

Opinion No. 1134

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JOSEPH M. BURTON
CLERK OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

DISTRICT OF COLUMBIA)
REDEVELOPMENT LAND AGENCY)
and BRESLER & REINER, INC.,)
)
Petitioners)
)
v.)
)
DISTRICT OF COLUMBIA,)
)
Respondent)

OCT 5 1976

FILED

Docket No. 2289

TRIAL FINDINGS AND
MEMORANDUM ORDER

Petitioners, District of Columbia Redevelopment Land Agency (DCRLA) and Bresler & Reiner, Inc., (Bresler) appeal from real property assessments for Fiscal Year 1975. The Court has jurisdiction pursuant to D. C. Code 1973, §§11-1201, 47-2403 and 47-2405.

The respondent originally valued the property at \$3,700,000, consisting of land valued at \$1,250,000 and improvements at \$2,450,000. The petitioners do not contest the value assigned to the improvements but do contest the value assigned to the land. Thus, while the entire assessment is appealed, the only issue before the Court is the value assigned to the land. (See Memorandum Order dated June 18, 1975.)

I

Based upon the stipulation entered into by the parties and the evidence offered at trial, the Court makes the following findings of fact:

1. The subject property is located at 1000 Sixth Street, S. W., in the District of Columbia and is legally described as Square 499 Lot 50.
2. The land is owned by DCRLA and is leased to Bresler under a lease which will expire in January 2058. The lease had been originally entered into by Webb and Knapp, Inc. on June 2, 1959; Bresler is a successor on that lease.
3. The property consists of land and improvements thereon; the improvements being apartment houses.
4. Bresler is a corporation organized under the laws of the District of Columbia with its principal office at 401 M St., S.W. in the District of Columbia. Under the terms of the lease, Bresler is obligated to pay all real property taxes and to prosecute any appeal of real property tax assessments.
5. DCRLA is a government instrumentality, incorporated and operating in the District for the purpose of replacing and rebuilding urban areas.
6. The subject property contains 135,262.64 square feet. The ground rent is \$20,289.40 per year.
7. The assessor assessed the property at \$3,700,000 of which \$1,250,000 was assigned to the land and \$2,450,000 was assigned to the improvements.
8. Petitioners filed a timely appeal to the Board of Equalization and Review. The Board upheld the assessment.
9. The total taxes in controversy for Fiscal Year 1975 was \$67,561.96. The first half taxes were paid in September 1974, and the second half taxes in March 1975. The taxes have been paid in full.

10. The petitioners do not challenge the value assigned to the improvements but do challenge the value assigned to the land.

II

As noted above, the only issue raised in this appeal is the value assigned to the land. Originally, the petitioners had asserted a land value of \$338,156.60. However, they have amended their petition to assert a land value of \$270,500. That value conforms with the testimony by the expert of the petitioners, Curt C. Mack. The respondent's expert, Peter A. Moholt, assigned a value of \$704,000 to the land, that figure being less than the original assessment in this case.

Both experts agreed that the actual use of the property was the highest and best use. See, District of Columbia v. Burlington Apartment House Co., D.C. App. 7986 (decided January 29, 1976) at Slip Op. 9. In arriving at values however, each used a different approach. Mr. Mack concluded that the comparable sales approach would be of no use because he could find no comparable sales or properties. After reviewing the land lease agreement, he concluded that the most appropriate and reliable method of valuation of the land was by the capitalization of the rent into value.

On the other hand, Mr. Moholt testified that the proper method was to use the market data approach. He did so by comparing the subject property with "comparable" properties in Northwest Washington. The petitioners objected to the admission of evidence concerning the alleged comparable

properties on the grounds that they were not in fact comparable. It is, of course, true that the question as to whether the alleged "comparable" properties are comparable is "a factual issue which the trial judge has discretion to determine" and that if they are not comparable, they are irrelevant to the proceedings and should not be admitted. District of Columbia v. Burlington Apartment House Co., supra at Slip Op. 10.^{1/} The court overruled the objection and allowed the testimony holding that in this particular case, the objection went to the weight of the evidence and not to its admissibility.

