

FILED  
11 27 AM '91  
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

GROUP HOSPITALIZATION AND :  
MEDICAL SERVICES, INC., et al. :  
 :  
Petitioners, :  
 :  
DISTRICT OF COLUMBIA, :  
 :  
Respondent. :

Tax Docket Nos. 4506-90  
4819-91  
5236-92

OPINION AND ORDER

This matter came before the Court for trial on June 2, 1993. Petitioners, the fee simple owners of real property located at 550 12th Street, S.W., Lot 47 in Square 327 (hereinafter the "subject property") challenged the real property tax assessed against the subject property for tax years 1990, 1991 and 1992 pursuant to D.C. Code § 47-820 (1981 ed.).

Tax Year 1990

Respondent, the District of Columbia, valued the subject property for tax assessment purposes for tax year 1990 at \$79,375,000 consisting of \$26,006,088 for land and \$53,368,912 for improvements. Petitioners appealed to the Board of Equalization and Review, which reduced the assessment from \$79,375,000 to \$76,253,706. Petitioners timely paid the tax of \$1,547,950.20 and timely filed this appeal.

Tax Year 1991

Respondent, the District of Columbia, valued the subject property for tax assessment purposes for tax year 1991 at \$83,859,000 consisting of \$26,006,088 for land and \$57,852,912 for improvements. Petitioners appealed to the Board of

Equalization and Review which sustained the assessment.

Petitioners timely paid the tax of \$1,802,968.50 and timely filed this appeal.

Tax Year 1992

Respondent, the District of Columbia, valued the subject property for tax year 1992 at \$88,007,000 consisting of \$26,006,088 for land and \$62,000,912 for improvements.

Petitioners appealed to the Board of Equalization and Review, which sustained the assessment. Petitioners timely paid the tax of \$1,892,150.50 and timely filed this appeal.

The Court exercised jurisdiction over this appeal pursuant to D.C. Code §§ 47-825 and 47-3303 (1981 ed.). Based upon the evidence presented at trial and stipulations of the parties, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The subject property is located at 550 - 12th Street, S.W., Lot 47, Square 327 in the District of Columbia ("subject property").

2. (a) Petitioner Group Hospitalization and Medical services, inc. (GHMSI) is a corporation organized and existing under the laws of the District of Columbia with a principal place of business at 550 12th Street, S.W. in the District of Columbia. GHMSI is the owner of the improvements on the subject real estate, Lot 47 in Square 327, in the District of Columbia, improved by premises known as 500 12th Street, S.W., Washington,

D.C.

(b) Petitioner GHI Nominee, Inc. is a corporation organized and existing under the laws of the District of Columbia with a principal place of business at 550 12th Street, S.W., Washington, D.C. GHI Nominee, Inc. is the owner of the subject real estate, Lot 47 in Square 327.

3. By agreement with Petitioner GHI Nominee, Inc., GHMSI is obligated to pay all real estate taxes assessed against the subject property.

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

5. Lot 47 in Square 327 has a land area of 134,052 square feet. Its improvements are a commercial structure of eight stories with three below ground level containing office, parking and storage facilities with a net rentable area of approximately 533,378 square feet. The subject site is currently zoned U.R. and is developed to an FAR of approximately 4.16. The building is owner-occupied by the Petitioner.

6. The Petitioners, through their expert appraiser, have asserted that the fair market value as of January 1, 1989 of the property for tax year 1990 is \$45,900,000, and as of January 1, 1990 for tax year 1991 is \$44,200,000, and as of January 1, 1991 for tax year 1992 is \$44,800,000.

7. Troy Davis testified as the assessor of the subject property for tax years 1990 and 1991. Roy Morter testified as

assessor for tax year 1992. Both assessors used the mass appraisal technique and ultimately applied the income approach in assessing the property and determining the estimated market value.

