SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

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CLERK OF SUPERIOR COURT OF DISTRICT OF COLUMBIA TAX DIVISION

1111 19TH STREET ASSOCIATES	:	
Petitioner	:	**Tax Docket Nos. 4261-89& 4380-90**
v.	:	
DISTRICT OF COLUMBIA	:	
Respondent	:	

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court for trial on petitioner's appeal from an assessment for real property taxes for years 1989 and 1990. The parties filed stipulations pursuant to prior Super. Ct. Tax R. 11 (b). Upon consideration of the stipulations, 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 owned by 1111-19th Street Associates, a limited partnership organized and existing under the laws of the District of Columbia. Petitioner, 1111-19th Street Associates, is obligated to pay all real estate taxes assessed against the subject property.

2. The subject property is located at 1111-19th Street, N.W., Square 140, Lot 90, in the District of Columbia. It is a 12-story office building, built in 1979, with three levels of underground parking. The property has 375,843 gross square feet. It has 235,300 square feet of gross leasable office space, 14,475 square feet of gross leasable retail space, 3,740 square feet of storage space and 250 parking spaces. The property is zoned C-4 and developed to a 10.0 FAR.

3. For tax year 1989, the valuation date being January 1, 1988, the District's proposed assessment was $53,339,000. Petitioner timely filed a complaint with the Board of Equalization and Review (BER). The BER held a hearing and reduced the assessment to $43,947,951. At trial, the District sought to uphold the assessment of $53,339,000.

4. Petitioner timely paid the real estate taxes in full, as required by law, and timely filed this petition for reduction of assessment and refund of excess taxes paid for tax year 1989. In its petition, petitioner asserted that the fair market value of the property for tax year 1989 was $33,300,000. At trial, petitioner changed its claim as to the value of the property to $31,900,000. This figure reflects the value set by its expert appraiser.

5. For tax year 1990, the District's proposed assessment was $60,770,000. Petitioner timely filed a complaint with the BER. After a hearing, the BER sustained the assessment. At trial, the District sought to uphold the assessment of $60,770,000.

6. Petitioner timely paid the real estate taxes and timely filed the petition for a reduction of the assessment and refund of excess taxes paid for tax year 1990. In its petition, petitioner asserted that the fair market value of the property for tax year 1990 was $34,400,000. At trial, petitioner amended its claim to $32,700,000, which reflects the value set by its expert appraiser.

7. The tax assessor for both tax year 1989 and 1990 was Phillip S. Appelbaum. Mr. Appelbaum is a commercial assessor with the Department of Finance and Revenue of the District of Columbia. For both tax years, Mr. Appelbaum used the mass appraisal technique and ultimately applied the income approach in assessing the property.

8. Based on his opinion that the reported income for the subject property was substantially below current market rates, Mr. Appelbaum determined the potential net operating income of the property to be $5,349,873 for tax year 1989. In contrast,

the reported (actual) net operating income of the property was $2,702,356, $2,928,529 and $2,933,590 for the years 1984, 1985, and 1986 respectively. The 1986 income was the most recent available to him when he was performing the tax year 1989 assessment. Mr. Appelbaum arrived at his figure for net operating income by conducting an economic income expense study of buildings built in the 1970's. Mr. Appelbaum examined the expenses and leases signed within the last two years in these buildings as reported to the District. He then averaged the expense and income figures and applied them to the subject property as the net operating income. He testified that existing leases at the subject property were not used. Without making any adjustments to the potential net operating income, Mr. Appelbaum divided his net income figure by a capitalization rate of 11.63% which was given to him by the Standards and Review Division. Mr. Appelbaum stated that this was, in his opinion, the proper rate for buildings in that age category. Based on these figures, Mr. Appelbaum calculated the fair market value of the property to be $53,339,000.

9. For tax year 1990, Mr. Appelbaum conducted a similar income expense analysis. He used a potential net operating income of $5,973,680 when the actual net income for 1987 was

$2,987,594. Again, he almost doubled the income. For this tax year, Mr. Appelbaum used a capitalization rate of 9.83% which was given to him. He admitted at trial that this rate was not sufficient to cover a mortgage payment, return on equity and pay the real estate taxes.

