

12932

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

FILED
JUL 10 1990
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L'ENFANT PLAZA PROPERTIES, INC.,
ET AL. :

Petitioner :

v. : Tax Docket Nos. 380⁷~~6~~-86
3942-87

DISTRICT OF COLUMBIA :

Respondent :

FINDINGS OF FACT, CONCLUSIONS OF LAW
MEMORANDUM OPINION AND JUDGMENT

This matter came before the Court for trial on petitions for reductions of assessments property and partial refunds for excess taxes paid on real property for tax years 1986 and 1987 filed by petitioners and the answer of the District of Columbia. The parties filed a Stipulation of Facts pursuant to Super. Ct. Tax Rule 11(b). Upon consideration of the petitions, answers, stipulations of the parties and the evidence adduced at trial, and having resolved all questions of credibility, the Court makes the following:

Findings of Fact

1. The subject property is located at 990 L'Enfant Plaza, S.W. and 825 Frontage Road, S.W., Lot 61, Square 435 and Lot 187, Square 387 in the District of Columbia.
2. Petitioner, L'Enfant Plaza Properties, Inc.

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Findings of Fact

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2. Petitioner, L'Enfant Plaza Properties, Inc.

(hereinafter referred to as "L'Enfant Plaza") is the successor by merger, as of June 30, 1974 to L'Enfant Plaza East, Inc. Both corporations are or were incorporated in and operating in the District of Columbia. The principal office of both corporations is or was 490 L'Enfant Plaza East, S.W., Washington, D.C. L'Enfant Plaza is the owner of the improvements and lessee of the subject land.

3. The petitioner, District of Columbia Redevelopment Land Agency (hereinafter "RLA"), is an independent government corporation and an instrumentality of the District of Columbia government as of July 1, 1974, incorporated and operating within the District of Columbia for the purpose of replanning and rebuilding slum, blighted, and other areas pursuant to an Act of Congress (the District of Columbia Redevelopment Act of 1945, approved August 2, 1946, as amended). RLA is the owner of the land described above. RLA's principal office is 1122 North Capitol Street, N.E., Washington, D.C.

4. L'Enfant Plaza East, Inc. was obligated under its lease with RLA dated November 24, 1968, to pay all real estate taxes assessed against Lot 61 in Square 435 and Lot 187 in Square 387 (the "subject property"). Under that same lease, RLA agreed to join as petitioner in any tax case.

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

6. On or about March 1, 1985, petitioners received a notice of assessment dated February 27, 1985 stating the assessment on the subject property for tax year 1986 was \$98,538,000.

7. An appeal to the Board of Equalization and Review, Appeal No. 86-666, was timely filed on April 15, 1985. The Board of Equalization and Review, by decision dated May 31, 1985, informed petitioners of its decision to reduce the assessment to \$62,069,000.

8. On or about March 1, 1986, petitioners received a notice of assessment dated February 26, 1986, stating that the assessment on the subject property for tax year 1987 was \$93,232,414.

9. An appeal to the Board of Equalization and Review for the subject property was timely filed on April 15, 1986. The Board of Equalization and Review, by decision dated May 20, 1986, sustained the assessment.

10. On or about August 28, 1986, petitioners received a tax year 1987 First Half Tax Bill for the subject property, stating that the subject property was all Class 4.

11. An appeal of the First Half Tax Bill to the Board of Equalization and Review for the subject property was timely filed on September 30, 1986. By letter dated October 14, 1986, the Board informed petitioners that it had no jurisdiction to render a decision on classification.

12. The taxes and assessment in controversy for tax

year 1986 are in the following amounts:

Total Assessment: \$62,069,000.00

Total Taxes: \$ 1,077,833.72

13. The tax year 1986 taxes in the amount of \$1,077,833.72 were timely paid in full. The first-half taxes, in the amount of \$538,916.86, were timely paid on September 15, 1985, and the second-half taxes, in the amount of \$538,916.86, were timely paid on March 31, 1986.

14. The taxes and assessment in controversy for tax year 1987 are in the following amounts;

Total Assessment: \$93,232,414.00

Total Taxes: \$ 1,892,618.00

15. The tax year 1987 taxes in the amount of \$1,892,618.00 have been paid in full. First half taxes, in the amount of \$946,309.00, were timely paid on September 15, 1986. Second half taxes, in the amount of \$946,309.00, were timely paid on March 31, 1987.

