discuss and set up a work program, based on the resources that we have, what can we do and where should we go.

The Land Value Advisory Committee is made up of private appraisers or realtors who are knowledgeable about property in the District of Columbia. The members of the committee are appointed by the Director of the Department of Finance and Revenue apparently upon the recommendations of other members of the Department.

Since the Court was advised that the Land Value Advisory Committee has such considerable input in the actual selection of neighborhoods or particular properties for reassessment, and since no attempt is made to transcribe or keep any record of the recommendations of particular members of that committee, the Court inquired of another Department representative whether members are required to disclose their real estate interests or holdings as a means of avoiding a possible conflict of interest. Moreover, the Court inquired whether the Director

or the Department had established any guidelines, either oral or in writing, which were used to avoid possible conflicts of interest or the appearance of impropriety. In response, this representative stated:^{7/}

. . . the Court can rest assured that if an individual is given information relative to a particular piece of property that he may own, it isn't very long before someone of that committee hits him over the head, because they will say right out that you have an interest in it, and they know the facts of that man's transactions. So, we have these people as watchdogs on one another. They are not going to say or try to say don't assess me, or assess someone else. They are in there to give us advice, and valuations.

Q But there is no disclosure that they provide?

A No.

It should be made clear that the Court saw no evidence whatsoever of a conflict of interest, wrongdoing or impropriety by any member of the Land Value Advisory Committee but was only concerned over the possibility of such a conflict and how respondents have acted to avoid that problem.

The Court finds many problems with the District's present system for selecting neighborhoods and properties for reassessment. First, the respondents could not demonstrate that they had achieved equalization although their program has been in operation for a number of years. Second, in many cases the Department representatives were unable to examine their records and to state why a particular neighborhood had been selected or not selected for reassessment. For example, the three criteria might have indicated a need for reassessment but the neighborhood had not been reassessed. No records were kept from year to year to

^{7/} Testimony of Edward S. Baran.

indicate why an assessment had not been made. Third, the Land Value Advisory Committee at time of "review" and other realtors and appraisers at time of "field review" had a considerable input in the selection of neighborhoods and properties, but there is no way to determine from the records whether that input was decisive in selecting or not selecting particular neighborhoods or properties for reassessment. Fourth, it was revealed that under the District's system, one property owner could be assessed once in three years, another twice in three years, a third three times in three years, and a fourth not at all in three years. Fifth, respondents did not and do not keep detailed records of which neighborhoods or properties have been reassessed from year to year. Sixth, there is no system which would require that a given parcel of property be reassessed within a given period of time. Seventh, there is no way in which a taxpayer can challenge the fact that his property has been selected for reassessment since the respondents failed to keep adequate records.

V

Petitioners bring this as taxpayers or in the nature of a class action on behalf of themselves and all other similarly situated. Respondents contend that the case cannot be maintained as a class action since it has not been certified as such by the Court.^{8/} D. C. Super. Ct. Civil Rule 23-1.

^{8/} Petitioners never requested such certification.

Respondents overlook the fact that this case was filed in the Tax Division of this court since that Division has exclusive jurisdiction over such actions. See Part II, supra. There is no provision for class actions in the rules of that Division. D. C. Super. Ct. Tax Rule 3(a). Moreover, the petitioners bring this as a taxpayer action to enjoin the assessment of a tax allegedly resulting from unequal reassessments made by respondents.

Assuming arguendo, that petitioners are required to comply with the rules pertaining to class actions, the Court finds that petitioners can still maintain this case as a class action. They have met all of the prerequisites of a class action.

(1) The class here is so numerous that joinder of all members would be impractical. (2) There are questions of law or fact common to the class. (3) The claims or defenses of the representative parties are typical of the claims or defenses of a class. (4) The representative parties will fairly and adequately protect the interest of the class. D. C. Super. Ct. Civil Rule 23(a).