Upon reviewing the testimony concerning the comparable properties used by respondent's expert, the Court concludes that those properties and that testimony is entitled to little if any weight. The subject property is located in southwest Washington in an area subject to vandalism and crime. The comparable properties are located in upper northwest Washington. The subject property is zoned UR (Urban Renewal) and as such has restrictions as to its use which are not factors in the northwest comparable properties. The comparable properties are zoned R-5-C. Moreover, due to the differences in zoning location and "socio-economic conditions", it was necessary for

^{1/} A similar objection was sustained in a related case which was tried after this case. District of Columbia Redevelopment Land Agency v. District of Columbia, Tax Case No. 2288 (decided April 30, 1976).

respondent's expert to make a number of adjustments in order to arrive at a comparable value. (See in this connection, Resp. Ex. 1.)^{2/} The method used in making the adjustment raises questions in the court's mind. For example, the expert concluded that there was a "minus ten percent" factor applied to the comparable properties for "location" "UR versus R-5-C" zoning and "socio-economic conditions". What really is the basis for making those determinations? Although there was a reference to public housing nearby to the subject property, not all public housing is alike. What affect does that public housing really have on the subject property? Should the adjustment be more or less than minus ten percent? Little evidence was presented concerning either neighborhood upon which the Court could satisfy itself that the facts upon which the opinion was based was established by the evidence. See D.C. Standardized Civil Jury Instructions, Instruction No. 34 (Expert Opinion).

III

After reviewing the evidence in this case, together with the testimony of the expert witnesses, the Court concludes that the evidence offered by the petitioners is more convincing. Due to the method of evaluation used by respondent and the problems inherent therein in this case, the Court gives little

^{2/} Resp. Ex. 1 is a combined exhibit which was used both in this case and in case No. 2288. The relevant portions on this issue are found on pages 53 through 65.

if any weight to the respondent's evidence on value. Thus, the Court finds that the only credible evidence is that offered by the petitioners. As a result, the Court rejects respondent's claim that the land value is \$704,000. The credible evidence supports a finding that the land value is \$270,500 as of January 1, 1974 or July 1, 1974 as argued by petitioners.

Seemingly, it can be argued that the land value will not change taking into consideration the petitioners' theory of value and the long-term lease entered into between DCRLA and Bresler. In the view of this Court, that is not necessarily the case. The Court's finding is limited, as it must be, to Fiscal Year 1975 and is based solely on the evidence presented for that fiscal year in this case. In short, the Court by ruling that the value of \$270,500 is the correct value for Fiscal Year 1975, is not making a long-term judgment of the land value of this property. It may be that different evidence offered at some future date for a different fiscal year may lead to a different result. However, based upon this record, the Court rules that the value of the land for Fiscal Year 1975 is \$270,500.

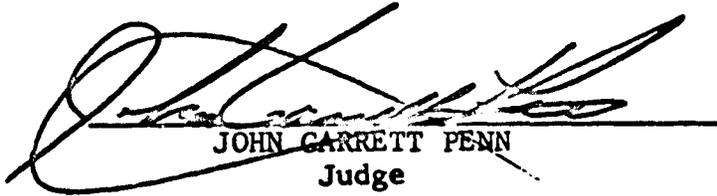
O R D E R

It is hereby

ORDERED that the petitioners shall submit a proposed order within five days consistent with these findings and this order.

Petitioners shall submit the order to counsel for the respondent who will have an additional five days in which to submit any objections to the form of the order. Interest shall be paid from the date of payment of the assessment pursuant to this Court's opinion in District of Columbia Redevelopment Land Agency v. District of Columbia, D. C. Superior Court Tax No. 2290 (decided April 14, 1976). Should respondent not file objections thereto within five days, the order will be signed as presented by the petitioners.

Dated: September 30, 1976


JOHN GARRETT PENN
Judge

Gilbert Hahn, Esq.

Dennis McHugh, Esq.

Copies mailed postage prepaid
to parties indicated above on
10/4, 1976.

Jean Sencius