16. The subject property contains 91,993 square feet of land with primary frontage on L'Enfant Plaza, S.W. The site is zoned UR. The subject property is improved with a multi-story, mixed-use building, completed in 1973. Both parties agree that the current use of the subject property is its highest and best use.

17. The building contains approximately 1,077,336 square feet of gross building area. Approximately 394,778 square feet of the net rentable area is office space;

28,615 square feet is retail space; and 48,639 square feet is storage space. There are also 372 hotel rooms and a 468-car parking garage.

18. George B. Altoft was senior assessor during both tax years 1986 and 1987 with the Department of Finance and Revenue, Standards and Review Division. He testified by agreement in place of Mr. Robert Klugel, former Chief of Standards and Review, who had since left employment with the District of Columbia. While Mr. Klugel made the assessments, Mr. Altoft participated in them to some extent.

19. The District used the mass appraisal technique, after checking all three appraisal approaches to valuation. They relied heavily on the income approach. They were also concerned with equalization.

20. After the Board of Equalization and Review reduced the tax year 1986 assessment, Mr. Altoft requested a rehearing. At that time, Mr. Altoft prepared a different estimate of value. (See petitioner's exhibit 13). Mr. Klugel, who had estimated the value of the property at \$98,538,000, admitted that he "overshot" the value for 1986 and that he was prepared to make a revision after reviewing the owners' income and expense forms.¹ Instead of using the figures reported by the taxpayers (\$7,738,315), he adjusted the net operating income upward by \$4,652,026. For

¹Although Mr. Klugel did not testify, portions of his deposition testimony were admitted into evidence.

tax year 1987, Mr. Klugel used a net income of \$3,630,242 more than reported. Again, he made adjustments to the owner's expenses. While the taxpayers reported expenses (including vacancy losses) of \$17,926,639, Mr. Klugel used only \$15,711,200. The following differences also appear between the figures reported by the taxpayer and those utilized by the assessor in determining value:

<u>Category</u>	<u>Assessor's Figures</u>	<u>Taxpayer's figures</u>
Hotel Revenue	\$12,500,000	\$9,500,000
Food & Beverage Receipts	6,400,000	4,800,000
Other	1,000,000	880,000

21. The mass appraisal technique used by the District to determine the assessments do not take into account the individual characteristics of the subject property. The assessors failed to consider economic trends in the market place (such as the types and terms of mortgages being written as of the value date) and the use of the subject property as an investment on which an investor would expect a positive cash flow. Actual leases for the subject property and the real potential of the property were not considered by the assessors. The tax year 1987 tax bills for the subject property did not reflect any allocation, between class three property (hotels) and class four property (office buildings). The bill indicated that the subject was all class four.

22. Mr. Donald Urquhart testified as an expert witness for petitioner. Respondent stipulated to his qualifications

as an expert real estate appraiser. His qualifications are set forth in petitioner's exhibit #14 at pp. 90-94. Mr. Ryland Mitchell, III testified as an expert real estate appraiser for respondent. Mr. Mithcell's qualifications are set forth in respondent's exhibit A following the conclusions of his report. The qualifications of each expert are incorporated herein by reference.

23. In his valuation of the subject property, Mr. Urquhart considered all three methods of valuation: the cost approach, the comparable sales approach and the income capitalization approach. He determined that the cost approach was not applicable because of the property's age and the fact that investors are more interested in the income stream of the property. The witness relied most heavily on the income approach to value. He deemed this approach most relevant, since it measures the quality, quantity and durability of the property's income stream. The witness also developed a sales comparison approach to test the conclusions reached by the income approach to value. This method was of limited use to the expert because of the absence of true comparables. Adjustments had to be made for differences between the other properties examined and the subject. Therefore, the witness used the comparable sales approach only as supporting evidence for his conclusions as to value.

24. To begin his valuation by the income approach, Mr.

Urquhart estimated the fair economic rent for the office portion of the subject property for each year. He found sufficient data on comparable facilities to estimate the fair economic rent. The witness stated that the office market was soft during the period question and that owners had to provide tenant concessions. For 1985, the typical concession was about 10%. The witness concluded that the average fair economic rent for the office was \$22.00 per square foot for the "face" rent. With tenant concessions, Mr. Urquhart concluded the the "effective" market rent (the rent owner actually receives) would be \$20 per square foot of leasable office area. The witness considered the opportunity for re-leasing unoccupied space at higher rents. The resulting unit rate was close to or at the actual rents as of January 1, 1985 and January 1, 1986.