Respondents further contend that the petitioners have failed to give the required notice of the case to the purported members of the class. D.C. Super. Ct. Civil Rule 23(c)(2). Petitioners published notice of the pendency of this action in the Washington Law Reporter, Washington Post, and the Washington Star-News. See Part III(13), supra. However, the notice would not appear to comply with the strict requirements of Rule 23(c)(2), as outlined by the United States Supreme Court in construing

that rule. Eisen v. Carlisle & Jacquelin, ___ U.S. ___, 94 S.Ct. 2140, 40 L.Ed. 2d 732 (1974). In Eisen the case was brought under Rule 23(b)(3) whereas here, even if the Tax Division had a rule similar to Rule 23, this action would fall under Rule 23(b)(2). The strict notice provisions referred to in Eisen do not apply to Rule 23(b)(2) actions where the party is seeking final injunctive relief. See D. C. Super. Ct. Civil Rule 23(c)(2).

The taxpayers in this action are not only seeking injunctive relief but are doing so on the grounds that the selection process for reassessment followed by respondents violates the equal protection clause of the Constitution. Once the Court makes such a finding, the entire selection process falls, for if it is unequal to petitioners it is necessarily unequal to all others in the class, and any relief would go to the entire class.^{9/}

^{9/} See in this connection the Advisory Committee's Note, Proposed Rules of Civil Procedure, 39 FRD 98, 102 (1965) where it is stated:

* * *

Subdivision (b)(2). This subdivision is intended to reach situations where a party has taken action or refused to take action with respect to a class, and final relief of an injunctive nature or of a corresponding declaratory nature, settling the legality of the behavior with respect to the class as a whole, is appropriate. Declaratory relief 'corresponds' to injunctive relief when as a practical matter it affords injunctive relief or serves as a basis for later injunctive relief. The subdivision does not extend to cases in which the appropriate final relief relates exclusively or predominantly to money damages. Action or inaction is directed to a class within the meaning of this subdivision even if it has taken effect or is threatened only as to one or a few members of the class, provided it is based on grounds which have general application to the class.

VI

The parties agree that normally the respondents are required to make annual reassessments of all real property. D. C. Code 1973, §47-702.^{10/} They have stipulated, and the Court finds as a fact, that the respondents were unable to reassess all real property in the District for Fiscal Year 1975 due to fiscal and manpower shortages.^{11/} The petitioners argue, however, that when respondents fixed standards or criteria for selecting real property for reassessment on other than an annual basis, such

9/ Cont'd --

Illustrative are various actions in the civil rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration. [Citations omitted.] Subdivision (b)(2) is not limited to civil rights cases.

10/ On October 20, 1970, the Department of Finance and Revenue published the following statement in the District of Columbia Register (Vol. 17, No. 8, Supp. 1, at 231):

ANNUAL REASSESSMENT REVIEW

The statutes require that valuations of all real estate be made annually and that the determination of value for land and improvements on any tract of land be determined from actual view and from the best sources of information available. The Office of Assessment Administration performs these functions during each calendar year from January 1 through December 31.

11/ A similar finding was made in District of Columbia v. Green, 310 A.2d 848, 855 (D.C. App. 1973).

action constituted a "rule" and "rule making" within the definition of the DCAPA. ^{12/} This Court agrees.

Under D. C. Code 1973, §1-1502(6)(7), "rule" and "rule making" are defined as follows:

(6) The term "rule" means the whole or any part of any Commissioner's, council's, or agency statement of general or particular applicability and future effect designed to implement, interpret, or proscribe law or policy or to describe the organization, procedure, or practice requirements of the Commissioner, Council, or of any agency;

(7) The term "rule making" means Commissioner's, Council's, or agency process for the formulation, amendment, or repeal of a rule;

It has been held that an order directing the Department of Human Resources to set the level of public assistance payments at 75% of the public assistance standards was a "rule". Junghans v. Department of Human Resources, 289 A.2d 17, 23 (D.C. App. 1972). Moreover, in District of Columbia v. Green, supra, at 854, it was held that the "interpretation or implementation of the words 'full and true value'" was a "rule" and its formulation was "rule making".

