

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Tax Division

JAN 17 1986

1111 19TH STREET ASSOCIATES, :  
: Petitioner, :  
v. : Tax Docket No. 3255-83  
: DISTRICT OF COLUMBIA, :  
: Respondent. :

FILED

ORDER

This matter came before the Court for trial. Petitioner, the fee simple owner of property located at 1111 19th Street, N.W. (Lot 90, Square 140), challenges the real property tax assessed against it for Tax Year 1983 pursuant to D.C. Code §47-820 (1981 ed.). Respondent, the District of Columbia, valued the subject property for tax assessment purposes for Tax Year 1983 at \$24,988,200, consisting of \$9,954,100 for land and \$15,034,100 for improvements. Petitioner appealed to the Board of Equalization and Review, which sustained the assessment. Petitioner paid the tax of \$533,098.53 and timely filed this appeal. The Court exercises jurisdiction over this appeal pursuant to D.C. Code §§47-825 and 47 3303 (1981 ed.).

FINDINGS OF FACT

1. The subject property is located at 1111 19th Street, N.W., Lot 90, Square 140, in the District of Columbia.
2. The subject property contains 26,195.41 square feet of land with primary frontage on 19th street. The site is located in an area zoned C-4, with a nominal "Floor Area Ratio" ("FAR") of 10.
3. The subject property is improved with a twelve story office building, completed in 1979, which is constructed on Lot 90, Square 140. Both parties agree that the current use of the property is its highest and best use.

4. The building contains approximately 348,646 square feet of gross building area of which 261,749 square feet are finished area. Approximately 14,475 square feet of the net rentable area is retail space, and the remainder is office space and storage space. The building has 77,541 square feet of unfinished rentable cellar space, the principal use of which is automobile parking.

5. Petitioner presented expert testimony through Anthony Reynolds, M.A.I. Mr. Reynolds testified that in 1981 there was an oversupply of commercial office space, which decreased the value of that space.

6. The petitioner further presented evidence of the property's market value as of January 1, 1982, through Mr. Reynolds' testimony and his appraisal report. Mr. Reynolds used an income approach in determining value. Relying on the income history of the property, he stabilized the per square foot rental income from the office, retail, storage, and parking areas of the property as of January 1, 1982. Although the rental rates used by Mr. Reynolds were lower than the January 1, 1982, market rental rates, he determined that the use of market rates would give an inflated estimate of value of the property because an investor purchasing on January 1, 1982, would be bound by the existing leases and could not obtain market rates immediately. Mr. Reynolds stabilized net income and real estate taxes for the subject property at \$2,345,000.

7. Mr. Reynolds testified that the American Council of Life Insurance reported mortgage rate averages of 14.58% and 14.21% for the fourth quarter of 1981 and the first quarter of 1982 respectively. He also testified that the Council reported capitalization rates for the same periods of 13.3% and 12.9% respectively. He noted that the rate at which

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7. Mr. Reynolds testified that the American Council of Life Insurance reported mortgage rate averages of 14.58% and 14.21% for the fourth quarter of 1981 and the first quarter of 1982 respectively. He also testified that the Council reported capitalization rates for the same periods of 13.3% and 12.9% respectively. He noted that the rate at which

office buildings with time-lag leases were traded in Washington (at good downtown locations) was lower than the national average. Mr. Reynolds testified that he therefore selected a lower capitalization rate in this case of 11.50%. The total capitalization rate applied by Mr. Reynolds was 13.63%, consisting of the then-current real property tax rate of 2.13 plus the capitalization rate of 11.50%.

8. Mr. Reynolds' opinion of value of the subject property using the income approach was \$17,200,000. Mr. Reynolds obtained this value by applying his total capitalization rate of 13.63% to stabilized net income and real estate taxes of \$2,345,000, yielding a result of \$17,204,696 which Mr. Reynolds rounded to \$17,200,000.

9. The District argued that Mr. Reynolds should have used market rent rates and market capitalization rates. Mr. Reynolds countered with testimony (page 12, footnote of his Report admitted as Plaintiff's Exhibit 4) that if he had used market rates for income, he would have had to use a capitalization rate of 14.9% instead of 11.50% and the resulting value would have been nearly the same.

10. Petitioner also presented evidence concerning the value of the mortgage on the subject property as of January 1, 1982. Petitioner's expert testified that the value of the mortgage on the subject property as of the valuation date was slightly in excess of his opinion of value of \$17,200,000. Respondent produced no evidence of the value of the mortgage on the valuation date, nor did it refute Mr. Reynolds' characterization of the mortgage value.

