

*Opinion
No. 12 44*

SECTION OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

FILED
MAY 2 1985

MARGARET W. McKIM, et al., :
: Petitioners, :
v. : Tax Docket No. 3513-85
DISTRICT OF COLUMBIA, :
Respondent. :

ORDER

This matter came before the Court for trial on petitioners' appeal of their 1985 tax year real property (commercial) assessment.

Petitioners seek a partial refund of real property taxes based on the alleged improper assessment by respondent for tax year 1985 of the subject property known as 2016 P Street, N.W., (Lot 41, Square 96) located one block west of Dupont Circle.

The subject property's land area consists of 2040 square feet, is zoned C-2-B¹ and is improved by a four-story brick-masonry building (GMA 0376 sq. ft.) occupied by a retail store on the first floor and six residential apartments on the remaining three floors. The subject property's developed FAR is 4.1.

Respondent's assessor Robert Weaver estimated the market value of the property for tax year 1985 to be \$725,000, separately valuing the land at \$360,640 - 2040 sq. ft. @ \$180 per sq. ft., and the improvements at \$356,360 - GMA 0376 sq. ft.

¹ The C-2 zoned District (Community Business District) is divided into C-2-A, C-2-B, and C-2-C Districts. A property within a C-2-B zoning District as is the subject, is so designated to permit commercial and residential functions, with a maximum permitted floor area ratio (FAR) of 3.5.

A property within a C-2-C zoned district also may enjoy a mixture of commercial and residential use as C-2-B, but its maximum permitted FAR is 6.0 11 DCMR, §720 et seq.

petitioners made timely appeal to the Board of Equalization and Review regarding the valuation of the property. The Board sustained the valuation of \$725,000.

This Court has jurisdiction to hear this appeal pursuant to D.C. Code §§11-1201 and 47-3303 (1981 ed.). Upon consideration of the evidence and arguments advanced, the court makes the following:

FINDINGS OF FACT

1. The subject property is a four-story brick building within one block of Dupont Circle, N.W., enjoying commercial use as apartments (top 3 floors) and a retail store (first floor) on a lot area of 2048 sq. ft.

2. The Department of Finance and Revenue sent petitioners a Notice of Proposed Assessment for Real Property Tax for tax year 1985 in the amount of \$725,000 (2048 sq. ft. of land - \$360,640 @ \$100/sq. ft.; improvements \$356,360 - 0376 sq. ft. GDA). Petitioners appealed this proposed assessment to the Board of Equalization and Review which sustained the assessment.

3. At the administrative hearing before the Board of Equalization and Review, petitioners represented that the Fair Market Value of the property for tax year 1985 was \$260,000. Thereafter, petitioners' pleadings in their appeal to this Court, including the complaint and pro-trial statement, argued for a Fair Market value of \$350,000. At trial de novo of this case petitioners, based on the testimony of an expert witness, Edgar Myers, MAI asked the Court to conclude that the Fair Market value of the subject property on January 1, 1984, the effective date of the assessment, was \$260,000.²

² Although Edgar Myers' appraisal report admitted in evidence as petitioners' exhibit 01 stated his opinion of the property's Fair Market Value to be \$260,000 as of November 14, 1983, Mr. Myers testified that this value (\$260,000) also applied to the property on January 1, 1984.

4. Respondent's assessor and petitioners' expert witness utilized the Market Data or "Comparable Sales" approach to valuation which bases assessed value on the prices at which reasonable comparable properties have recently sold with appropriate adjustments made for time, location, etc. Although both researched the Dupont Circle neighborhood for sales of comparable properties relevant to the January 1, 1984, valuation date, each relied on greatly disparate properties (\$725,000 v. \$260,000) for the "comparable sales" utilized to justify the market values they determined.

5. The Court notes that petitioners' expert witness performed his appraisal with the mistaken understanding that property was currently zoned C-2-C with an FAR of 6.0 (appraisal - p. 4). It is not. The subject property is zoned C-2-B with an FAR of 3.5. Petitioners' expert also testified that he limited his analysis of "comparable sales" in the immediate neighborhood only to sales occurring within six months of the effective date of valuation, January 1, 1984.

6. Petitioners' expert recommended only three observed sales of property nearby the subject property as "most similar to the subject" (appraisal p. 15). His "sale 01" was described as a 15 unit apartment building that sold for \$625,000 in August, 1983. He reported this building located at 2122 P Street, N.W. (Lot 76, Sq. 60), one block east of the subject, but with a larger land area (3315 sq. ft.) had the "same zoning as does the subject C-2-C." This is incorrect since subject is zoned C-2-D. Mr. Myers arrived at a sale price per unit for the building of \$41,667 by dividing the sale price - \$625,000 by the number of units (15). Mr. Myers did not report the square feet of the improvements

(GBA) to determine a sale price per sq. ft. of GBA. Mr. Myers testified that sale price per sq. ft. of GBA is no longer sought to be determined by an appraiser, and that "unit value," i.e., sale price divided by the number of apartments or units, is alone a satisfactory guide to valuation in the comparable sales approach. His remaining comparable sales, 02 and 03, were residential in character, zoned R-5-B, maximum FAR = 1.0. Neither of the two properties have the commercial use potential of the subject property. Petitioners' expert divided the sales prices of the two properties, (sale 02, 03), by the number of "units" therein and extracted sales price per unit values of \$17,083 and \$43,750, respectively. Sale 03 - 1415 Hopkins Place, N.W., which sold in May, 1903, for \$175,000 is a converted residence with a land area 40% smaller than subject's 2048 sq. ft.