It is conceded that respondents are required to make annual reassessments of properties. Since they cannot do so because of fiscal and manpower shortages, they have embarked on a program

^{12/} The effective date of the DCAPA was October 21, 1968. D. C. Code 1973, §1-1501. The act required that all administrative rules then in effect be published in the District of Columbia Register by October 21, 1970. D. C. Code 1973, §1-1507.

of making some reassessments only every two, three or four years. That deviation from the clear statutory mandate falls within the definition of "rule" and "rule making". A necessary part of the program is the method of selecting which properties will be reassessed and whether they will be selected by "cycle" or some other means such as that utilized by the respondents. The entire selection process, including the criteria used for selection, is a "rule" and the formulation of that program or policy is "rule making".

The respondents argue that, even if the Court should construe the method of selecting properties and the criteria used therein, as a "rule", it is a practice that they (respondents) have followed for years and well before the effective date of the DCAPA. Thus, they contend, there has been no change in the selection process for Fiscal Year 1975 and the petitioners have no complaint under the DCAPA.

The simple answer is that although the respondents may have used the present method of selection prior to Fiscal Year 1975, they have nevertheless led the petitioners and all other taxpayers to believe that they (respondents) were using a cyclical reassessment program. The Director and other representatives of the Department of Finance and Revenue have consistently referred to "cycles", "reassessment cycles" and one, two, three and four year "cycles" in referring to their method of selecting properties in testimony before Congress, reports to the City Council, and informational pamphlets sent to taxpayers. See Part IV - A, supra. It would be a novel form of

justice and equity indeed, for this Court to rule that petitioners now cannot prevail on this issue because they mistakenly relied upon the written and oral representations made by the Director and representatives of the Department. The logical result of such a ruling would be to tell the taxpayers of this City that you accept the word of your Government at your peril.

This Court cannot accept such an inference or result. The respondents are bound by the statements of the Director and the representatives of the Department of Finance and Revenue just as though the Department had actually used a cyclical reassessment program. It was only through discovery and evidence presented in this case that the actual method of selecting properties was determined.

The public pronouncements made by the Department can be equated, for the purposes of this case, to a notice published in the District of Columbia Register. Those pronouncements, made over a period of years, told the taxpayers that a cyclical reassessment program was in use. The respondents have never withdrawn or attempted to clarify or explain those prior statements. The statements made in this case by Department officials that the Department does not use a cyclical reassessment program are, what amounts to, a new public pronouncement of what would be a "rule" and "rule making" under the DCAPA. In making that rule, the respondents have not complied with the provisions of the DCAPA and have not complied with due process as provided by that Act.

VII

Respondents next argue that the petitioners cannot maintain this action, in which they seek injunctive relief, in view of the prohibition contained in D. C. Code 1973, §47-2410, which provides:

No suit shall be filed to enjoin the assessment or collection by the District of Columbia or any of its officers, agents, or employees of any tax.

The above statute is patterned after Section 7421 of the Internal Revenue Code of 1954, 26 U.S.C. 7421, which contained a similar prohibition against enjoining the assessment or collection of federal taxes. Those cases interpreting the federal statute are also appropriate for consideration in the instant case. District of Columbia v. Green, supra, at 852.

The case most often cited by courts considering a request to enjoin the assessment or collection of federal taxes is Miller v. Standard Nut Margarine Co., 284 U.S. 498, 509, 52 S.Ct. 260, 263, 76 L. Ed. 422, 429 (1932), where the court said:

[W]here complainant shows that in addition to the illegality of an exaction in the guise of a tax there exist special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence, a suit may be maintained to enjoin the collector. (Citations omitted.)

More recently, the Supreme Court ruled in Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7, 82 S.Ct. 1125, 1129, 8 L.Ed 2d 292, 296 (1962), that the assessment or collection of a tax can be enjoined:

[I]f it is clear that under no circumstances could the Government ultimately prevail, the central purpose of the Act is inapplicable and, under the Nut Margarine Case, the attempted collection may be enjoined if equity jurisdiction otherwise exists. In such a situation the exaction is merely in "the guise of a tax". (Citations omitted.)