11. Mr. Spruill, the District's assessor, testified that he used the cost approach to valuing the property for Tax Year 1983 because it was a new building. He stated that he only had one year's income (calendar year 1980) available

to him to determine a stabilized income for the property. He determined this was insufficient for that purpose.

12. The owner of the subject property submitted income and expense forms to the District of Columbia for 1980 and 1981. This information was available to the assessor although it was unclear if the assessor reviewed the 1981 forms before making his assessment. In assessing the property for Tax Year 1983, however, the assessor did not use this information. Nor did he use the income approach as a check. Thus the Court finds that the assessor did not use the income approach to valuation in assessing the subject property for Tax Year 1983.

The government has admitted, in 1015 15th Street, N.W. Associates v. District of Columbia, Tax Docket No. 3266-83 and in Washington Sheraton v. District of Columbia, Tax Docket No. 3123-82, reversed on other grounds D.C. Court of Appeals, Appeal No. 83-1045, decided Oct. 4, 1985, that the District generally uses the income approach to value commercial office buildings for assessment purposes. Mr. Reynolds, often an expert witness for the District, confirmed this in his testimony at trial.

The District stipulated, in Stipulation #2, to a Department of Finance and Revenue guideline showing that the District only used the replacement cost approach to value buildings with no income. The improvements on the subject property were finished in 1979, the building had an income stream for 1980 and 1981 which was known to the District having been timely submitted by the Petitioner, and the valuation date was January 1, 1982.

The District argued that Mr. Spruill had only one year, i.e., 1980, of income available. However, in testimony,

Mr. Spruill admitted that he had income information for both calendar years 1980 and 1981.<sup>1/</sup>

13. Mr. Spruill admitted that he had access to the income and expense statements submitted by the property owner and that those statements provided a sufficient income stream to use the income approach. In answers to interrogatories, Exhibit 1, which Mr. Spruill signed, he stated that he had not used the income or comparable sales approach to valuation.

14. Mr. Spruill stated that he used the mass appraisal technique to value the subject property for Tax Year 1983 as a check on his cost approach and admitted this is not an approved technique. Petitioner called Mr. James Edson, also an assessor for the District of Columbia. Mr. Edson testified that the use of the mass appraisal technique was not an authorized assessment technique in the District of Columbia. In any case, however, the District did not attempt to explain what this technique was and did not attempt to prove that it was a technique authorized for use by assessors in the District of Columbia.

#### ANALYSIS AND CONCLUSIONS

Superior Court review of tax assessment appeals is de novo, necessitating competent evidence to prove the matters at issue. Wyner v. District of Columbia, 411 A.2d 59 (D.C. App. 1980). Notwithstanding de novo review of the matter, the petitioner has the burden of demonstrating that the assessment appealed from is invalid.

The correct assessment of the subject property for Tax Year 1983 is the present market value -- the value of future

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<sup>1/</sup> Mr. Spruill testified for the District in the Washington Sheraton case, supra, and noted that one year's income was adequate to implement the use of the capitalization of income method.

benefits associated with the ownership of the property -- determined as of January 1, 1982. The assessment at issue is that of Tax Year 1983 as sustained by the Board of Equalization and Review -- in the amount of \$24,988,200.

The Court finds that petitioner provided credible evidence that the value of the subject property as determined by applying the income approach is \$17,200,000 for Tax Year 1983. Upon review of the testimony and documentation presented, the Court concludes that income analysis was properly performed by petitioner's expert, using income and expense data that has not been disputed, thereby producing an accurate estimate of market value. An expert opinion is not alone sufficient to carry petitioner's burden of proving an assessment to be incorrect. The Court therefore turns to the evidence presented regarding the assessment itself.

Petitioner contends that the assessment was arbitrary and excessive in violation of D.C. Code §47 801 et seq. (1981 ed.) and the due process clause of the United States Constitution. Because statutory and factual considerations are sufficient to resolve this case, the Court need not reach the constitutional issue.

By statute and regulation, assessors for the District of Columbia are required to consider all available information which may have a bearing on the value of the property, including financial considerations, replacement costs less accrued depreciation and income earning potential. D.C. Code §47-820 (1981 ed.); 9 D.C.M.R. §307.1 (1982). In assessing the subject property for Tax Year 1983, the assessor did not adequately consider these factors.