10. At trial, Mr. Appelbaum testified that the actual net operating income may or may not be similar to the potential (market) net operating income when using the mass appraisal technique. He stated that, in fact, he did not anticipate that the income for the subject property would jump to $5,349,873 in 1988, the test year for tax year 1989, or to almost $6 million in 1989 for tax year 1990. He also stated that he did not give effect to actual income, actual expenses, lease-up costs, improvements costs, rent concessions or vacancy and collection losses. By not taking into account the experience of the property, Mr. Appelbaum's income figures have a distorted relevancy to the subject property and cannot be very reliable. As a result, his assessments suffer the same unreliability.

11. Only the taxpayer offered expert testimony. Ms. Michelle Saad testified for the petitioner and the Court accepted her as an expert witness.

12. Ms. Saad arrived at the land value by considering comparable sales and adjusting for dissimilarities with the subject property. Ms. Saad valued the land at $95 per FAR foot or $25,000,000 which was the same value determined by the assessor. Since neither petitioner nor respondent challenged the District's valuation of the land, the Court accepts the value of the land to be $25,000,000 as set by the District's assessor.

For tax year 1990, Ms. Saad performed the same analysis with additional sales. Her conclusion of the land value was $28,800,000. The assessor's land value was $30,386,200.

13. In calculating the value of the improved property, Ms. Saad relied on the income approach and rejected the cost approach. Ms. Saad used the sales comparison approach but only to support her valuation of the subject property by the income capitalization approach.

14. Ms. Saad calculated the net operating income of the property by making a detailed examination of the property's operating history. She considered that the building was 100% leased, had an average rent of $17 per square foot and that 50% of the leases would expire in 1989 and 1990.

Ms. Saad then examined comparable rentals for office space and retail space. Rents for office space ranged from $17.50 to $26 per square foot and, for retail space, rents ranged from $25 to $30. Ms. Saad testified that after considering the age and condition of the improvements, location, leasing terms, and the demand for space in the area, it was her opinion that the average fair economic rent for office space was $27 per square foot full service. After reducing the rent for concessions, Ms. Saad estimated the effective market rent for the property to be $22 per square foot. However, because there will be a significant turnover in 1989 and 1990, the expert determined that the first year of stabilized rents will be 1990 or 1991.[1] The failure to take into account any rent concessions where approximately 50% of the leases would be up for renewal within two (2) years of the assessments served to skew or inflate the income used by the assessor in arriving at the assessment values by ignoring potential lease up costs that would more than likely occur.

15. For purposes of her report, Ms. Saad assumed that 1990 would be the first stabilized year. Petitioner's expert projected the potential annual income for the property for 1988

[1] Ms. Saad emphasized that a value based upon capitalization of net operating income can only be valid for a year when net operating income has stabilized. That is the reason for the following method.

through 1990 based upon the actual operating history. Ms. Saad adjusted the 1990 income to reflect the 105,799 square feet of office space that was to be re-leased at higher rents in that year. Ms. Saad's gross annual income for 1988 was $4,512,516 increasing to $5,923,691 in 1990, the first stabilized year. From these figures, Ms. Saad subtracted vacancy and credit loss at 5%.

It is important to note here that the gross income figures reached for 1989 and 1990 by comparison are not extremely disparate but the assessor did not subtract any costs from the gross income figures to get a net income figure whereas the appraiser did. Put differently, it appears that the assessors' gross income figure is both the gross and the net income figure.

	Assessor	**Appraiser**
1989	$5,349,873	$4,512,516
1990	$5,973,680	$5,928,085

16. After subtracting estimated expenses, Ms. Saad arrived at the net operating income of the subject property for 1988 through 1990. Ms. Saad determined the net operating income for 1988 to be $2,936,281, the net income for 1989 to be $3,109,130 and for 1990 $4,114,764.

For both the 1988 and 1989 net incomes, she then discounted the projected net income by a present value factor of 12% to through 1990 based upon the actual operating history. Ms. Saad adjusted the 1990 income to reflect the 105,799 square feet of office space that was to be re-leased at higher rents in that year. Ms. Saad's gross annual income for 1988 was $4,512,516 increasing to $5,923,691 in 1990, the first stabilized year. From these figures, Ms. Saad subtracted vacancy and credit loss at 5%.

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For both the 1988 and 1989 net incomes, she then discounted the projected net income by a present value factor of 12% to determine the value of the income as of the value date, January 1, 1988 for tax year 1989. The results were $2,621,679 for 1988 and $2,478,579 for 1989. After determining her 1990 net income, the stabilized income, she capitalized it at a capitalization rate of 11.03% to yield $37,305,228. From this figure, she testified that she deducted the value of six months rent abatement on the new leases and tenant improvements at $20.00 per square foot. The resulting future value is $33,559,316 which she discounted using the present value factor of 12% to arrive at $26,753,281. The final step was to add the present values of the 1988 and 1989 net incomes to the present value of the 1990 valuation. The sum of these figures and Ms. Saad's conclusion was $31,853,540.