See also Alexander v. Americans United, Inc., ___ U.S. ___, 94 S.Ct. 2053, 40 L. Ed. 2d 518 (1974); Bob Jones University v. Simon, ___ U.S. ___, 94 S.Ct. 2038, 40 L. Ed. 2d 496 (1974).

The issue of whether the Court can grant injunctive relief in this case is perhaps not as important in view of the ultimate relief granted here. See Part IX, infra. However, this Court notes that it has found that the respondents failed to follow the due process provisions of the DCAPA although required to do so, and further, that respondents violated the equal protection provisions of the Constitution in their method of selecting neighborhoods and properties for reassessment in Fiscal Year 1975. See Part VIII, infra.

The facts in this case speak for themselves. Those facts, as in District of Columbia v. Green, supra, are so exceptional and extraordinary as to merit equitable relief. For example, until this action, District representatives have consistently stated that they were using a cyclical reassessment program and no doubt most if not all members of the class of taxpayers involved herein have relied on those representations believing that all properties were being selected by some fair, mechanical system. To deny the relief sought in this case and, in effect, make every taxpayer challenge this selection process in separate actions at some later date would be to allow respondents to do

indirectly what this Court holds is impermissible if done directly.

Although the petitioners can challenge the reassessment by appealing to the Board of Equalization and Review that appeal would go to the question of the valuation of the property and not to the issue of selection of neighborhoods and properties for reassessment. See D. C. Code 1973, §47-2405. Here, the issue is limited solely to the method of selecting properties for reassessment. Respondents have apparently conceded that this issue cannot be raised before the Board of Equalization and Review. As stated above, under the facts in this case the Court finds that those facts are so exceptional and extraordinary as to allow the granting of injunctive relief notwithstanding D. C. Code 1973, §47-2410.

VIII

The prime issue in this case is whether the method of selecting neighborhoods and properties for reassessment violates the equal protection provisions of the Constitution. The equal protection clause of the Fourteenth Amendment has been read into the due process clause of the Fifth Amendment and applies to the District of Columbia. Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693, 98 L. Ed. 884 (1954).

Once again the Court must note that it is undisputed that the District has been unable, due to fiscal and manpower shortages, to reassess all real properties in one year as required by D. C. Code 1973, §47-702. Addressing itself to that problem,

the Court of Appeals has stated in District of Columbia v.

Green, supra, at 855:

Under such circumstances a cyclical assessment program may be permissible, provided any inequalities resulting therefrom are of an accidental or temporary character. See, e.g., Sunday Lake Iron Co. v. Wakefield, 247 U.S. 350, 38 S.Ct. 495, 62 L. Ed. 1154 (1918); Johnson v. County of Ramsey; 290 Minn. 307, 187 N.W. 2d 675 (1971); Carkonen v. Williams, 76 Wash. 2d 617, 458 Pa. 2d 280 (1969) (En Banc); Skinner v. New Mexico State Tax Commission, 66 N. M. 221, 345 Pa. 2d 750 (1959). Indeed, appellees agree that if the District had engaged in a cyclical program of adjusting the fair market value of properties in the City one group at a time, this case would not have arisen.

Respondents vigorously argue that their program for selecting properties for reassessment is appropriate in view of their fiscal and manpower shortages and cite several cases which they contend support their argument. This Court cannot agree.

After reviewing those cases cited by respondents, the Court finds that they are all distinguishable. In Alberta v. Board of Supervisors of San Mateo, 193 Cal. App. 2d 225, 14 Cal. Rep. 72 (1961), the County Assessor reassessed and increased the land assessments of part of the county, however the remaining parts of the county were not reassessed or increased. The taxpayer-plaintiff then complained that where the county embarked on a cyclical reassessment program, the county should have withheld assigning the new market values until the cycle had been completed. In short, the taxpayers complained, for example, that under a three-year cyclical program, the assessor should not bill them for the increased values until the cycle had been completed and all properties in the county had been reassessed. In that

way, all taxpayers would have an increase in taxes in the same year although perhaps in some cases three years after the first reassessments were made. The court found no violation in the fact that the assessor actually billed the taxpayers for the new market values without waiting for a completion of the cycle.