25. After a detailed examination of the operating history, Mr. Urquhart derived stabilized gross incomes for the subject property based upon market and contract rents. He deducted from the stabilized gross incomes, stabilized figures for vacancy and credit loss. He concluded that the stabilized effective gross incomes for the office portion of the property were \$8,810,575 for tax year 1986, and \$9,712,000 for tax year 1987.

26. For income generated by the hotel component, Mr. Urquhart examined the average daily room rates actually achieved. The published rates for this hotel ranged from

\$80 to \$245 per night for double and from \$85 to \$130 per night for single occupancy. However, the posted rates do not reflect the average daily room rates which are lower because of various discounts (e.g. group rates, government rates, two packages, special week-end rates and complimentary rooms). The average daily room rate for the subject was \$79.66 for 1982; \$88.11 for 1983; \$87.39 for 1984, and \$90.71 for 1985. For tax year 1986, the witness projected that the property would achieve an average daily room rate of \$90.00 based on the historical data. For tax year 1987, the witness projected that the property would achieve an average daily rate of \$96.00 per room. He also examined comparable hotel rentals and determined that the subject is competitive with other facilities. He then determined a projected occupancy rate based upon historical occupancy levels at the subject hotel and in the Washington D.C. market. Mr. Urquhart concluded that the projected occupancy level for each year would be 80%. Based on all of the considerations, Mr. Urquhart concluded that the stabilized effective gross income of the hotel portion is \$15,524,760 for tax year 1986 and \$16,529,250 for tax year 1987. The estimated room income was derived as follows:

No. of rooms	X	=	365 days	X	Average	=	gross income
					daily		before occupancy
					room rate		rate adjustment

The witness then applied the occupancy level of 80% to obtain the estimated gross annual income.

27. Mr. Urquhart then examined the expenses of the subject property and market expenses for other properties with which he was familiar. In stabilizing the expenses for the subject property, Mr. Urquhart took into consideration unique features of the property's operation. For example, the management of the subject property had been very effective, in maximizing the base rent for leased space and in minimizing the vacancy and credit loss for the property. Mr. Urquhart pointed out that the building had some physical features that required expenses in a certain range. The witness examined every lease and expense item. He could find no room for a reduction in expenses. Real estate taxes, which are in dispute, are not appropriately considered in expenses. However, they are addressed in the capitalization rate.

28. Mr. Urquhart concluded from his analysis that the stabilized operating expenses for the subject property would total \$16,231,795 for tax year 1986 and \$17,207,825 for tax year 1987. The stabilized operating expenses were then deducted from the stabilized effective gross incomes to yield a net operating income of \$7,639,700 for tax year 1986 and \$8,562,185 for tax year 1987.

29. To determine value for the subject property by the income capitalization approach, Mr. Urquhart developed an overall capitalization rate to be applied to income. This rate is based on evidence derived from market attitudes and

economic indicators by the expert. Mr. Urquhart derived these rates from the Washington, D.C. market and from nation-wide publications which publish capitalization rates derived from sales. He considered other investment opportunities which compete with the purchase of real estate, including their rates of return and risks. He analyzed financial indicators and real estate investment criteria. The rate the witness developed took into account all of such factors. From this examination of national and local trends and competing investments, along with his familiarity with the local market, Mr. Urquhart concluded that the capitalization rate should be 12.06% for tax year 1986 and 11.56% for tax year 1987. To these rates, he added the blended tax rate for each tax year of \$1.95 per \$100 of assessed value, to yield a total capitalization rate which he rounded to 14.0 for tax year 1986 and 13.5 for tax year 1987.

30. Mr. Urquhart concluded a value of \$54,600,000 for the subject property as of January 1, 1985 (for tax year 1986), using the income approach. This value was obtained by applying his total capitalization rate of 14.0 to the stabilized net operating income of \$7,683,500, yielding a result of \$54,600,000. For tax year 1987 (as of the January 1, 1986 valuation date), Mr. Urquhart concluded a value of \$63,400,000 obtained by applying his capitalization rate of 13.5 to the stabilized net operating income of \$8,562,185.