For tax year 1990, as of January 1, 1989, Ms. Saad conducted the same type of analysis. Because the property was one year older, she only projected the 1989 and 1990 income and expenses. Her 1989 figures were based upon the actual operating history of the property. She testified that the market rent for office space at the subject was still $27 full service and the effective rent was $22 per square foot. Thus, her 1989 gross income was $4,613,042 while her 1990 gross income rose to $5,928,085. These figures were adjusted for vacancy at 5%.

As in the prior year, after deducting expenses, she calculated the present value of the 1989 net income using a present value factor of 12%. The result was $2,660,067.

Also, as in the prior year, after determining her 1990 rent income, she capitalized it at 11.03% to yield $37,382,980. From this figure she deducted six months rent abatement and tenant improvements at $20 per square foot. The resulting 1990 value was $33,637,088. Ms. Saad calculated the present value of this figure to be $30,033,115. She added this to the present value of the 1989 income to yield her value of $32,693,182.

Based on her appraisal reports, it appears that Ms. Saad considered both existing leases and market conditions in determining the net operating incomes of the property for 1988 through 1990. She made a thorough analysis of how the expiration of half of the office space leases would affect the property. This results in Ms. Saad's valuation being supported by more credible evidence. The Court will take into account both existing leases and market conditions since both affect the ability of the property to generate income. Accordingly, the Court adopts Ms. Saad's analysis of the net operating incomes for 1988 through 1990.

17. To arrive at her overall capitalization rate of the property of 11.03% for each year, Ms. Saad examined market

attitudes and economic indicators as well as other factors related to the property (lease terms, expense ratios, location). Ms. Saad also considered bank rates and bond yield rates. Due to the greater risk and non-liquidity of real estate investments, petitioner's expert determined that the higher rates of Corporate Baa and A bonds provided the most relevant basis for risk as compared to other bank rates and bond yields.

	Jan. **1989**	Jan. **1988**	Jan. **1987**	Jan. **1986**
Corporate Bonds Baa	10.65	11.07	9.27	11.44
Corporate Bonds A	10.10	11.43	9.23	11.04

Ms. Saad obtained these figures from Moody's Bond Survey.

Ms. Saad examined new mortgage commitments and the average capitalization rate, both for the fourth quarter of 1987 and for the fourth quarter of 1988. The average capitalization rate was 9.4% for the fourth quarter 1987 and 9.2% for the fourth quarter 1988. Moreover, based on economic indicators, financial indicators, real estate investment criteria, and the Washington, D.C. market, Ms. Saad determined real estate yield rates, as of both January 1, 1988 and January 1, 1989, stratified by property specifics and locational characteristics.

In both years, Ms. Saad also calculated a range of capitalization rates using the band of investment technique, a traditional method of capitalization often used when sufficient market data is available. Under the band of investment technique, the appraiser develops a weighted component of the mortgage and equity to develop the overall rate. In applying the band of investment technique, Ms. Saad considered typical loan to value ratios, debt service, equity dividend rates, and points paid in the mortgage process. Using this formula, Ms. Saad determined a capitalization rate of 9.3% for tax year 1989 and 1990.

As an alternative to the band of investment technique, Ms. Saad also developed a capitalization rate by the debt coverage ratio formula. This formula considers the net income threshold that a property must generate to meet lender requirements. For tax year 1989, Ms. Saad used a debt coverage ratio of 1.21 based upon the ratio reported by the American Council of Life Insurance Companies. The resulting overall capitalization rate was 9.1%. For tax year 1990, she used a debt coverage ratio of 1.25 and the resulting overall capitalization rate was 9.5%.

The two rates determined by the two different methods were thus 9.1% and 9.3% for tax year 1989 and 9.5% and 9.3% for tax year 1990. In view of the subject property's location in the

District of Columbia, Ms. Saad used a conservative estimate of 9.0% for both years. To this figure, she added the tax rate of 2.03% to arrive at 11.03%.

Ms. Saad's capitalization rate is strongly supported by the evidence as so many factors were considered. Also, it should be noted that Ms. Saad's capitalization rate is very close to the capitalization rate used by Mr. Appelbaum in tax year 1989 of 11.63%.