The same issue was raised in Best v. County of Los Angeles, 228 Cal. App. 2d 655, 39 Cal Rep. 665 (1964). The taxpayer-plaintiffs failed to sustain their burden in that case where the assessor used a systematic reassessment program over a period of years. There he had 1,700,000 parcels of land and reassessed only 400,000 of that number in 1960. It was held that the taxpayers could not complain because all taxpayers had not been reassessed at the same time even though the program may have resulted in a disparity in assigned values pending completion of the reassessment program. There is no support for respondents' statement that the "methodology was the same as that employed by the District of Columbia". (See Brief for Respondents, p. 9.) The court in Best referred to the "systematic" program initiated by the assessor.

A similar issue was raised in Johnson v. County of Ramsey, 290 Minn. 307, 187 N.W. 2d 675 (1971), where taxpayer-plaintiffs complained of the disparity between areas where property had been reassessed and those areas where no reassessment had taken place. The court stated there that (290 Minn. at 314, 187 N.W. 2d at 679):

Whether we consider Ramsey County a single assessment district or not, we think the better rule is that where it becomes necessary to reassess all the property within

a county and it is impractical or impossible to complete the reassessment all at one time, a taxing authority should be given a reasonable time within which to complete the entire job.

The above statement by the court in Johnson appears entirely consistent with the petitioners' contention in this case.

It does not support respondents' position however, since, in the view of this Court, it contemplates a systematic or cyclical reassessment program.

The last case cited by respondents is Skinner v. New Mexico State Tax Commission, 66 N.M. 221, 345 Pa. 2d 750 (1959). The issue there was the same as in Alberts v. Board of Supervisors of San Mateo, supra. Simply stated, the complainants argued that when the reassessment program could not be completed in one year, the assessor could not assign new market values until the entire county had been reassessed. Again, that is not the issue raised in this case.

The respondents have not cited Carkonen v. Williams, 76 Wash. 2d 617, 458 Pa. 2d 280 (1969), but that case was cited by the Court of Appeals in Green. 310 A.2d at 855. There, the State of Washington had provided for a cyclical reassessment program by statute. The court held that there was no need for the assessor to "hold back" on using the new values until the entire county had been reassessed.

The cases cited by respondents simply do not support their argument in favor of the present method of selecting properties for reassessment. In all of the cited cases, the taxing authorities used a cyclical type of reassessment program. In all of

those cases the inequities resulting therefrom were of an accidental or temporary character. Here, the respondents by their own admission do not employ a cyclical reassessment program. They keep no accurate record of the actual criteria used for selecting particular neighborhoods and properties for reassessments from year to year. The program has not resulted in equalization. In three years, some taxpayers may have their property assessed once, others twice, yet others three times, and a few not at all.

Since the Department of Finance and Revenue does not maintain complete records there is no way that a taxpayer can actually determine why his neighborhood or property may or may not have been selected for reassessment in a given year. Moreover, the considerable input of the Land Value Advisory Committee at time of review, and the recommendations and input of private realtors and appraisors at time of field review, are not matters of public record. Certainly, those groups should have no input at all into the selection of neighborhoods or properties for reassessment except perhaps at the very outset of a program where the respondents are making their initial selection to start a cycle. Even then the input should be limited solely to the question of increasing or decreasing land values in the City. They should have no say in the selection of neighborhoods or properties for reassessment and accurate records should be maintained as to any comments of the Land

Value Advisory Committee concerning their recommendations re
valuation.^{13/}

It is obvious that the most equitable means of handling reassessments is to reassess every parcel of real property every year. Such a program would conform with the statute, D. C. Code 1973, §47-702. If such a program cannot be maintained, the most equitable means to accomplish the reassessment of real property is to embark on a cyclical reassessment program where all properties are reassessed once in a given number of years. Such a program is mechanical, easy to manage but most of all fair to every taxpayer since every taxpayer would know when he is to be reassessed. Moreover, he or she could expect a reassessment only once in a given number of years.

