SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

WATERGATE SOUTH, INC.,	:	
WATERGATE WEST, INC.,	:	
1661 CRESCENT PLACE, N.W., INC.	:	
CLARIDGE HOUSE COOPERATIVE, INC.	:	
Petitioners	:	
v.	:	Docket Nos. 4493-90
		4494-90
DISTRICT OF COLUMBIA	:	4495-90
		4496-90
Respondent.	:	Judge John F. Doyle

OPINION AND ORDER

These four consolidated cases, which came on for trial on February 4, 1993 involve the appeals of real property tax assessments for Tax Year 1990 against apartment buildings owned by the following cooperative housing associations: Watergate South, Inc.(Watergate South), Watergate West, Inc. (Watergate West), 1661 Crescent Place, N.W., Inc. (Crescent Place), and Claridge House Cooperative, Inc. (Claridge House).

The Court exercised jurisdiction over these appeals pursuant to D.C. Code § 47-825(i) and § 47-3303. Based on the evidence presented at trial, and the stipulations of the parties, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Court has considered separately the facts as to each

cooperative and finds as follows:

1. Claridge House

As stipulated by the parties at trial (tr. 12-13: February 4, 1993), the Court makes the following findings concerning Lot 863 in Square 16, owned by Claridge House, for Tax Year 1990:

Lot	Square	Address	Unit Mix
863	16	940 25th Street, N.W.	95 efficiencies 31 one bedrooms 12 Garage Parking Spaces

Assessment:	Land =	$2,043,237
	Improvement =	$5,055,763
	Total =	$7,099,000
	Tax =	$100,854.60

Lot	Square	Address	Unit Mix
93	16	950 25th Street, N.W.	63 efficiencies 148 one bedrooms 2 two bedrooms 59 Garage Parking Spaces

Assessment:	Land =	$2,291,168	
	Improvement =	$9,143,832	
	Total =	$11,435,000	
	Tax =	$163,224.60	Class 2

Claridge House had appealed its proposed assessments to the Board of Equalization and Review for Tax Year 1990 and these proposed assessments were sustained. Claridge House then paid the tax and timely appealed to the Tax Division.

2. Crescent Place

As stipulated by the parties at trial (tr. 14-15) the Court makes the following findings concerning Lot 954 in Square

2571, owned by Crescent Place, for Tax Year 1990:

Lot	Square	Address	Unit Mix
954	2571	1661 Crescent Pl., N.W.	4 efficiencies 7 one bedrooms 28 two bedrooms 6 three bedrooms 11 four bedrooms

Assessment:	Land =	$2,498,100	
	Improvement =	$4,609,605	
	Total =	$7,107,705	
	Tax =	$78,184.75	Class 1

Crescent Place had appealed its proposed assessments to the Board for Tax Year 1990 and these proposed assessments were sustained. Crescent Place then paid the tax and timely appealed to the Tax Division.

3. **Watergate South**

The Court makes the following findings concerning Lot 812 in Square 8, owned by Watergate South:

Lot	Square	Address	Unit Mix
812	8	700 New Hampshire Ave., N.W	14 stories plus penthouse 2 parking basements 111 one bedrooms 112 two bedrooms 18 three bedrooms 4 four bedrooms

Assessment:	Land =	$9,029,993	
	Improvement =	$95,124,150	
	Total =	$104,154,143	
	Tax =	$1,035,887.40	Class 1

Watergate South appealed its proposed assessment to the Board

for Tax Year 1990 and the proposed assessment was reduced from $106,373,000 (with $97,343,007 attributed to the building) to $104,154,143. Watergate South then paid the tax and timely appealed to the Tax Division.

Both parties stipulated at trial that the aggregate value of Watergate South's proprietary leases and shares of stock, less one percent for personal property, amounts to $68,981,345 for Tax Year 1990.

4. **Watergate West**

The Court makes the following findings concerning Lot 809 in Square 8, owned by Watergate West:

Lot	Square	Address		Unit Mix
809	8	2700 W.Virginia Ave., N.W		62 parking spaces 60% river view 75 one bedrooms 46 two bedrooms 15 three bedrooms
Assessment:		Land =	$6,438,128	
		Improvement =	$43,690,872	
		Total =	$50, 129,000	
		Tax =	$529,038.40	Class 1

Watergate West appealed its proposed assessment to the Board for Tax Year 1990 and this proposed assessment was sustained. Watergate West then paid the tax and timely appealed to the Tax Division.