8. Both assessors testified that they determined economic income and expenses from the market. They relied primarily upon office buildings occupied by several tenants. However, the assessors admitted that the building was not configured for multiple tenant occupancy. Based on their opinion as to current market rates for multi-tenant buildings, the assessors determined the potential economic net operating income of the property to be \$8,374,034 for 1990; \$7,547,298 for 1991 and \$7,920,663 for 1992.

9. The income on which the assessors based their estimates of net operating income requires unrealistic assumptions. The assessors' economic income was derived from multi-tenant properties. However, if the property were purchased on the respective value dates, it would not have been able to achieve the income which the assessors projected, because the new owner would not have been able to immediately rent 100% of the property at market rents to several tenants. If the owner were to lease the property to multiple tenants, he would have to reconfigure the space. Both assessors admitted that they failed to take into account lost rent, renovation costs, leasing commissions or advertising costs. This Court finds that the assessors did not value the property as if it were to be leased to a single tenant. The rent that a single tenant would pay is lower than the rent

that several tenants would pay. Moreover, the space would not have to be reconfigured. The assessors thus overestimated the market rent.

10. Neither can the assessors' capitalization rates be accepted. In none of the three years, did the assessors themselves calculate a capitalization rate. Instead the Standards and Review Division provided the rates to the assessors. Petitioners' Exhibits 5 through 9. The capitalization rates for both tax year 1990 and 1991 are demonstrably not high enough to cover the annual mortgage payment, the real estate taxes and a fair return to the cash invested by the purchaser. Rock Creek Plaza-Woodner, Ltd. v. District of Columbia, 466 A.2d 857, 858 (D.C. 1983). In the case of tax year 1990, Mr. Davis admitted that the calculation was flawed by use of an "equity dividend" instead of "equity yield" in the Akerson Formula that was provided to him. Petitioners' Exhibit 5. He also could not explain the basis for the assumption of 5% annual appreciation. Id. For tax year 1991, Mr. Davis testified that Standards and Review derived the recommended capitalization rate from sales of other office buildings. This was done by dividing each sales price by a net operating income. However, Mr. Davis could not explain how the net operating incomes were derived. He admitted that no records were available to the Court or Petitioners to check the calculations. With regard to Petitioners' Exhibit 7, the schedule of recommended rates given to Mr. Davis by Standards and

Review, Mr. Davis admitted that the phrases "high end rates applicable to high traffic areas" and "low end rates generally applicable to Eastern Section of Downtown" were in error as applied to capitalization rates. In fact, the opposite is true. Finally, no justification was given for the precipitous reduction of the capitalization rate from .1055 for tax year 1990 to .0900 for tax year 1991.

In the case of tax year 1992, Mr. Morter admitted to all the same errors that Mr. Davis did for tax year 1991.

11. The assessments now before the Court are:

Tax year 1990:	\$76,253,706
Tax year 1991:	83,859,000
Tax year 1992:	88,007,000

as reduced by the Board of Equalization and Review in 1990 only.

12. The Court finds that these errors by the DFR assessors resulted in erroneous estimated market values which caused the overassessment of the real property for the tax years in issue. It is necessary for the Court to determine the estimated market value for the property and order any resulting reductions and refunds.

13. In addition to the assessors, only Mr. Harry Horstman testified as to estimated market value for the statutory dates. Mr. Horstman was accepted by the Court as an expert witness for Petitioners. Mr. Horstman arrived at the land value by considering comparable sales and concluded that the Respondent's assessed land value was correct for both years. The Court accepts the value of the land to be \$26,006,088 as set by the

Respondent's assessors, for tax years 1990, 1991 and 1992.

14. In calculating the value of the improved property, Mr. Horstman used the income approach and rejected both the market and cost approaches; he concluded that the highest and best use of the property was as developed for a multi-tenanted building.