Every taxpayer has a right to know that he is being treated the same as every other taxpayer in the District. Such is not the case under the reassessment program now in use in this City. The program is neither systematic nor cyclical. The inequalities resulting therefrom are not accidental but result from an intentional selection of certain neighborhoods or properties for reassessment. The inequalities are not temporary since

^{13/} It is certainly hoped that the District would establish a formal procedure for selecting members of the Land Value Advisory Committee even though those members may be selected by the Director of the Department of Finance and Revenue. It would also seem appropriate for the District to establish such rules or regulations as are necessary to avoid a conflict of interest of the members of that committee or the appearance of impropriety.

they have continued over a period of several years. The method of selection of neighborhoods and properties is arbitrary and necessarily violates the equal protection and due process clauses of the Constitution. U.S. Constitution, Amendment V.

IX

The Court has found the violations complained of by the petitioners. There remains the difficult question of the appropriate remedy in this case.

A. Method of Selection to be Used by District.

Clearly the petitioners and other members of a class owning some 60,000 parcels of real property in the District are entitled to relief from the arbitrary method in which the District selects neighborhoods and properties for reassessment. In District of Columbia v. Green, supra, the court allowed to stand an order enjoining the respondents from using the proposed de-basement factor of 60% thereby automatically leaving the de-basement factor at the 55% rate which was in use during the prior year. Here, the petitioners request this Court to enjoin the respondents from using the new values resulting from the challenged reassessments thereby returning the market values to those of July 1, 1973. All the petitioners and all members of their class had their market values increased for Fiscal Year 1975.

Such relief if granted raises a number of complex questions. What of the 15,000 District taxpayers who had their market values decreased for Fiscal Year 1975 as the result of the

challenged reassessments? Petitioners do not contest the market values assigned to their properties; it is the method of selection they challenge. Presumably, the 15,000 land owners who had a decrease in their market values do not challenge the new values assigned and it is just as likely that they also seek a fair and equitable system for selecting properties for reassessment.

The Court could attempt to reduce the market values of those taxpayers having an increase for Fiscal Year 1975, but leave standing those who had their market values decreased for the same fiscal year. Such a remedy however would create as many inequities as the Court seeks to correct by its order in this case.

To return the market values to July 1, 1973, would set aside all the work of the District Appraisers for Fiscal Year 1975 which hopefully brought the estimated market values more in line with the actual market values. It might, for example, also raise additional problems with properties which have been improved or razed since July 1, 1973.

The respondents have contended that they expect to have available by 1975 - 76 the fiscal and manpower resources which would allow them to reassess every parcel of real property in the City for Fiscal Year 1977 and thereafter. Such a result is desired and is the fairest way of making reassessments in addition to being the method mandated by statute. To return the market values back to July 1, 1973, and make the respondents undo what they have already accomplished, would require the

use of additional resources and manpower and perhaps delay the start of the one-year cycle reassessment program.

While the Court must protect the rights of the petitioners in this case, it must do so in a manner which will cause the least violence and disruption to the District's tax program and the attempts to bring the District into compliance with Section 47-702 by Fiscal Year 1977..

In weighing the different factors presented in this case, this Court concludes that the market values resulting from the reassessment made for Fiscal Year 1975 must stand. Such an approach would be fair to the petitioners and the members of their class who after all do not complain of the values assigned to their property for Fiscal Year 1975, and to those taxpayers and property owners who as a result of the reassessments for 1975 had a decrease in their market values. Such a program would also allow the respondents to utilize all of their resources towards bringing the City in compliance with Section 47-702 by Fiscal Year 1977. To protect those taxpayers who have had their properties reassessed for Fiscal Year 1975, the Court will enter an order enjoining the respondents from making a further reassessment against those properties for Fiscal Year 1976. In other words, this Court now orders the respondents to commence a cyclical reassessment program. All those properties which were subjected to reassessments for Fiscal Year 1975 will henceforth constitute Group A of the cycle. All of those properties which were not reassessed for Fiscal Year 1975 shall be reassessed for Fiscal Year 1976 and shall

constitute Group B of the cycle. Such a plan would certainly give the respondents no cause to complain since they have contended throughout this case that they made the reassessments in 1975 in order to obtain equalization.

