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SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

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ASC STORES III, INC., * FILED
Petitioner *
v. * Tax Docket Nos.
3391-84
* 3609-85
(Consolidated)
DISTRICT OF COLUMBIA *
Respondent. *

ORDER

This matter came before the Court for trial.

Petitioner, ASC Stores III, Inc., a corporation that owns the retail store known as Garfinckel's, challenges the real property tax assessment of its department store property for Tax Years 1984 and 1985. The property is located at 1401 F Street, N.W. (Lots 818 and 820 in Square 224). For Tax Year 1984, the Respondent, District of Columbia, assessed the improvements and the land for a total assessment of \$10,830,150; for Tax Year 1985 Respondent assessed the land and improvements for a total of \$15,000,000. The assessments were upheld by the Board of Equalization and Review (the "Board") after Petitioner had timely appealed each. For Tax Year 1984, \$2,502,890 was allocated to the improvements, and \$8,327,260 allocated to the land. For Tax Year 1985, \$3,821,712 was allocated to the improvements, and \$11,178,288 allocated to the land.

Petitioner contends that both its income approach to valuation and the "equalization" evidence used demonstrate assessment value of \$8,200,000 for Tax Year 1984, and \$8,825,000 for Tax Year 1985. Therefore, after paying the taxes of \$230,682,20 levied pursuant to the 1984 assessment, it initiated Case No. 3391-89. It initiated Case No. 3609-85, having paid the Tax Year 1985 assessment of

\$304,500.00. These cases were consolidated for purpose of trial on October 16, 1985.

Petitioner presented most of its evidence through an expert appraiser, James P. Ryan, M.A.I. Respondent presented testimony through Paul Spruill, who assessed the property for Tax Year 1984, Robert L. Klugel, the Chief of the Department of Finance and Revenue's Standards and Review Division, who assessed the property for Tax Year 1985, and an expert appraiser, Anthony Reynolds, M.A.I. who appraised the property for both Tax Years in question. Upon consideration of the record herein, the evidence and arguments of counsel at trial, the Court makes the following:

FINDINGS OF FACT

1. The subject adjacent lots contain approximately 28,228 square feet. The building, which occupies the entirety of the site, was erected in 1930 and contains approximately 337,000 square feet. It has nine stories above ground, the uppermost of which contains boilers and other similar equipment. There also are two basement levels containing approximately 55,000 square feet which were converted from storage to office space for petitioner's use in its business. The first six levels above the basement contain the selling area of approximately 127,000 square feet, which includes storage and dressing rooms. Although the property is located in a C-4 zoning district in which a Floor Area Ratio ("FAR") of 10 is permitted as a matter of right, the building is developed to a FAR of approximately 8.4.

2. The property is located at the western end of the downtown central business district on F Street, which has long been the principal retail core. The remainder of the square in which it is located is improved by Metropolitan

Square, a large new office building complex, which was erected shortly prior to Tax Year 1984.

3. Efforts to rejuvenate the downtown section of the central business district were fully underway by January 1, 1983, the valuation date for Tax Year 1984. As of that time, much development had been initiated or completed.

4. Petitioner's expert, Mr. Ryan testified that he considered the subject property as "potentially historic" because the Mayor's Downtown Planning Committee had stated that it should be designated historic. Respondent's assessor, Mr. Spruill, stated that he did not assess the subject property as historic, because it had no such designation.

According to Mr. Klugel, the property is not historic nor is it in an historic district. Mr. Klugel further testified that although he at one time wondered whether the subject property might be designated historic (as evidenced by his notes on the Office Building Review Form and its attachment) before the assessment was made, he ascertained from George Altoff of his office and from his own research that the subject property was neither historic, nor was it proposed for historic designation.

5. At trial, one of the central issues raised by the evidence was the "highest and best use" for the subject property as of the valuation dates. The District contends that the highest and best use was as an office building with some retail occupancy. It therefore assigned a minimum value to the building because of its functional obsolescence resulting from its present use and condition.

6. Petitioner however, contends that the present use is the highest and best use of the site, and that the District's theory produced an excessive value which cannot be supported

by evidence of prevailing market conditions. To support its position, Petitioner argued that as of the valuation dates, the downtown office building market had become severely depressed because of an oversupply of office space. Mr. Ryan testified that because of the recent period of recession and poor market conditions, the developers of Metropolitan Square (which is located in the same square as the subject) encountered significant difficulty in renting space in Phase Two of that project. In addition, the office space in nearby National Place was then being marketed, and the new Daon Building, located a few blocks to the north of the subject property on New York Avenue, remained vacant. Mr. Ryan testified that in view of these conditions the market would have concluded that the development of the subject site for office use would not have been prudent.