18. Ms. Saad also calculated the value of the property by applying the sales comparison approach, also called the market data approach. Under this approach, the subject property was valued by comparing it with similarly improved properties which had been sold recently or were in the process of being sold. Utilizing this approach, Ms. Saad valued the property at $31,900,000 for tax year 1989 and $32,700,000 for tax year 1990.

19. Ms. Saad used the sales comparison approach as a check, giving it very little weight. She relied on the income capitalization approach for determining the value of the property. Thus, Ms. Saad found the market value of the property to be $31,900,000 as of January 1, 1988 and $32,700,000 as of January 1, 1989.

20. Ms. Saad also testified at trial that the subject property was sold on December 19, 1991 for $32,500,000. She testified that, while the sale occurred almost three years after the value dates, it served to corroborate her estimates of value. Post assessment date sales may be used for limited purposes in the valuation process.

CONCLUSIONS OF LAW

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. See Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980). Petitioner bears the burden of proving that the assessment appealed from is incorrect. See Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207, 211 (D.C. 1987). However, petitioner is not required to establish the correct value of the property. See Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. 1986).

"The assessed value of property for real property taxation shall be the estimated market value of the property on January 1st of the year preceding the tax year." District of Columbia v. Washington Sheraton Corp., 499 A.2d 109, 112 (D.C. 1985) (citing

D.C. Code §47-820(a) (1990)). The estimated market value is defined as:

> One Hundred 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 in a position to take advantage of the exigencies of the other.

D.C. Code §47-802(4) (1990).

In determining estimated market value, factors that must be taken into account include: "any factor which might have a bearing on the market value of the real property including, but not limited to, sales information on similar type of real property, mortgage, ... income earning potential (if any), zoning, and government imposed restrictions." D.C. Code, § 47-820(a) (1990).

Petitioner has met the burden of proving the incorrectness of the assessment by showing that its own appraisal is more accurate than the District's assessment, not merely different. See YWCA v. District of Columbia, 731 A.2d 849, 852 (D.C. 1999). Also, there is sufficient competent evidence on the record for the Court to determine the fair market value of this property. 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.).

In assessing this property for tax year 1989 and 1990, the District's assessor, Mr. Appelbaum, used a net operating income based on the average income and expense figures for properties built in the 1970's, but he admitted not taking into consideration the actual income, actual expenses, current leases, or lease-up costs of the subject property. These factors affect the ability of the property to achieve market rents today and in the future. Without consideration of these factors, utilizing the average net operating income of buildings in a particular age group is an arbitrary and impractical method for determining a property's net operating income for purposes of valuation.

In Washington Sheraton Corp., the Court stated that "[w]hen an income-producing property has been in operation for a period of time, its past earnings assist the assessor in projecting future earning ability." Washington Sheraton Corp., 499 A.2d at 115. The Court also stated that the market value of an income-producing property includes the present value of the property's future income. See Id. Therefore, to arrive at a reliable estimate for the stabilized net operating income of the property, the District must consider not only market conditions, but the experience of the property as well. Ms. Saad did just that.

The District failed to take into consideration the property's actual income. This resulted in a substantial increase in value as determined by the District. The District used economic rent derived from current leases from central business district commercial office buildings, but the unique character of this building was that 50% of leases were to expire within two (2) years.

The Court must weigh all the evidence to determine which property valuation is the most credible. For the reasons already stated in the findings of fact, the Court rejects the assessed values and accepts the property valuations proposed by Ms. Saad. Having considered the testimony and the appraisal reports, and having rejected the assessments, the Court sets forth the reasons it accepts the only other evidence of valuation presented at trial.

The Court has generally recognized three approaches to value and it has been held that all three must be considered. See Washington Sheraton Corp., 499 A.2d at 113; Safeway Stores Inc. v. District of Columbia, 525 A.2d 207,209 (D.C. 1987). The expert and the District's assessor examined all three approaches and both rejected the cost approach. Mr. Appelbaum rejected the sales comparison approach while the expert relied on it to confirm her value by the capitalization of income approach.

Both the expert and the District's assessor gave considerable weight to the income capitalization approach. Of the three recognized approaches, the income capitalization approach is the preferred method for valuing income-producing properties. See 1015 15th Street. N.W.. Associates Limited Partnership v. District of Columbia, Tax Docket No. 3266-83 (Sup. Ct. November 13, 1984). The assessor admitted at trial that the capitalization rate used was not sufficient to cover the mortgage and tax payments and give a fair return on equity. That submission suggests that in an arms length buy/sale transaction where each side is trying to maximize their economic opportunity that a buyer may not be able to maximize his economic opportunity does not express an incorrectness of the capitalization rate. See District of Columbia v. Rose Associates, 697 A.2d 1236 (D.C. 1997). It does however, go a long way in supporting that the assessed value is at least suspect and at most wrong.