Hopefully, the District will have the necessary resources to reassess all real properties for Fiscal Year 1977 in one year. Such are the representations that they have made to this Court. If the respondents do not have the resources then they must reassess Group A for Fiscal Year 1977 and Group B for Fiscal Year 1978, and then all properties in the District for Fiscal Year 1979.^{14/}

The Court is mindful that it has not given the relief specifically requested by petitioners even though it has found that the reassessment program utilized by the respondents is constitutionally infirm. The problem is that in view of the Court's finding that the respondents have used the present system for a number of years, the defect in the method of selection would not be corrected by returning the assessments

^{14/} If it becomes necessary to commence a second two-year cycle to include Fiscal Years 1977 and 1978, the District may wish to ask for leave of the Court to make adjustments in the number of properties to be reassessed in each of those years in order that they can accomplish reassessments for one-half of the properties in Fiscal Year 1977 and one-half of the properties for Fiscal Year 1978. Such a plan is not available for Fiscal Years 1975 and 1976, since the respondents by their own election have reassessed a greater number of properties for Fiscal Year 1975 than they will be able to reassess for Fiscal Year 1976.

back to those utilized on July 1, 1973. It is interesting to note in this regard that the respondents have argued that the Court can grant no relief in this case since if respondents were wrong, they have been wrong for years. Such an argument is totally without merit.

Although the Court seems to incorporate the defective reassessment selection process used by the respondents in its remedy, it has ordered that henceforth the District will use a cyclical reassessment program. Moreover, there is precedent for the remedy granted by the Court. Kilgarlin v. Hill, 386 U.S. 120, 87 S.Ct. 820, 17 L. Ed.2d 771, rehearing denied 386 U.S. 999, 87 S.Ct. 1300, 18 L. Ed. 2d 352 (1967); Toombs v. Fortson, 241 F. Supp. 65 (ND Ga. 1965), affirmed without opinion 384 U.S. 210, 86 S. Ct. 1464, 16 L. Ed. 2d 482 (1966); Drum v. Seawell, 249 F. Supp. 877 (1965), affirmed without opinion 383 U.S. 831, 86 S.Ct. 1237, 16 L. Ed. 2d 298 (1966).

B. Notice to be Given to All Taxpayers.

The respondents have failed to keep the property owners of the District advised of the methods used for selection. The notice sent out in the 1973 - 1974 pamphlet entitled "Your Real Estate Assessment" is noteworthy in that it tends to perpetuate the belief of the taxpayers that the District was operating on a cyclical reassessment program.

The respondents shall now cause to be issued to every real property taxpayer in the District a notice setting forth full and complete information concerning the method to be used

henceforth in reassessing real properties pursuant to the Order of this Court. Every taxpayer is to be advised whether he is a member of Group A or Group B so that he will be on notice whether his property was reassessed for Fiscal Year 1975 or is to be reassessed in Fiscal Year 1976. Prior to its issue, the notice is to be submitted to the petitioners as representatives of the class for any comments and finally to the Court for its approval.

ORDER

It is hereby

ORDERED:

1. The injunction entered by this Court on June 28, 1974, enjoining respondents from initiating, making or approving or in any way issuing assessments of properties different than those issued for Fiscal Year 1974 is vacated.
2. The respondents are directed to initiate a cyclical reassessment program based on a two-year cycle. The respondents, their agents, servants and employees are hereby enjoined from using other than a two-year cyclical reassessment program for Fiscal Years 1975 and 1976. All properties, whether residential, commercial or otherwise, which have been reassessed for Fiscal Year 1975 shall henceforth constitute Group A of the cycle. All properties which were not reassessed for Fiscal Year 1975 shall henceforth constitute Group B of the cycle.
3. Properties falling in Group A should not be reassessed for Fiscal Year 1976. Respondents, their agents, servants and

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employees are hereby enjoined from reassessing Group A properties for Fiscal Year 1976.