31. In support of his primary approach using income capitalization, Mr. Urquhart looked for sales of properties sufficiently similar to the subject to develop a comparable sales approach to valuing the property. There were no sales that could form the basis of a reasonable comparison in Southwest. There were no sales of mixed-use properties anywhere in the District of Columbia. Further, those sales of office buildings and hotels outside the Southwest area required extensive adjustments because of location. In Mr. Urquhart's opinion, the sales did not contradict the value of the subject property derived using the income capitalization approach.

32. Finally, in testing his conclusions of value for the subject property, Mr. Urquhart completed cash flow analyses. Applying the stabilized net operating incomes he had derived for the subject to the real estate taxes and mortgage requirements at the then-prevailing market rates for mortgages, Mr. Urquhart concluded that, if an investor purchased the property for either value that he ascribed to it, the property would have a positive cash flow sufficient to render it competitive in the market place for investors' dollars.

33. Respondent's expert witness, Ryland Mitchell, III, also considered the three traditional approaches to value: cost, income and comparable sales. He did not utilize the cost approach because the development costs of a stable

income-producing property such as the subject property does not reflect actions of willing buyers and willing sellers in the market. Mr. Mitchell deemed the income approach to be most pertinent in developing estimated market value of an income producing property like the subject. He agreed that typical purchasers evaluate such properties based on the quality, quantity and durability of a project income stream. He also considered the market approach to value. He contends that he found support for his opinion based on recent sales of office buildings and hotels in the area. He based his land value on comparable sales.

34. Mr. Mitchell also reviewed and analyzed the property's historical income-expense statements and rent rolls charting the leasing experience of the office portion. The stabilized effective gross incomes developed by both experts for tax year 1986 were about identical: \$24,335,335 for Mr. Urquhart; \$24,750,000 for Mr. Mitchell. The difference in their perceived total net operating incomes is almost entirely attributable to the difference in the calculation of their respective stabilized operating expenses. For tax year 1987, the difference is slightly greater. Mr. Mitchell determined the effective gross income to be \$25,700,000, and Mr. Urquhart found it to be \$26,241,250. There is essential agreement between the two experts on gross effective income.

35. Mr. Mitchell testified that he examined comparable

rentals as well as rents for the subject property and concluded a projected gross income for the office portion of \$9,000,000 for tax year 1986 and \$9,825,000 for tax year 1987. Mr. Mitchell then subtracted a vacancy factor from the gross income of five percent to arrive at stabilized effective gross income of \$8,550,000 for the tax year 1986 and \$9,335,000 for tax year 1987.

Mr. Mitchell considered the property to be "above economy class, but no luxury". For the hotel portion, he examined comparable rentals and the history of the subject property. He derived an average daily room rate of \$95.00 per room and applied an 80% vacancy. This is the same vacancy factor used by Mr. Urquhart. Mr. Mithcell's projected effective gross incomes for the hotel are \$16,200,000 for tax year 1986 and \$16,365,000 for tax year 1987.

36. The major difference in the experts' determinations of net operating income for purposes of their income approaches to value was in operating expenses. Mr. Mitchell, reaching lower figures for operating expenses, examined the expenses for other buildings and for the subject. He assumed that the subject could be operated for less. This conclusion is contrary to experience and the fact that higher expenses are necessary due to the building's characteristics. Approximately one-third of the building consists of common areas. Its heating and cooling

systems are inefficient. Its expenses for utilities are higher due to the building's configuration. Efforts have been made by the owner and their agents to operate the building as economically as possible, consistent with their lease obligations. It is unrealistic to expect that the expenses for the property will decline as projected by respondent's expert witness.

37. Petitioner's expert projected expenses consistent with the property's history. A comparison of the expenses used by the two experts is shown on petitioner's exhibit 31. Mr. Urquhart's projection of expenses appear to be appropriate in calculating net income. The expense figures used by this witness take into account the actual experience of the building and its unique characteristics which bear upon cost. Mr. Urquhart's expense projections appear to be supported by the evidence, and they should be accepted.