15. Mr. Horstman in arriving at his estimate of value constructed a model where the property was assumed to be sold to a buyer who would then lease the building to multiple tenants. Thus, he would be required to reconfigure the office space to accommodate more than one tenant. He also testified that before leasing the property, certain D.C. Code violations and G.S.A. requirements would have to be met. Mr. Horstman calculated the cost of renovating the property, the cost of refitting office space for multiple tenants, the cost of rent concessions, leasing commissions, and advertising. Mr. Horstman testified that this process would take three to four years. He then stabilized net operating income in the fourth year. At the end of the fourth year, he extended a sale of the property to a third party. Then he discounted the proceeds of the sale and the income streams of the property in each of the four years back to the valuation date. He used this same method in all three years. The Court finds that this process is flawed and does not lead to a reasonable conclusion as to value.

16. To arrive at the overall capitalization rate of the property, Mr. Horstman examined market conditions and economic indicators as well as other factors related to the property (e.g.

lease terms, expense ratios, location). Mr. Horstman also considered bond rates, treasury bonds, stocks, money market CDs and other sources. Due to the greater risk and non-liquidity of real estate investments, Petitioners' expert considered the summary of interest rates for real estate loans as noted in the Investment Bulletin (American Council of Life Insurance). For tax year 1990, he examined the rates reported for each quarter in 1988. For tax year 1991, Mr. Horstman used 1989 rates, and for tax year 1992 Mr. Horstman used the 1990 rates. The factors selected by Mr. Horstman were too high and resulted in capitalization rates that were too high and therefore rejected by the Court.

17. Considering all of the above information and calculations along with factors affecting buyer motivation, the Court determines reasonable capitalization rates after adding the tax rates, of .1055 for 1990, .0900 for 1991 and .0900 for 1992.

18. This Court finds that it is not necessary to assume that the property is sold or leased to multiple tenants in order to estimate its value. Instead, it should be valued on the basis that it is leased to a single tenant who would pay a lower rent than would several tenants. This Court also finds that it is not necessary to incur the expense of refitting the space for multiple tenancy or other associated costs in order to estimate the value of the property.



19. The appropriate calculation of net operating income, well supported in the testimony, is as follows:

Tax year 1990

Rentable space	533,378 square feet
Income @ \$20 per sq. ft.	\$10,667,560
5% vacancy	<u>533,378</u>
	10,134,182
Expenses @ \$6.75 per sq. ft.	<u>3,600,302</u>
NOI	\$ 6,533,880

Tax year 1991

Rentable space	533,378 square feet
Income @ \$20 per sq. ft.	\$10,667,560
5% vacancy	<u>533,378</u>
	10,134,182
Expenses @ \$6.75 per sq. ft.	<u>3,600,302</u>
NOI	\$ 6,533,880

Tax year 1992

Rentable space	533,378 square feet
Income @ \$21 per sq. ft.	\$11,200,938
5% vacancy	<u>560,047</u>
	10,640,891
Expenses @ \$7.00 per sq. ft.	<u>3,733,646</u>
NOI	\$ 6,907,245

20. The Court finds that the three overall capitalization rates developed by Mr. Horstman are too high and not supported by the evidence. The Court, therefore, adopts for tax year 1990 the capitalization rate of .1055 and the capitalization rate of .0900 for tax year 1991 and the capitalization rate of .0900 for tax year 1992. As previously stated, the Court also rejects the

assessors' rates.

21. Accordingly, the Court having found the appropriate net operating incomes for tax year 1990, tax year 1991 and tax year 1992, the Court finds the estimated market value and assessments for the three years, as follows:

<u>Tax Year</u>	<u>Net Operating Income</u>	<u>Capitalization Rate</u>	<u>Value</u>
1990	\$6,533,880	.1055	\$61,932,511
1991	6,533,880	.09	72,598,666
1992	6,907,245	.09	76,747,166

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over this appeal pursuant to D.C. Code §§ 47-825 and 47-3303 (1990 Repl.). The Superior Court's review of a tax assessment is de novo, therefore requiring competent evidence to prove the issues. Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980). Petitioners bear the burden of proving that the assessment appealed from is incorrect. Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207, 211 (D.C. 1987). However, Petitioners are not required to establish the correct value of the property. Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. 1986).

