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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

HAY ADAMS HOTEL ASSOCIATES	*	
Petitioner,	*	
v.	*	Tax Docket No. 3655-85
DISTRICT OF COLUMBIA	*	
Respondent.	*	

ORDER

This matter came before the Court for trial. Petitioner, the fee simple owner of property located at 800 - 16th Street, N. W. (Lot 809 in Square 186), challenges the real property taxes assessed against it for Tax Year 1985 pursuant to D.C. Code §47-829 (1981 ed.). Respondent, the District of Columbia, valued the subject property for tax assessment purposes for Tax Year 1985 at $19,754,000 in February, 1984. In August, 1984, Petitioner received a notice of a supplemental assessment stating that the Tax Year 1985 assessment was increased to $24,900,000, pursuant to D.C. Code §47-829 (1981 ed.), consisting of $4,958,415 for land and $19,941,585 for the improvements. Petitioner appealed to the Board of Equalization and Review, which sustained the increased assessment. Petitioner paid the tax of $505,470, together with all interest and penalties thereon, and timely filed this appeal.

The Court exercises jurisdiction over this appeal pursuant to D.C. Code §§47-825 and 47-3303 (1981 ed.). Based upon the record herein and upon the evidence adduced at trial, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The subject property is located at 800 - 16th Street, N. W., Lot 809 in Square 186 (hereinafter the "subject property").

2. Petitioner, Hay Adams Associates, is the owner of the subject property and the improvements thereon and is obligated to pay all real estate taxes assessed against the subject property.

3. The Respondent, the District of Columbia, is a municipal corporation created by the United States Congress, Section 1-101 of the District of Columbia Code.

4. On or about March 1, 1984, Petitioner received a notice of assessment dated February 27, 1984, stating that the assessment on Lot 809 in Square 186 (the subject property) for Tax Year 1985 was $19,754,000, allocated as $4,958,415 to land and $14,795,585 to improvements. In August 1984, Petitioner received notice of an annual supplemental assessment dated August 3, 1984, stating that the assessment for Tax Year 1985 was increased to $24,900,000 pursuant to D.C. Code §47-829, consisting of $4,958,415 for land and $19,941,585 for improvements.

5. Petitioner's appeal to the Board of Equalization and Review in Appeal No. 851-24 was timely filed on September 30, 1984. Oral hearing was held before the Board of Equalization and Review and by decision dated October 2, 1984, the Board informed Petitioner of its decision to sustain the increased assessment.

6. The taxes and assessment in controversy are real estate taxes and annual supplemental assessment for Tax Year 1985 in the following amounts:

Total Assessment:	$24,900,000
Total Taxes:	$ 505,470

7. The Tax Year 1985 taxes in the amount of $505,470 have been paid in full, together with all penalities and interest owing. First-half Tax Year 1985 taxes in the amount of $252,735, interest in the amount of $18,196.92 and penalties of $50,547 were paid on March 29, 1985; second-half Tax Year 1985 taxes in the amount of $252,735 were paid on March 29, 1985.

8. The subject property is an eight-story hotel consisting of 165 rooms which underwent renovation the latter part of 1983 through 1984. The site is zoned SP-2, which permits hotel and apartment uses with a Floor Area Ratio (FAR) of 3.5 and an increase to a FAR of 6.0 with the approval of the Board of Zoning Adjustment. The developed FAR of the subject property is 7.2.

9. The highest and best use of the subject property is the current use because the current developed FAR is 7.2, which is 1.2 over the legal allowance.

10. The subject property consists of a rectangular site of 12,879 square feet of land, improved with a pre-cast concrete building built in 1928 and made to look like stone. Some of the exterior wall on the 16th Street and H Street sides is stone and the hidden North and West walls are brick. The gross floor area of the subject improvements is 111,260 square feet. The interior walls and ceilings are plaster and the floors are hardwood.

11. Of the 165 rooms comprising the subject property, approximately 60 percent face H Street or Lafayette Park and were described by the expert as superior. The remaining 40 percent are on the North and West sides of the building; the expert described these rooms as small and poorly lit.

12. The hotel contains no meeting rooms, and thus cannot become a conventional hotel. In addition, the hotel contains no laundry which necessitates that all laundry be sent out and an additional expense incurred. The hotel does not have any parking facilities. The hotel contains two dining rooms on the first floor and a grill in the basement.

13. Respondent assessed the subject property for the annual assessment at an estimated market value of $19,754,000 consisting of $4,938,415 for land and $14,795,585 for improvements for Tax Year 1985. The assessment for the land was determined by Mr. George Altoft, Senior Assessor for the Department of Finance and Revenue for both the Tax Year annual assessment and annual supplemental assessment. Mr. Altoft presented evidence explaining how he reached the amount allocated for the land.