38. Mr. Mitchell derived two capitalization rates for the subject property for each valuation date, one for the office and one for the hotel. For each year, he concluded a capitalization rate of 8.0% for the office, to which he added the real property tax rate of 2.03% to arrive at an overall capitalization rate of 10.0%. For the hotel portion, Mr. Mitchell determined a capitalization rate of 12%, to which he added the tax rate of \$1.82 to arrive at an overall rate of 13.8%. For tax year 1986, Mr. Mitchell divided the net operating income of the office portion of

\$5,930,000 by the rate of 10% to yield an office value for the subject property rounded to \$59,300,000. He then divided the hotel net operating income of \$3,897,000 by his capitalization rate of 13.8% to yield a value of \$28,239,000 rounded. In the same fashion, he computed office and hotel values for tax year 1987 with the same capitalization rates. His office net operating income was \$6,260,000 which yielded a value of \$62,600,000. The hotel net operating income was \$3,602,000 yielding a value of \$26,101,449. Mr. Mitchell also computed the values with a blended capitalization rate which combined the hotel and office capitalization rates and tax rates. This overall blended rate, he concluded, was 11.45%. He applied this rate to the combined net operating incomes to yield a value of \$85,825,000 for tax year 1986 and \$86,130,000 for tax year 1987.

39. For tax year 1986, Mr. Mitchell chose an overall capitalization rate of .095 (9.5%) for application to the entire subject property from market sales data. He stated that five recent sales of office buildings and hotels for which the indicated overall capitalization rates ranged from .045 (4.5%) to .095 (9.5%) influenced his market oriented overall capitalization rate of .095 (9.5%). To this overall cap rate Mr. Mitchell added a tax rate of .0195 representing the blending of \$2.03 per \$100 of assessed value for commercial real estate and \$1.82 per \$100 of assessed value for the hotel portion resulting in a total capitalization

rate of .1145 (11.45%).

For tax year 1987, Mr. Mitchell derived his overall capitalization rate for the entire property from five office building sales. Considering, hotels a more risky investment, the witness developed a higher overall capitalization rate of 12% with some reference to the limited data related to hotel sales. As stated in paragraph 38, he used a combined capitalization rate of 11.45%.

40. Mr. Mitchell also checked his values with an internal rate of return analysis. The analysis is based upon several assumptions or speculations. He analyzed a five-year projection period. Among his assumptions were a compound increase in the net operating income of 5% per year, stable expenses, and a sale at the end of five years at a substantial gain. Mr. Mitchell admitted that the actual net operating income was flat and that expenses had been increasing. He also admitted that if any one assumption proved to be false, the final conclusion would be different. Nevertheless, he did the exercise as it is one engaged in by investors. The calculation is only as reliable as the assumptions upon which it is based. There appears to be no support for the assumptions made of increases in projected income and stable operating expenses.

41. Mr. Mitchell admitted that, under market conditions as of the value dates, his analysis of both tax year 1986 and tax year 1987 would yield a substantial

negative cash flow after debt service applying his income and expense conclusions. The witnesses agree that willing buyers are looking for positive returns on their investments. Therefore, buyers are not likely to invest in a real estate venture of the magnitude of the subject with the expectation of the substantial negative cash flow that Mr. Mitchell's proposed values produce.

42. Since there are some significant differences in the income and expense figures for the two experts which will affect the values finally determined by the two experts, the figures must be carefully examined. For tax year 1986, Mr. Mitchell reports an effective gross income of \$16,200,000 for the hotel. Mr. Urquhart reports an effected gross income of \$15,524,760. Thus, the income reported by Mr. Mitchell is \$675,240 more than Mr. Urquhart reports for the hotel portion of the property. While Mr. Mitchell has overstated the income derived from food and beverages, he has understated other revenue of the hotel by failing to include income derived from telephones, the retail area, and other sources. The remaining difference in two figures projected by the experts may be accounted for in the amount assigned as income from hotel room revenues. With the vacancy and collection loss allowed by Mr. Mitchell, hotel room revenues are approximately \$10,200,000. Mr. Urquhart reflects potential room revenue at \$9,776,160. This figure is derived from an average daily room rate of \$90.00, which

is slightly less than the average daily room rate determined by Mr. Mitchell. It is also based on an 80% occupancy level, which both witnesses agreed to be appropriate. The average daily room rate is the amount achieved by the hotel after deductions for various discounts which must be given. Mr. Urquhart's projections appear to be appropriate in light of past experience. In view of the understatements of estimated gross annual income for the hotel in certain categories by Mr. Mitchell and the overstatement in the categories of food and hotel rooms, the Court cannot accept Mr. Mitchell's figures. On the other hand, the evidence preponderates in favor of Mr. Urquhart's figures for stabilized income and expenses for the hotel portion of the property considered in the valuation for tax year 1986.