5. The method of assessment used by the District of Columbia authorities for Tax Year 1990 was to aggregate the market value of

the units in each building (the value of proprietary leases and stock shares) less a 1% deduction for personal property.

6. The petitioners challenge this method of assessment alleging that the correct method of assessing cooperatives for Tax Year 1990 was the discounted gross sell out method prescribed for Tax Year 1991 and subsequent tax years by D.C. Law 7-205, 47 D.C. Code § 820.1 requiring a 35 percent discount to the assessor's sums for Tax Year 1990 as hereinabove set forth. Petitioners assert that this method should be applied to Tax Year 1990 assessments because under statute and regulations the assessor is required to "... take into account any factor which might have a bearing on market value..." 47 D.C. Code § 820(a), and to determine the assessed value, "... bas[ed] on the most current, accurate, and conclusive evidence of market value available at the time the assessed value is determined..." 9 D.C.M.R. § 306.2. The petitioners contend that the discounted gross sell out method required in D.C. Law 7-205 was available to the District's assessors when the assessments for Tax Year 1990 were made and that it was the best method for assessing cooperatives. Therefore, the assessors were required to use this method despite the fact that D.C. Law 7-205 did not become effective until Tax Year 1991.

7. This Court rejects the position of petitioners set forth in finding #6 above for the following reasons:

a) D.C. Law 7-205 by its terms applies to assessments

for "... the tax year beginning July 1, 1990 and for each tax year thereafter..." D.C. Law 7-205, § 421(a), 47 D.C. Code § 820.1 (a), but there is nothing in the Act or in the Committee Report showing intent to have the requirements contained therein applied retroactively to the tax year beginning July 1, 1989 (Tax Year 1990) which is at issue in these cases.

b) There is no exclusive method of assessing cooperatives for real estate tax purposes. (See Conclusions of Law #5 - #7). The method to be used is a legitimate matter of legislative choice. In the absence of statute the method to be used in assessment is the province of the Mayor and her assessors, 47 D.C. Code § § 820, 821 and such assessment is presumptively correct.

c) The system chosen by the mayor and her assessors for Tax Year 1990 for taxing cooperatives was to use the market data approach by referring to sales of comparable cooperative apartment units and to multiply the square footage to arrive at the aggregate value for a particular cooperative apartment house. The data used was the information regarding sales of individual cooperative apartment units in the District of Columbia reflected in the Multiple Listing Service and which were available for the first time in the Tax Year 1990 assessment. No discount was applied. The reason given therefor was that the data in the multiple listings showed no significant difference between the sale prices of comparable cooperative and condominium apartment units.

d) The function of the Court is not to make a choice

between the various methods for assessing cooperatives as did the City Council for Tax Year 1991 and succeeding tax years but rather to determine from the evidence presented in these cases whether the petitioners have been substantially overassessed for Tax Year 1990.

e) There is no substantial testimony showing that in this city there is such a great difference between the market value of cooperatives and condominiums of comparable location, size and facilities as would justify a discount of 30% or 35% to be used in favor of the former. In this respect the presumption of correctness of the Tax Year 1990 assessment has not been overturned.

8. In the foregoing all of the petitioners joined in a common theory opposing the 1990 assessments treated above. One of the petitioners, Watergate West, has additional reasons for opposing the 1990 assessment and the following findings are in respect thereof.

a) Watergate West contests the computations made by the assessors in respect of the aggregate value of the individual units and common area shares, $50,129,000 (See Finding of Fact #6). In the course of the instant litigation the expert for the petitioners, Mr. William S. Harps, M.A.I., C.R.E., and Mr. Herman Ricks for the District of Columbia narrowed the figures to $43,630,641 (Mr. Harps) and $45,260,000 (Mr. Ricks), both without the discount. The Court credits the computation of Mr. Ricks and finds the value of Watergate West to be $45,260,000 for Tax Year

1990.

b) Previously there had been a dispute in the assessment of Watergate South. As stipulated the value without the discount of this petitioner for Tax Year 1990 is $68,981,345. (See Finding of Fact #3).

c) Watergate West also asserts that the 1990 assessment should be set aside in favor of the 1989 assessment. Since the Court has found for the 1990 assessment the argument in favor of rejecting the same is itself rejected.