The Court examined the testimony and evidence and determined that the evidence supported Ms. Saad's opinion as she considered both existing leases and market conditions and used a capitalization rate which among other things met the Rock Creek test. An expert's testimony may not arbitrarily be disregarded, disbelieved, or rejected. "When the trial Court rejects the testimony of taxpayers' expert, there must be some basis in the record to support the conclusion '"that the evidence of the taxpayers' witnesses is unworthy of belief."' Rock Creek Plaza, 466 A.2d at 859. (citing Cullers v. Commissioner, 237 F.2d 611, 616 (8th Cir 1956)).

Therefore, based on the above conclusions, the Court finds that a preponderance of the evidence supports a figure of $31,900,000 as the market value for the subject property as proposed by Ms. Saad for tax year 1989 and $32,700,000 for tax year 1990. The December 19, 1991 sale for $32,500,000 though it may not be direct evidence of value, can be used to corroborate an independently arrived at value. See City of Atlantic City v. Boardwalk Regency Corp., 19 N.J. Tax 164, 184-85 (N. J. Super. Ct. App. Div. 2000)(citing additional tax cases for this proposition).

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 for tax year 1989.

Therefore, as stated previously, the Court adopts $25,000,000 as the value of the land. The remaining portion of the assessment is allocated to the building. For tax year 1990, the Court finds that Ms. Saad's value of $28,800,000 is supported by the evidence.

It is therefore by the Court this 7th day of January, 2004, *nunc pro tunc* to December 22, 2003,

ORDERED, that the assessed value for the subject property is reduced and determined to be as follows for the tax year 1989:

Land	$25,000,000
Improvements	6,900,000
Total	$31,900,000

ORDERED, that the assessed value for the subject property is reduced and determined to be as follows for the tax year 1990:

Land	$28,800,000
Improvements	3,900,000
Total	$32,700,000

It is further

ORDERED, that the assessment record card for the property maintained by the District shall be adjusted to reflect the values determined by this order.

It is further

ORDERED, that the parties or either of them shall submit a proposed judgment order or computation of over payment providing for a refund of the overpayment of taxes and interest due to the petitioner. A copy of the proposed order or computation pursuant to Superior Court Tax Rule 14 shall be served to each party and filed within thirty (30) days of entry of this Order.

JUDGE WENDELL P. GARDNER, JR.
(Signed in chambers)

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L:\tax\fof.19th.street.associates.**AMENDED** (mkw)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

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TAX DIVISION

2004 JAN 22 P 3:15

CLERK OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

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Petitioner,	:	
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v.	:	**Tax Docket Nos. 4261-89 & 4380-90**
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District of Columbia,	:	
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Respondent.	:	

ORDER

Following a trial, this court entered it Findings of Fact and Conclusions of Law in the instant matter reducing the tax year 1989 and 1990 assessments on the real property known as Lot 90 in Square 140. Pursuant to Superior Court Tax Rule 14, , it is this 22ND day of January, 2004

ORDERED that the 1989 real property tax assessment of Lot 90 in Square 140, known as 1111 19th Street, NW, Washington, D.C., is $31,900,000, consisting of:

LAND	$25,000,000
IMPROVEMENTS	$ 6,900,000
TOTAL	$31,900,000

and the Office of Tax and Revenue's records shall reflect this valuation, and it is

FURTHER ORDERED that petitioner is entitled to a refund of real property taxes paid for tax year 1989 on Lot 90 in Square 140 of $244,573.41, with interest at the rate of six percent per year from April 1, 1989 until paid; and it is

FURTHER ORDERED that the 1990 real property tax assessment of Lot 90 in Square 140, known as 1111 19th Street, NW, Washington, D.C., is $32,700,000, consisting of:

LAND	$28,800,000
IMPROVEMENTS	$ 3,900,000
TOTAL	$32,700,000

and the Office of Tax and Revenue's records shall reflect this valuation, and it is

FURTHER ORDERED that petitioner is entitled to a refund of real property taxes paid for tax year 1990on Lot 90 in Square 140 of $569,821.00, with interest at the rate of six percent per year from April 1, 1990 until paid.

Wendell P. Gardner
JUDGE

READ AND APPROVED:

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