14. Mr. Robert Klugel, Chief of Standards and Review, Department of Finance and Revenue, approved Mr. Altoft's land assessment and determined the amount to attribute to improvements for both the annual and the supplemental assessments.

15. In determining the annual assessment, Mr. Klugel presented evidence that he had income and expense statements for calendar years 1980, 1981, and 1982 which he used as historical data to arrive at the estimated market value of the subject property.

16. Mr. Klugel analyzed Petitioner's income for 1981 and 1982 on the Building Review Form and determined Petitioner's estimated stabilized net income was approximately $2,890,000. He capitalized this estimated

income using a .1250 capitalization rate plus the expected tax rate of 2.13 per $100.00 to arrive at a value of $19,754,000 or $89,130 per room.

17. The only documentary evidence relating to the Tax Year 1985 annual supplemental assessment of the subject property was a single piece of paper, called a "change sheet" which Mr. Klugel testified was the entire documentary evidence of how the annual supplemental assessment had been made. All other evidence of the making of the annual supplemental assessment was provided through Mr. Klugel's oral testimony.

18. Through oral testimony, Mr. Klugel stated that the Tax Year 1985 annual supplemental assessment for the subject property was made by adding $5,146,000 or $31,000 per room, to the Tax Year 1985 annual assessment. Mr. Klugel stated that the annual assessment for Tax Year 1985 was made using the Mass Appraisal Technique. This technique requires the assessor to consider all approaches to value in reaching an assessment. It is described in a manual published by the Department of Finance and Revenue and incorporates the definition of estimated market value as found in the District of Columbia Code and 9 DCMR.

19. Mr. Klugel testified that he had instructed another assessor, Mr. Troy Davis, to add the amount of $5,146,000 to the Tax Year 1985 annual assessment to achieve the Tax Year 1985 annual supplemental assessment. He further testified that only a single document, the change sheet, reflected this instruction and that the document did not show how the value had been calculated. Mr. Klugel's only oral testimony as to how the Tax Year 1985 annual supplemental assessment was arrived at was that he concluded that the renovation added value to the subject property in the amount of $5,146,000.

20. The Petitioner's expert witness was William Harps, MAI. Respondent, District of Columbia, stipulated to Mr. Harps' qualifications as an expert witness and Mr. Harps' written report was admitted into evidence at trial. Petitioner's expert relied upon the income capitalization approach to value the subject property and stated that although the comparable sales approach could not be utilized because there were no comparable sales, i.e., sales of land zoned SP-2 on 16th Street, Northwest, between Lafayette Park and the Massachusetts Avenue, Rhode Island Avenue intersection, he had prepared an analysis of property sales susceptible of comparison.

21. In Mr. Harps' analysis of the income capitalization approach, he used Petitioner's 1982 Income and Expense statement which reflected income for the full calendar year but he utilized only partial statements for calendar years 1983 and 1984. For 1983, the period of time used by Mr. Harps was June, 1983 to December, 1983; and for 1984, the period of time was January, 1984 to June, 1984.

22. Although Mr. Harps incorporated the 1982 Income and Expense Statement into his appraisal report, there was no evidence it was given much consideration or used as historical data except to determine the occupancy rate for the full calendar year of 1982. Mr. Harps initially testified that the rate of occupancy for Tax Year 1982 was 39.3%. During cross examination, however, he changed this figure to 56% and later to 51.4%. It was the view of Respondent's assessor that an occupancy rate could not be determined from the information provided on the 1982 income and expense statement.

23. Mr. Harps' use of data for only two half-year periods (1983 and 1984) is an insufficient basis from which

to project stabilized income. He, in turn, used these statistics as a basis for projecting future benefits. During this same period, the hotel was undergoing massive renovation.

24. Petitioner's expert also prepared a market data analysis. However, as no sales of properties were directly comparable to the subject property, Petitioner's expert prepared an analysis of hotels considered susceptible of comparison with the subject property. This analysis yielded a range of values for the subject property from $7,772,915 to $13,623,555, with a mean of $11,104,182. As one of the hotels susceptible of comparison was the closest to the subject property by type of clientele and amenity, Mr. Harps gave the greatest weight to this comparison and concluded that the market data approach supported the income approach at a value of $11,900,000.