43. Expense figures for the hotel portion for tax year 1986 of the two expert witnesses is virtually the same. Mr. Mitchell reports total expenses of \$11,745,000. Mr. Urquhart projects expenses of \$12,027,200. There are variations between the witnesses in certain categories of expenses. The fact that these sums are almost equivalent may defeat the utility of examining line by line the differences between the two witnesses. However, it should be noted that Mr. Mitchell shows no categories for advertising and marketing, telephones, and "other" expenses as reported by the taxpayer and included by petitioner's expert. Petitioner shows a lower estimated value for its

personal property. A lower return on personal property results, and a lower deduction must be taken from income by the taxpayer. Mr. Mitchell does not include a deduction for income derived from the good will of the business. It is appropriate to deduct from the estimate of net income an allowance for goodwill or business value.

Mr. Urquhart's figures are based upon the stabilized expenses, considering the past operating history of the property. He also reviewed similar hotels to determine the percentages of expenses to revenues. Since Mr. Urquhart included all necessary items of expenses and found support for the hotel's experience for expenses in the market, the stabilized expenses projected by petitioner's witnesses are persuasive.

44. The effective gross income reported by the two experts for the office portion for tax year 1986 are roughly equivalent. Petitioner reports a larger effective gross income in the amount of \$8,810,575 as opposed to respondent's expert, at \$8,550,000. Again there are slight variations in the line items comprising the total figures. Although the figures are close, the estimated gross income advanced by petitioner reflects more accurately income potential based on the history of the property. Therefore, it is accepted as supported by the weight of the evidence.

45. There is a substantial difference in the two expert witnesses with respect to the expenses for the office

portion of the property projected for tax year 1986. The difference is \$1,584,595. No allowance is shown by respondent's expert for legal and accounting fees (\$280,000) which are reflected for each year for the property. The two experts differ substantially in the figures for payroll and benefits. Mr. Mitchell lists only \$250,000 for payroll, while Mr. Urquhart reflects \$800,000 for payroll and benefits. Respondent's figure is inexplicable, considering the substantial fees reported on the financial information forms provided the government for payroll and payroll taxes (including fringe benefits). Security costs for this property appear to have escalated. Nevertheless, Mr. Mitchell's projection is substantially below the reported stabilized expenses for security for the office portion as shown by Mr. Urquhart. Mr. Urquhart's expenses in this category are supported by the evidence of record. Expenses for utilities are understated by \$250,000 by Mr. Mitchell. Mr. Mitchell has failed to include certain items of expenses. It also appears that the expenses which Mr. Mitchell derived from other sources are not reflective of the actual experience in this property. Petitioner's have attempted to effect economics in the building. In many of the expense categories, it not be feasible to reduce expenses beyond their present levels. Accordingly, the Court accepts the expense projections for the office portion of the property as reflected by Mr. Urquhart for tax year

figures is only \$872,920. Mr. Urquhart estimates the greater gross annual income for the property. However, he takes a vacancy loss of 7% while Mr. Mitchell projects a vacancy loss of 5%. The office market shows vacancy rates overall of between 8 and 12%. As of the date of the appraisal of this property it was 81% occupied. The impact of an over-building of office space during this period of time must be considered. Having taken that into account, Mr. Urquhart projects a larger vacancy loss than does Mr. Mitchell. Mr. Urquhart's conclusions appear to be justified. Therefore, Mr. Urquhart's suggest vacancy loss and income figures for the office portion of the building in connection with estimating market value for tax year 1987 are supported by the evidence and should be accepted.

48. Estimated expenses given by the two experts for the office portion of the building are quite different (for tax year 1987 valuation). Mr. Urquhart projects \$4,324,920, while Mr. Mitchell projects \$3,075,000. Again Mr. Mitchell has failed to include any items to cover the cost for legal and accounting services which have been necessary in the expense history for this property. Although trash removal is an item which should be included, it does not appear in Mr. Mitchell's expense projections. There are some categories for which Mr. Mitchell has higher expense figures than Mr. Urquhart. However, there are substantial understatements of expenses for certain items, among which

are utilities, payroll, cleaning, and security. Mr. Urquhart's estimate of stabilized expenses is persuasive as it includes all expenses necessary for the hotel and more accurate projections based on past experience.