7. Petitioners' expert then averaged the sum of the three comparable sale price per unit values: $\$41,667 + \$17,083 + \$43,750 = \$102,500$ divided by 3 = $\$34,167$. He attributed to the subject property's six (6) units a market value of \$35,000 each (appraisal p. 15). He also attributed to the subject property's entire first floor a value of \$50,000.³ Mr. Myers' final summary of value of the subject property is expressed thus:

6 Units x 35,000 -	\$210,000
First Floor Store -	<u>50,000</u>
Value Estimate by the Market Approach	\$260,000

³ The first floor of the subject property is approximately 2004 sq. ft. (6376 GBA sq. ft. divided by 4 floors), and is occupied by a retail store, attesting to the property's commercial value as well as residential use.

8. The Department of Finance and Revenue's (DFR) assessor, Robert Weaver, was not so selective or discriminating as petitioners' expert witness in his selection of comparable sales from market data. Petitioners' expert limited his selection of comparable sales to sales occurring no later than six months prior to the valuation date of January 1, 1984. Mr. Weaver considered sales from 1981 up to the critical date of assessment--January 1, 1984. His methodology produced seven sales (respondent's Exh. 02) with similar (C-2-zoning) commercial/residential use as the subject property. Four of the seven properties utilized as comparable are on the same block as the subject property, located just a few doors away, or across the street from the subject property. Mr. Weaver valued the subject property at \$06.55 per sq. ft. of GBA in the very low range because of the subject's age and need of renovation. Mr. Weaver stated that his estimate of the Market Value of the subject property improvements component, i.e. \$356,360, amounted to a "shell" value.

In estimating the market value of the land component of the subject property (2040 sq. ft) Mr. Weaver testified that he found no new land sales of C-2 land in the immediate area but that recent sales in the vicinity of 21st & M Street, N.W. of land zoned C-2 (commercial/residential use) supported his valuation of subject land at \$100/per sq. ft. or \$40.00 per point of FAR.⁴ Mr. Weaver's valuation of subject's land component was therefore \$360,640 (2040 sq. ft. x \$100/sq. ft.).

⁴ \$40.00 x 4.1 "developed" FAR + 100 corner influence equals \$176.00, rounded to \$100/sq. ft. The subject property is on the corner of P Street, N.W., and Hopkins Street, N.W.

9. Appraiser Myers' opinion that the subject land component value is worth \$80 per sq. ft. was based on two land sales that occurred in 1980 on the outskirts of the Dupont Circle neighborhood: 1700 17th Street, N.W. and New Hampshire Avenue and Corcoran Street, N.W.

CONCLUSION OF LAW

There is no statutory or common law mandate that respondent follow any one particular approach in valuing real property in this jurisdiction. D.C. Code §47-020 (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. ~~ASSESSORS ARE NOT~~ ~~REQUIRED TO~~ ~~PROVIDE~~ ~~INFORMATION~~ ~~ON~~ ~~SIMILAR~~ ~~TYPES~~ ~~OF~~ ~~REAL~~ ~~PROPERTY,~~ ~~MORTGAGE,~~ ~~OR~~ ~~OTHER~~ ~~FINANCIAL~~ ~~CON-~~ ~~DITIONS,~~ ~~REPRODUCTION~~ ~~COST~~ ~~LOSS~~ ~~ACCURED~~ ~~DEPRE-~~ ~~CIATION~~ ~~BECAUSE~~ ~~OF~~ ~~AGE,~~ ~~CONDITION,~~ ~~AND~~ ~~OTHER~~ ~~FACT-~~ ~~ORS,~~ ~~INCOME~~ ~~EARNING~~ ~~POTENTIAL~~ ~~(IF~~ ~~ANY),~~ ~~ZONING,~~ ~~AND~~ ~~GOVERNMENT~~ ~~IMPOSED~~ ~~RESTRICTIONS.~~

(Emphasis supplied.) The burden of proof is on the petitioner to provide evidence sufficient to prove that assessments are arbitrary, excessive or otherwise erroneous and unlawful. Superior Court Tax Rule 11(d). See, e.g., Wynn v. District of Columbia, 411 A.2d 59, 60 (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. For the following reasons, the Court concludes that petitioners failed to demonstrate that respondent made an erroneous determination and, consequently, petitioners did not meet their burden of proof.

Both petitioners' expert appraiser and respondent's assessor essentially adopted the same valuation approach or

technique to determine the market value of the subject property as of January 1, 1984, i.e., the market value by the comparable sales approach. The Court, however, is not convinced that petitioner's evidence of value, chiefly the testimony of Mr. Myers, is more persuasive than the estimated market value as found by Mr. Weaver. The Court further notes that petitioner's appraiser was mistaken as to the subject property's actual zoning category. Further, the appraiser's collection and analysis of available market data concerning sales of properties comparable to the subject was not convincing. In essence, the sum of Mr. Myers' overall appraisal analysis is the proffer of a single "comparable sale," a 15 unit apartment house, whose zoning classification and FAR is uncertain, and whose sq. ft. of gross building area is unknown. (Sale #1 - 2122 P Street, N.W., Lot 76, Square 60). Mr. Myers' remaining two comparables, both residences zoned R-5-D, FAR 1.0, are determined to not be comparable and thus cannot be used in measuring the market value of the subject property. The Court concludes that respondent's assessor's methodology was comparatively more in accord with 11 DCMR §307.3 which dictates the use of "reasonably comparable properties" when utilizing the comparable sales approach to value. Having failed to meet their burden, the Court concludes that petitioners have failed to establish by a preponderance of the evidence that the assessment was arbitrary, erroneous, or unlawful.

Wherefore, it is this 5th day of March, 1986,

ORDERED that respondent's assessment for tax year 1985 for the subject property known as 2016 P Street, N.W., (Lot 41, Square 96) be and is hereby affirmed.


JUDGE THOMAS G. WILLIAMS

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