CONCLUSIONS OF LAW

Superior Court review of a tax assessment 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). The assessed value of property for real property taxation purposes is the "estimated market value" of the property. D.C. Code §47-820(a)(1981 ed.). In the instant case, the assessment challenged by Petitioner is the Tax Year 1985 annual and annual supplemental assessments. For the Tax Year 1985 annual supplemental assessment, the proper value of the subject property is its "estimated market value" as of July 1, 1984. See D.C. Code, §47-829 (1981 ed.); Cathconn Associates Limited Partnership v. District of Columbia, 107 D.W.L.R. 957 (D.C. Super. Ct., Tax. Div., Tax Docket No. 2424, Apr. 27,

1979, Penn, J.)(a new assessment made under the annual supplemental assessment statute must be based upon the fair market value just as in the case of an annual assessment).

The assessment here at issue is the Tax Year 1985 annual and annual supplemental assessments as to lot 809 in Square 186, as sustained by the Board of Equalization and Review, in the amount of $24,900,000. The Court has jurisdiction under D.C. Code §11-1101, 47-3303 and 47-3304 (1981 ed.). 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.

Petitioner bears the burden of proof to establish Respondent's assessment is arbitrary, excessive or otherwise erroneous and unlawful. Sup. Ct. Tax R. 11(d). See Also Wyner at 60; District of Columbia v. Burlington Apartment, 375 A.2d 1052, 1057 (D.C. 1977)(en banc). Petitioner cannot meet its burden by merely presenting an alternative value arrived at by using a different approach to valuation as a basis for invalidation of an assessment. Instead, Petitioner must show Respondent's assessed value was erroneously determined and therefore unlawful.

Petitioner has failed to establish Respondent's annual assessment for Tax Year 1985 was erroneously determined. The Court finds Petitioner has, however, met its burden of proof with respect to Respondent's annual supplemental assessment for Tax Year 1985 as being arbitrary and capricious and thus invalid and void as a matter of law. Therefore, the Court sustains Respondent's annual assessment for lot 809 at a value of $19,754,000, allocated as

$4,958,415 to land and $14,795,585 to improvements. Compare Brisker v. District of Columbia, 510 A.2d 1037, (D.C. App. 1986).

The Court is satisfied Respondent's annual assessment for lot 809 at a value of $19,754,000 was lawfully determined and represents the subject property's fair market value. Respondent's assessor presented oral testimony that he used Petitioner's income and expense statements for calender year 1980, 1981 and 1982 as historical data to arrive at the subject property's estimated market value. Based on his analysis of the data, he determined Petitioner's estimated stabilized net income and capitalized the same to arrive at a value of $19,754,000 or $89,130 per room. Although Petitioner attacks the assessor's credibility, the Court credits his testimony as truthful.

Contrariwise, Petitioner's appraiser used two six-month periods as a basis for determining the subject property's stabilized income. Moreover, the two periods used by the appraiser are abnormal because the subject property was undergoing extensive rehabilitation during the time. The Court thus finds the appraiser's data base is not reliable for predicting future earnings. The disruption to the usual operation of the hotel caused by the extensive renovation justifies Respondent's approach to income capitalization although it is somewhat at variance with the usual practice for hotels in the District. See District of Columbia v. Washington Sheraton Corp., 499 A.2d 109, 113 (D.C.App. 1985).

For any annual supplemental assessment, the proper value of the subject property is its "estimated value" as of July 1st. See D.C. Code §47-829 (1981 ed.). Estimated market value is defined as the price a willing buyer would pay a willing seller, neither being in a position to take advantage of the exigencies of the other. D.C. Code §47-802(4)(1981 ed.).

Respondent's assessor testified at trial that for the annual supplemental assessment, he merely increased the allocation to improvement by an amount of $5,146,000 to reflect the value of Petitioner's renovation rather than valuing the subject property anew. Respondent presented no evidence that this supplemental assessment was the fair market value of lot 809, Square 186. No testimony was offered as to any analysis reflecting that the cost of the renovations yielded an additional return to the property equal in value. Thus, Respondent's annual supplemental assessment reflecting an increase of $5,146,000 for improvements to lot 809 is arbitrary, capricious and improper.

The assessment value of lot 809 as of July 1, 1984 should be reduced to the value originally proposed by the annual assessment in the amount of $19,754,000 of which $4,958,415 is allocated to the land and $14,795,585 is allocated to the improvements.

Accordingly, it is this 20th day of November, 1987,

ORDERED, that the Respondent shall modify the assessment record card for lot 809 in Square 186 to reflect the value of $19,754,0000 for Tax Year 1985, of which

$4,958,415 shall be allocated to the land and $14,795,585 shall be allocated to the improvements and shall refund to Petitioners, with interest from the dates of payment, the excess taxes which have been unlawfully collected for Tax Year 1985 supplemental assessment; and it is

FURTHER ORDERED that the Petitioner present a proposed order for refund, with interest from the dates of payment of the tax, no later than ten (10) days from the date this Order is signed.

SO ORDERED.

JUDGE IRALINE G. BARNES

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