4. Properties falling in Group B should not be reassessed for Fiscal Year 1975. Respondents, their agents, servants and employees are hereby enjoined from reassessing Group B properties for Fiscal Year 1975.

5. Respondents, their agents, servants and employees are hereby enjoined from making or approving or initiating any assessment of properties in Group B for Fiscal Year 1975 different than that used for Fiscal Year 1974.

6. Respondents are directed to issue to every taxpayer, a written Notice setting forth the reassessment program as ordered by this Court. Absent further order of the Court, the written Notice is to be issued no later than September 30, 1974, and if possible should be sent as an enclosure to the annual assessment (bills) notice.

7. The written Notice described in paragraph 6 of the Order shall specifically inform the taxpayer, in plain language, of the following:

(a) That D. C. Code 1973, §47-702 requires that every parcel of real property in the District of Columbia be reassessed once every year.

(b) That reassessment refers to the process of revaluation in which the property is thereafter assigned a higher, lower or the same market value. The respondents may give any further description of the process as they deem necessary.

(c) That due to fiscal and manpower shortages the District is unable to make annual reassessments and that accordingly the District will use a cyclical reassessment program.

(d) That under the cyclical reassessment program the District will operate with a two-year cycle and that all real property which was reassessed for Fiscal Year 1975 shall constitute Group A. That properties not reassessed for Fiscal Year 1975 shall constitute Group B. That all properties in Group B will be reassessed for Fiscal Year 1976.

(e) That the taxpayer is to be advised whether his property or properties fall in either Group A or Group B.^{15/} In this connection, the designation of the Group may be contained in the Notice or on the annual assessment bill, whichever is easier for the District to prepare. If the designation is contained on the annual assessment bill, the written notice will direct the taxpayer to that part of the annual assessment bill where the Group designation appears.

(f) That the cyclical reassessment program will operate on a two-year cycle and that the parcel of property can be reassessed only once in a given cycle.

(g) That the District expects to be able to comply with D. C. Code 1973, §47-702 and make annual reassessments on all real property for Fiscal Year 1977.

^{15/} Obviously, a taxpayer may own property in both Groups.

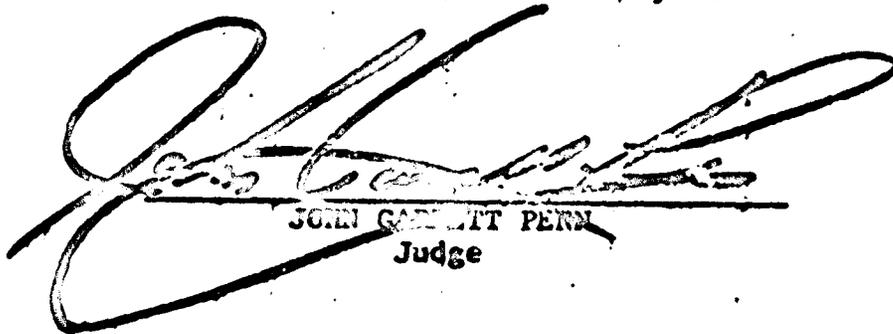
(h) That if the District is unable to make annual reassessments for Fiscal Year 1977, that the District will continue to operate under a cyclical reassessment program.

(i) Other information which District officials feel is appropriate, including, but not limited to appeal rights, and numbers or persons to call for information. The Notice may contain such additional information as the District representatives feel necessary including the information contained in "Your Real Estate Assessment".

8. Petitioners may submit their request for costs and reasonable counsel fees. Petitioners have fifteen (15) days from the date of this Order to submit such a request together with a supporting memorandum of law. Respondents thereafter have fifteen (15) days in which to file objections thereto together with a supporting memorandum of law. Either party may request an oral hearing provided such a request is contained in either the request for fees or the opposition thereto.

9. The Court will enter such further orders as may be necessary.

July 25, 1974



JOHN GARBUETT PERN
Judge

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