Opinion and Conclusions of Law

Petitioner's are entitled to a trial de novo in appealing from a real property tax assessment. Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980).

Petitioners have the burden of proving that the assessments appealed from are incorrect. Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. 1986). Petitioners can meet this burden of proof by showing that the District's valuations for the tax years in question were flawed. Id. Taxpayers are not required to establish the correct value of the property to meet the burden of proof. They need only show the incorrectness of the District's assessment. Id.

Petitioners have met the burden of proof in this case. The District's assessor admitted that he "overshot" the value for tax year 1986. In assessing the subject property for the two tax years in question, the assessors did not take into account specific factors set forth in the statute which bear upon the value of the property. They did not consider adequately available financial information about the subject. They determined that the property's expenses were excessive without considering the actual characteristics of the building which necessitated greater

expenses for the subject. Thus, the assessors' determinations were flawed.

Petitioners also demonstrated at trial that the estimated market value of the property as of each tax year was substantially less than the amount proposed by the District of Columbia. The inordinately high assessments made by the District for each year were well beyond the value of the property. Even the District's own expert would not support the value originally proposed by the District for tax year 1987 in the amount \$93,232,414 and for tax year 1986 of \$98,538,000. For 1987, it is respondent's expert's opinion that the market value was \$85,000,000. For tax year 1986, he estimated value at \$83,000,000.

Real Property taxes are based upon the estimated value of subject real property as of January 1, of the year preceding the tax year. Estimated market value is defined by statute as follows:

The term "estimated market value" means 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 §47-802(4)(1981). To determine the estimated market value of a property, the District must take into

account any factor that may have a bearing on that subject, including but not eliminated to sales information on similar properties, mortgages or financial considerations, production costs less accrued depreciation, condition, income earning potential, zoning and government restrictions. D.C. Code §47-820(a)(1981). The assessor may apply one or more of three recognized approaches to value: replacement cost, comparable sale and income approach.

District of Columbia v. Washington Sheraton Corporation, 499 A.2d 109, 113 (D.C. 1985). These recognized approaches to value consider the factors mandated by statute. Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207, 209 (D.C. 1987). Although assessors must consider all three approaches to value, the assessor may rely upon one approach, provided the others have been considered and there is a reasonable basis for selecting one over the other. Id.

Both expert witnesses in this case considered all three of the recognized approaches to value. Both witnesses relied primarily upon the income approach. This approach is deemed most appropriate in valuing income-producing properties. Each witness used the comparable sales approach to check and test the values arrived at by the income approach.

In spite of the similarities in most of the methodology of the two experts, a wide disparity in the estimates of market value resulted. The major reason for the differences

between the two experts' opinions results from the conclusions reached for net operating income and capitalization rates. Under such circumstances, the Court must consider and weigh the respective qualifications of the experts, the logic of the reasons provided in support of their respective opinions and the evidence which opposes or supports their opinions, to determine the facts. Both experts are well qualified; therefore, resolution of their conflicting opinions cannot be based solely on their qualifications. Having considered the rationale for their conclusions and the evidence in favor of or contrary to their opinions, for the reasons stated in the foregoing findings of fact, the Court finds the rationale and the conclusions reached by petitioner's expert to be persuasive as to the value of the property on the valuation date for each tax year. See District of Columbia v. Washington Sheraton Corp., 499 A.2d at 112. Accordingly, the opinions of Mr. Urquhart have been accepted.

Finally, petitioners request that the District be required to modify its records to reflect that the subject property was part class 3 and part class 4 during tax year 1987 and to make an allocation accordingly. The District is required to apportion into appropriate classes real property falling within more than one class. D.C. Code §47-813(f)(1)(1981). The Mayor must devise a means of making the apportionment. D.C. Code §47-813(f)(2)(1981). For tax

year 1986, the tax bill reflects the apportionment at 38.60% as class 3 and 61.40% at class 4. For tax year 1987, only the tax rate for class 4 was shown. Therefore, the records of the District for tax year 1987 must be changed. The rates to be charged for tax year 1987 should be determined in accordance with the prior apportionment.