This Court has previously recognized, and Mr. Spruill testified, both here and previously, that the income approach is the preferable approach for valuing income producing prop-

erties for assessment purposes in the District of Columbia. 1015 15th Street, N.W. Associates v. District of Columbia, Tax Docket No. 3266-83, Barnes, J., Order entered November 13, 1984, p. 7. The District has acknowledged that it normally uses the cost approach only for valuing new or unique commercial properties for which an income stream does not exist or is difficult to establish. Id. Washington Sheraton v. District of Columbia, Tax Docket No. 3123-82 (Sup. Ct. April 29, 1983) (Slip Op. at 5), reversed on other grounds D.C. Court of Appeals, Appeal No. 83-1045, decided Oct. 4, 1985. The subject property was completed in 1979 and income and expense data were developed at the time of assessment.

Even if the cost approach were an appropriate method of valuing the subject property for assessment purposes, the respondent did not establish that its assessment was the product of a proper application of this method. Most notably, the District produced no evidence that the reproduction cost would exceed the cost of construction or any evidence which would support an assessment in excess of the acquisition cost.

The cost approach also is used when there is a lack of comparable sales. Although the District argued that an alternative to the income method would be proper in this case, the assessor stated that he did not use the comparable sales method, and no evidence is present in the record to indicate that the assessor did use the comparable sales approach to value the entire property.

In performing the Tax Year 1983 assessment, respondent increased the assessment of the land. To support this increase, the assessor stated that he had used vacant land sales. To be relevant, sales data must relate to comparable properties. See D.C. Code, §47-820 (1981 ed.); 9 D.C.M.R. 307.3 (1982). Vacant land is not comparable to property which

contains a relatively new twelve story commercial office building and thus sales of vacant land are not relevant to a determination of the value of the subject property.

In using the replacement cost method, the assessor used a less desirable and less accurate method to valuation. First he testified that he obtained his land cost by comparing the subject property to sales of land either vacant or occupied by "non-effective" improvements. This Court has found in a prior case that this was improper. 1015 15th Street, N.W., Associates v. District of Columbia, Tax Docket 3266-83, p. 9.

To determine the value of the improvements, the assessor took figures generated to approximate cost for other buildings and applied these costs, without appropriate adjustments, to the subject improvements. These figures were not actual sales or actual costs but rather were figures created for assessment by the application of an impermissible replacement cost approach. The assessor used a replacement cost method not approved by the District's own regulations. See 9 D.C.M.R. §307 et seq. The assessor admitted that he used neither 9 D.C.M.R. §307.3(a) nor 9 D.C.M.R. §307.3(b) to get cost. These regulations provide that the cost approach may be used to estimate value either by (1) adjusting the property's original cost for price level changes; or (2) applying current prices to the property's labor and material components. 9 D.C.M.R. §307.4 (1982). The assessor's failure to follow either of these methods creates doubts as to the conclusions he reached using the cost approach.

Petitioner's evidence has established that the reliance on the sales data used by the assessor would not have produced an accurate estimate of value. Furthermore, there is no dispute that the assessor had the necessary data available

to employ the income method. The petitioner has carried its burden of proving that the assessment was based on an inappropriate valuation method improperly used for properties of this kind.

Further, the Court finds that the assessor, Mr. Spruill, did not properly apply the method of valuation he selected to arrive at his assessment. He did not use the comparable sales method to arrive at the assessment and he did not use the income approach to value the subject property. Nor did his use of the cost approach comply with the applicable regulations.

Petitioner has established that the assessor did not follow the regulations, assess the property on the same basis as comparable properties or properly follow either the comparable sales or cost approach in preparing the Tax Year 1983 assessment. Therefore, the evidence establishes that the assessment is arbitrary and excessive. Moreover, the assessor's testimony reflected significant lack of supporting documentation in employing the approach used.

After weighing all the evidence, the court concludes that petitioner has carried its burden of proving the Tax Year 1983 assessment for the subject property arbitrary and incorrect. The Court finds that the market value of the subject property as of January 1, 1982, was \$17,200,000.

Wherefore, it is this 15<sup>th</sup> day of January, 1986,

ORDERED, that the respondent shall modify the assessment record card to reflect the value of \$17,200,000 for Tax Year 1983, of which \$9,954,100 shall be allocated to the land and \$7,245,900 shall be allocated to the improvements, and shall refund to petitioner, with interest, the excess taxes which have been unlawfully collected for Tax Year 1983; and it is

FURTHER ORDERED that the petitioner present a proposed order for refund, with interest, no later than ten days from the date this order is signed.

  
JUDGE IRALINE G. BARNES

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March 31, 1983.



IRALINE G. BARNES  
JUDGE

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