d) Watergate West also asserts that the assessor should have followed the replacement cost method for Tax Year 1990. The Court rejects this argument. The experts and authorities for all sides including those appearing for and cited by Watergate West are of the settled opinion that the replacement cost method is inappropriate for other than relatively new buildings. See, Council of the District of Columbia, Report of the Committee on Finance and Revenue on Bill 7-548, "Cooperative Housing Assessment Procedure and Lower Income Homeownership Tax Abatement and Incentives Act of 1983 Amendment Act of 1988", at 10-11 (1988).; Petitioners' Exhibit #3 (Appraisal of Watergate West by William S. Harps), p. 7, 12-13; Danner, Cooperative Apartments, 51 The Real Estate Appraiser and Analyst 47 (Spring 1985). Furthermore, the Court was not presented with sufficient testimony at trial such that the replacement cost method could now be accurately applied to Watergate West. The petitioner's attempt to compensate for the lack of evidence presented at trial by presenting the Court with

necessary data in Supplemental Submission 2 attached to Watergate West's Post-Trial Memorandum of Law must fail. No such data was ever moved into evidence at trial and the Court will not now entertain new evidence presented by one party by way of a post trial submission.

CONCLUSIONS OF LAW

1. The jurisdictional prerequisites of § 47-825 and § 47-3303 D.C. Code having been satisfied (See Findings of Fact #1 through #4), the Court has jurisdiction over these appeals.

2. Of concern here are the permissible and appropriate methods of evaluating cooperative properties for real estate tax assessment and review purposes. This is a subject of first impression in D.C. judicial decisions.

3. The cooperative housing associations in the instant cases consist of corporations which hold title to land improved by multifamily apartment buildings and whose stockholders occupy the individual apartment units by virtue of proprietary leases. 29 D.C. Code § 1101. Although the corporations are the title holders and taxpayers, the unit holders have most of the attributes of owners. Their interest in the property is considered personal and not real but they have the exclusive personal right to occupy their apartments. They pay no rent except as assessments for maintenance

of common areas and taxes. Hicks v. Bigelow, 55 A.2d 924, 926 (D.C. 1947). In the case of real estate taxes the unit holder is assessed by the corporation for his proportionate share thereof but may take a deduction for the same in payment of income taxes. The legal form of the cooperative has developed (circa 1920) long after traditional real property tenures had crystallized and it fits poorly, if at all, into molds which the law uses in treating real estate problems.

4. For example the cooperative does not readily accommodate itself to the three methods which the law prescribes in assessing property for real estate tax purposes. The income approach is inapposite because the owner receives no rent and is a non profit corporation; the market data approach is also unworkable because while individual cooperative apartments are often sold, seldom, if ever, is a cooperative apartment building seen on the market; and the cost depreciation method is not effective because the average age of such institutions causes the computations involved to become speculative. Council of the District of Columbia, Report of the Committee on Finance and Revenue on Bill 7-548, "Cooperative Housing Assessment Procedure and Lower Income Homeownership Tax Abatement and Incentives Act of 1983 Amendment Act of 1988", at 10-11 (1988). Recourse is had therefor to artificial methods of appraisal.

5. Such methods vary depending upon the way legislatures, or

in the absence of statutes, assessing authorities, perceive the nature of the cooperative. At one end of the spectrum the cooperative unit holder may be seen as the owner in substance of his apartment with the corporation the holder of only formal legal title. The true unit of marketability is hence, like the condominium, the apartment unit itself and the undivided share of the common areas. In such perspective the problem of taxing the parcel rather than the unit is accomplished simply be adding the market values of the constituent units. At the other end concern focuses upon the estimated market value of the parcel as an hypothesized vacant saleable piece of property. The latter approach followed a more sophisticated assessment technique developed in 1976 to aid entrepreneurs or underwriters concerning sale or financing of newly erected or newly to be converted condominium or cooperative apartment buildings. As explained in the seminal article, Residential Condominiums, A Guide to Analysis and Valuation by Robert W. Dumball, American Institute of Real Estate Appraisers 1976, the appraisal technique used was the "Discounted Gross Sell Out Approach." This involved estimating the potential aggregate sale price of the individual units ("retail value") and subtracting therefrom the cost of marketing plus provision for reasonable profit ("wholesale value"). This approach included calculation of a reasonable time period to complete the sales together with inclusion of charges for maintenance and financing during such interval. In between such methods are various hybrid forms.