For the foregoing reasons, it is by the Court this 10th day of July, 1990,

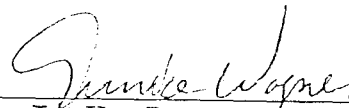
ORDERED, ADJUDGED and DECREED as follows:

1. That the estimated market value of the subject real property was \$54,600,000 for tax year 1986 of which \$27,600,000 is allocable to the land, and \$27,000,000 is allocable to the improvements.
2. That the estimated market value for the subject real property for the valuation date for tax year 1987 was \$63,400,000 of which \$27,600,000 is allocable to the land, and \$35,800,000, to the improvements.
3. The assessment record cards for the property maintained by the District of Columbia shall be adjusted to reflect the values determined by the Court in this Order.
4. If respondents have not already done so, it shall modify its records to reflect that the subject property was part class 3 and part class 4 during tax year 1987, and an allocation shall be made with 38.60% to class 3 and 61.40% to class 4. Taxes shall be assessed for tax year 1987 at rates indicated for each class.

5. Respondent shall refund to petitioners any excess taxes collected for tax years 1986 and 1987 resulting from assessed values used as the basis for such taxes which are in excess of those determined by this Order.

6. Petitioners shall submit to the Court a proposed Order setting forth the amount of the refund due with a provision for interest to be paid according to law. (A copy of the proposed order shall be served on the Corporation Counsel).

7. The case is set for a status hearing on the 19th day of July, 1990, at 9:30 a.m. before Judge Wagner, unless the proposed Order required hereunder (as to which there is no objection) is submitted prior to that date.



J U D G E
Signed In Chambers

Copies mailed this 11th day of July, 1990, to each of the following:

Gilbert Hahn, Jr., Esquire
Tanja Castro, Esquire
Amaran & Hahn, P.C.
Suite 1100
1155 15th Street, N.W.
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Julia Sayles, Esquire
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Washington, D.C. 20001

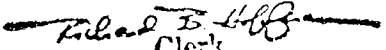
Harold L. Thomas, Director
Department of Finance and Revenue


7/11/90

District of Columbia
Court of Appeals

DISTRICT OF COLUMBIA
COURT OF APPEALS

FILED JUL 30 1990

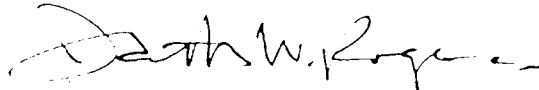

Clerk

O R D E R

WHEREAS, the Chief Judge of the Superior Court has presented a certificate of necessity pursuant to D.C. Code § 11-908 (b) (1981) indicating a necessity exists requiring the designation and temporary assignment of the Honorable Annice M. Wagner, Associate Judge of this Court, to serve on the Superior Court;

NOW, THEREFORE, I, Judith W. Rogers, Chief Judge of the District of Columbia Court of Appeals, pursuant to the provisions of D.C. Code § 11-707 (b) (1981), do hereby designate and assign the Honorable Annice M. Wagner, Associate Judge of the District of Columbia Court of Appeals, to serve temporarily as a judge of the Superior Court of the District of Columbia for the purpose of entry of judgments and orders on or before July 31, 1990, in the following pending proceedings, Tax Docket Nos. 3754-86 and 3933-87, *Trilon Plaza Co. et al. v. District of Columbia*, and Tax Docket No. 3872-87, *William B. Wolf, Sr. v. District of Columbia*.

BY THE COURT:

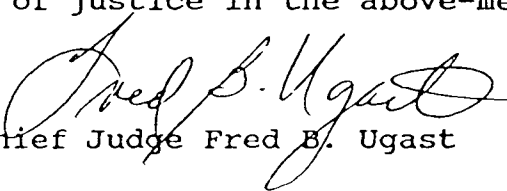


JUDITH W. ROGERS
Chief Judge

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CERTIFICATE OF NECESSITY

It appearing that the business of the Court makes it necessary for the efficient administration of justice that the Honorable Annice M. Wagner enter orders and judgments on or before July 31, 1990, in the following pending proceedings in this Court, Tax Docket Nos. 3754-86 and 3933-87, *Trilon Plaza Co. et al. v. District of Columbia*, and Tax Docket No. 3872-87, *William B. Wolf, Sr. v. District of Columbia*, it is this 30th day of July, 1990, certified pursuant to D.C. Code § 11-908 (b) (1981), that there is a need for the temporary assignment of the Honorable Annice M. Wagner, Associate Judge of the District of Columbia Court of Appeals to serve as a judge of the Superior Court of the District of Columbia for the administration of justice in the above-mentioned actions.


Chief Judge Fred B. Ugast