2. Petitioners have met the burden of proving the incorrectness of the assessment. When a taxpayer appeals an assessment to this Court, the Court can affirm, cancel, reduce or increase the assessment. D.C. Code § 47-3303 (1990 Repl.).

3. In assessing this property for tax years 1990, 1991 and

1992, the Respondent's assessors used a net operating income based on their estimates of income and expenses as a multi-tenanted building. The appropriate way to value the subject property is as a lease to a single tenant.

4. The Court must weigh all the evidence to determine which property valuation method is the most reasonable. For the reasons already stated in the findings of fact, the Court rejects the property valuations proposed by the assessors and Mr. Horstman and instead determined its own net operating income and capitalization rates.

5. Based on the above conclusions, the Court finds that a preponderance of the evidence supports an estimated market value for January 1, 1989 of \$61,932,511 for Tax Year 1990, \$72,598,666 for January 1, 1990 for Tax Year 1991, and \$76,747,166 for January 1, 1991 for Tax Year 1991.

6. In assessing real property, the value of the land and improvements must be identified separately. D.C. Code § 47-821 (a) (1990 Repl.). The parties did not contest the value that the District's assessor assigned to the land. Therefore, as stated previously, the Court adopts \$26,006,088 as the value of the land for both Tax Year 1990, 1991 and 1992. The remaining portion of the assessment is allocated to the building.

#### ORDER

Upon the findings of fact and conclusions of law made in the cases above and upon the petitions filed herein, and upon the

evidence adduced at trial, it is by the Court this 19th day of MAY, 1994, hereby,

1. **ORDERED** that the correct total assessment for the subject property for tax year 1990 is \$61,932,511 and that the correct assessment for the subject property for tax year 1991 is \$72,598,666, and that the correct assessment for the subject property for tax year 1992 is \$76,747,166; and it is

2. **FURTHER ORDERED** that the land assessment is \$26,006,088 for all tax years: 1990, 1991 and 1992; and it is

3. **FURTHER ORDERED** that Respondent be and hereby is, directed to modify the assessment record card to reflect the value of \$61,932,511 for tax year 1990, \$72,598,666 for tax year 1991 and \$76,747,166 for tax year 1992 and for all subsequent years until a lawful reassessment has been performed; and it is

4. **FURTHER ORDERED** that the correct real estate taxes on Lot 835 in Square 254 are as follows:

1990 \$1,257,229.97

1991 \$1,560,871.32

1992 \$1,650,064.07

and it is

5. **FURTHER ORDERED** that Respondent be and is hereby directed to refund to Petitioners the following,

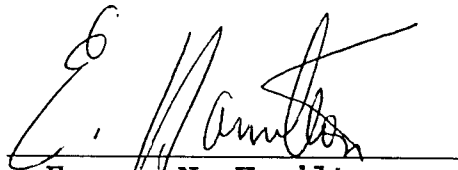
For Tax year 1990, real estate taxes in the amount of \$290,720.23 with interest from March 31, 1990 to the date of payment, at the rate of six (6) per cent per annum, the statutory

rate, until paid to the date of payment; and

For Tax year 1991, real estate taxes in the amount of \$242,097.20, with interest from March 31, 1991 to the date of payment at the rate of six (6) per cent per annum, the statutory rate, until paid to the date of payment.

For Tax Year 1992, real estate taxes in the amount of \$242,086.43 with interest form March 31, 1992 to the date of payment at the rate of six (6) per cent per annum, the statutory rate, until paid to the date of payment.

SO ORDERED.



Eugene N. Hamilton  
Chief Judge

Copies to be mailed to:

Gilbert Hahn, Jr. Esq.  
Tanja H. Castro, Esq.  
Amram & Hahn, P.C.  
815 Connecticut Ave., N.W. #601  
Washington, D.C. 20006

Joseph F. Ferguson, Jr., Esq.  
Asst. Corporation Counsel  
441 4th Street, N.W.  
Room 6N75  
Washington, D.C. 20001