6. The new theories created a flurry of litigation in New York state which then was the situs of 95% of the nation's cooperatives. 2 Rohan and Reskin, Cooperative Housing Law and Practice § 1.02(1), at 1-3, fn.1 (1990). The discounted gross sell out method was rejected as too speculative when applied to occupied condominiums, Bloom, Tax Valuation of Condominiums and Cooperatives: Fiction v. Reality, 11 Real Estate Law Journal 240, 245 (1983) (commenting on Marks v. Pelcher, 392 N.Y.S.2d 536 (Sup. Ct. 1977), but qualifiedly approved for cooperatives in 200 Country Club Associates v. Board of Assessors, 441 N.Y.S.2d 706 (App. Div. 1981). The latter decision however, within a matter of months, was in effect reversed by the state legislature which adopted a new section 581 to the real property tax law. 1981 N.Y. Laws, Chs. 1057, 1058 (effective Dec. 3, 1981). The new procedure returned the assessment approach to treatment of cooperatives, condominiums and rental apartments on the same basis. For the history of this litigation see South Bay Development Corp. v. Board of Assessors, 489 N.Y.S.2d 762 (App. Div. 1985); Rohan and Reskin, supra, § 15.04, at 15-12.8 to 15-23; Bloom, supra.

7. Whereas New York then treats all apartment buildings alike (at bottom as rental establishments) Illinois treats condominiums and cooperative units occupied by owners as single family houses, County Collector of Cook County v. Hunt, 483 N.E.2d 414 (Ill. App. 1985), citing Property Taxes Revenue Act of 1939,

Ill. Rev. Stat. ch. 120, para. 501c-1 (1983), and in the District of Columbia condominium units have since their creation been individually taxed. 45 D.C. Code § 1804. The new District of Columbia statute, 47 D.C. Code § 820.1, covering Tax Year 1991 and following years adopts the discounted gross sellout approach used in 200 Country Club Associates, supra, but goes much further and specifically quantifies the discount (30% or 35%). It may be seen therefore that in the states it is acceptable variously to assess the cooperative unit as though it were a rental apartment, a condominium of identical facilities and location, a single family residence of identical market value, or as in the latest D.C. statute it may be taxed at approximately 2/3 of that levied upon condominium units or comparably priced single family houses. There is hence at law, absent a statute, no exclusive method of assessment of cooperatives.

8. Without an effective statute the choice of method for Tax Year 1990 was hence that of the Mayor and her assessors. 47 D.C. Code § § 820, 821. The method, reached as it was for the first time that sales prices or listings for individual cooperative units became available, was not unreasonable as a matter of law.

9. The evidence presented does not show that the assessments made without the 30% or 35% discount resulted in overassessment.

10. The Court rejects the legal arguments presented by

petitioner Watergate West and referred to in Finding of Fact #8.

11. The petitioners have not met their burden of showing that the assessments for Tax Year 1990 are incorrect. Brisker v. District of Columbia, 510 A.2d 1037 (D.C. 1986).

ORDER

Upon the findings of fact and conclusions of law made in the case above and upon the petitions and stipulations filed herein, and upon the evidence adduced at trial, it is this 26th day of May, 1993, hereby,

1. ORDERED that the assessed value for the subject properties for Tax Year 1990 is determined to be as follows:

Watergate West:	$45,260,000	
Watergate South:	$68,981,345	
Crescent Place:	$7,107,705	
Claridge House:	940 25th Street, N.W.:	$7,099,000
	950 25th Street, N.W.:	$11,435,000,

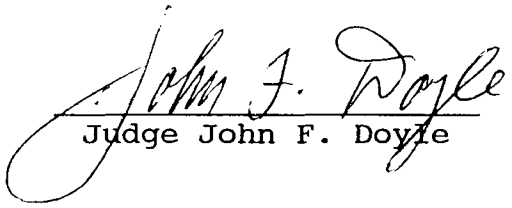
and it is

2. FURTHER ORDERED that respondent be and hereby is, directed to modify the assessment record card to reflect the value of $45,260,000 for Watergate West for Tax Year 1990 and $68,981,345 for Watergate South for Tax Year 1990; and it is

3. FURTHER ORDERED that respondent shall refund to petitioners, with interest, the excess taxes which have been

unlawfully collected for Tax Year 1990 for Watergate West and Watergate South; and it is

4. FURTHER ORDERED that respondent present a proposed order for refund, with interest from the dates of filing the petitions, for Watergate West and Watergate South, no later than five (5) days from the date of this Order.



Judge John F. Doyle

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