7. Mr. Ryan also observed that during this same period, Garfinckel's downtown store fared better than other department stores in the area, due largely to its established reputation with its more "affluent" market. Mr. Ryan concluded for this reason, and in view of the general redevelopment in the area, that the value of the site for a department store would continue to rise, and that its current use therefore would be more prudent than an office use.

8. Mr. Ryan also stated his opinion that the recognized historic landmark characteristics of the subject building would have been considered by the market as a significant reason for concluding that a conversion of the site to office use was not economically feasible or profitable. In this respect, he considered two facts particularly significant: First, the Mayor's Committee had recommended that the subject building be perpetually retained, and therefore, there was persuasive support for designating the property as an

historic structure; Second was the experience that the developer of Metropolitan Square had encountered because of the presence of two other structures on that site that were regarded to have historic significance. The first of these structures was the Albee Building, whose facade the developer decided to retain. According to Mr. Ryan, whose company had done the appraisal work for that developer, the retention of the facade added \$5,000,000 of additional cost. The other structure was Rhodes Tavern, which is located immediately adjacent to the subject building. When the developer sought to demolish that structure, a citizens group opposed this effort by seeking to have the structure classified as an historic landmark. This effort at preservation became quite popular and intense. After a lengthy court battle, the developer eventually succeeded in obtaining a demolition permit. Mr. Ryan maintained that the delay and expenses that resulted from the efforts of the preservationists added approximately \$3,000,000 to the development costs. In drawing an analogy between Garfinckel's and the Rhodes Tavern, Mr. Ryan concluded that the market would have viewed the likelihood of similar efforts to preserve the subject building so probable, and the attendant costs so significant, that it would not have attempted to convert the building from its current use to that of an office building. Mr. Reynolds concurred that the current use was profitable, but stated that a department store use was simply one of three alternative highest and best uses of the subject site.

9. Mr. Ryan testified that the Mayor's office would have opposed any effort to discontinue the current use of the subject property. He stated that not only would a change impair the City's investment in the Hecht site, but it would also adversely affect the development of other retail outlets

and nearby office buildings. Thus, he believed that the City's decision to donate property to the Hecht Company would be seriously impaired if the drawing power of Garfinckel's no longer existed. Furthermore, such a decision would also have adverse affects on other retailers and office building developers. Mr. Ryan concluded that a discontinuance of Garfinckel's would so threaten the downtown revenue base which the City seeks to develop, that the market would have been seriously concerned about any adverse reaction from the City over any change in use of the property.

10. Because he concluded that the present use is the highest and best use of the property, Mr. Ryan valued the property by using the traditional income approach. He capitalized the projected rental income that a typical department store lessee and a knowledgeable owner of the property would have found mutually agreeable as rent for the property. To determine this rental, he analyzed alternative investment opportunities, and market evidence bearing on a department store lessee's ability to pay market rent. The latter analysis reflected probable gross retail sales revenues of \$27,770,000 for 1984, which he concluded would have permitted the payment of a rent (in addition to real property taxes) of \$1,108,000 for 1983 and \$1,152,000 for 1984. After capitalizing these amounts, Mr. Ryan determined a Tax Year 1984 value of \$8,200,000, and a Tax Year 1985 value of \$8,825,000.

11. Based upon their premise that the site could be valued as though vacant and ready for development as office space, all of the Government's witnesses used the direct sales approach to value the property. The building was given a lesser value because of its functional obsolescence. The two assessors and Mr. Reynolds selected certain sales of land

that were readily adaptable for office building use and applied the sales prices for those acquisitions in determining a value for the subject land.

12. With one exception, the sales used by Mr. Klugel were of properties located within an area bounded by 13th and 15th Streets on the east and west, and which were located three to six blocks north of the subject property.

CONCLUSIONS OF LAW

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

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

Id., § 47-3303.

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

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

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

There is no statutory or common law mandate that respondent must follow any one particular approach in valuing

real property in this jurisdiction. D.C. Code §47-820 (1981 ed.) provides:

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

(Emphasis supplied.)

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

The Court concludes that petitioner has failed to demonstrate that respondent made an erroneous determination of value. Consequently, petitioner has not met its burden of proof. Petitioner's evidence did not provide sufficient justification for negating the Tax Year 1984 and 1985 assessments. The presentation of an alternative method of valuation is insufficient. Petitioner failed to demonstrate that the assessments were either excessive or out of equalization with other properties.

If the value question herein turns on the highest and best use as argued by petitioner at trial, the trial testimony showed that the highest and best use of this property would vary with its owner because there is no impediment to converting this property to office building

use. The subject property has not been designated historic, nor is it located in an historic district. By virtue of this Court's ruling in 1827 M Street, Inc. v. District of Columbia, Tax Docket Nos. 3217-83 and 3368-84, speculation on the possibility of such a designation or the mere proposal that a property should be historic is not by the assessor the determining factor in that property's value. The Court in 1827 M Street found that no legal restrictions existed on the development of the subject property as a result of the Joint Committee on Landmark's mere recommendation of that area for nomination as an historic district.

The present situation is analogous. The possibility of future historic designation is only one factor that may be considered in valuing the property. The Court is not persuaded that potential future historic designation carries any more weight than other characteristics to be considered in assessment of the property. In addition, the Court cannot ignore the fact that the Office of Assessment is under the same executive branch as the Mayor's office from which the Downtown Plan originates. The question becomes: What weight, if any, should the assessor and the government's expert give to a developmental plan generated within another section of the executive office? The Court is persuaded that the respondent properly considered the property's historic potential as one of many factors in arriving at its assessment.

Petitioners argue that discontinuance of Garfinckel's would threaten the downtown revenue base which the City seeks to develop, thus causing concern in the market about an adverse reaction from the City and its citizens. This concern is entirely too speculative for an assessor or this

Court to consider. Although future value may be properly factored for valuation purposes, mere speculation of future value cannot be accorded weight in determining the estimated market value of property. Any future increase in value will presumably be taken care of in the next annual assessment. Moreover, the obsolescence of the Garfinckel building (which gave the improvements its nominal value) could be addressed in the future not solely by razing the property to create an office complex, but through extensive renovation which then would be reflected in its over-all market value.

The Tax Year 1984 and 1985 assessments were not excessive or arbitrary. The respondent's assessment policies and procedures as applied to petitioner's property had a rational basis in District of Columbia law. The assessments were made fairly in relationship to other properties, and no capricious judgments were made regarding these assessments. Moreover the assessments were properly checked for equalization and fairness in relationship to other properties.

In assessing the subject property, the assessors did not use the income approach to valuation for several reasons: They were not given the appropriate income and expense information before the valuation date; they knew from their many years of experience in assessing commercial properties that the income from a fifty-five year old functionally and economically obsolescent building would not provide sufficient income to be reflective of the market in that location; and there are sufficient comparable local sales to indicate a value reflective of the market.

Petitioner not only failed to meet its burden of proof regarding the assessment, but also its use of the income

approach to value was improper in light of the testimony that income from the subject property could not support the land value dictated by other properties in the subject area. The readily available market data as used in the market data approach to value was more reflective of the true value of the subject property.

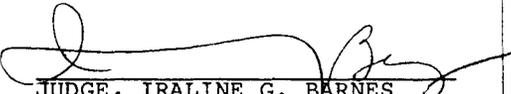
This Court agrees with the respondent in that the true value of the property lies in the land. The use of the income approach alone by petitioner's expert witness was improper in view of the relevant local comparable sales.

Moreover, Mr. Ryan focused on a very narrow view of the subject property, i.e. the selling area, and his figures for that were quite subjective, as evidenced by his deletion of almost one-third of the gross building area as "wasted space" (space used for stairwells and elevator shafts), while at the same time arguing that the overall decorum and design of the building is part of its drawing capacity.

The Court is persuaded that the market data approach to valuation and the direct sales comparison approach as used by respondent were the most reliable indicators of the subject property's value for Tax Years 1984 and 1985. The ready availability of comparable sales data; the degree of comparability of the land involved herein; and the absence of non-typical characteristics or conditions affecting the subject land all support the use of these methods in valuation. Respondent presented credible evidence that the value of the subject property was \$10,830,000 for Tax Year 1984 and \$15,000,000 for Tax Year 1985.

Wherefore, it is this 28th day of October, 1986,

ORDERED that respondent's assessments for Tax Years 1984 and 1985 for the subject property known as 1401 F Street, N.W. (Lots 818 and 820 in Square 224), are hereby affirmed.


JUDGE, IRALINE G. BARNES

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