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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

WILLIAM B. WOLF, SR., ET AL.	*	
Petitioners,	*	
v.	*	Tax Docket No. 3872-87
DISTRICT OF COLUMBIA	*	
Respondent.	*	
	*	

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER AFFIRMING ASSESSMENT

This case came on for trial upon petitioners' appeal from an assessment for real property taxes for tax year 1987. The case proceeded to trial upon an amended petition and respondent's response thereto. Upon consideration of same and the evidence adduced at trial, and having resolved all questions of credibility, the Court makes the following:

Findings of Fact

1. Petitioners are the lessees of a parcel of land described as Lot 12 in Square 215 in the District of Columbia, which is owned by John Hancock Mutual Life Insurance Company. There is an improvement on the property known as 1121 Vermont Avenue, N.W. in the District of Columbia. Petitioners own the building.

2. Under the terms of their ground lease, petitioners are required to pay all real estate taxes on the

land and the improvement.

3. The proposed assessment for tax year 1987 was \$17,788,000 with \$8,030,500 allocated to the land and \$9,757,500 allocated to the improvement. The assessed value for the preceding two years was \$12,510,000 with \$7,209,870 allocated to the improvement and \$5,300,130 allocated to the land.

4. An appeal to the Board of Equalization and Review was filed timely. The Board sustained the proposed assessments. There is no dispute that the required taxes were paid timely.

5. Petitioners challenge the value placed upon the land component only.

6. The subject property is located just south of Thomas Circle. It is bordered by Vermont Avenue, 14th Street and L Street, N.W. The lot is triangular in shape. The zoning is C-4 which allows for office construction with retail space on the first floor generally. The property is considered a corner lot. The lot has 16,061 square feet.

7. The subject property is improved by a twelve story office building which was built around 1967. The building has a gross building area (GBA) of 278,146 square feet, a gross finished area (GFA) of 166,707 square feet, and a net rentable area (NRA) of 133,815 square feet (including office and retail space). There are also 245 parking spaces in the four level garage. The developed floor area ratio

(FAR) of the building is 10.4. The floor area ratio is the amount of gross building construction allowed for the lot size. The higher the FAR, the greater the building density allowed. The building has certain advantages because of its triangular shape which allows a window exposure for all offices. A premium is paid for offices with windows.

8. The majority of the space in this building is leased to the United States government. There is commercial space on the first floor where a drug store is located. The four levels of garage space are leased.

9. One of the petitioners, William B. Wolf, Jr., testified on behalf of petitioners. Mr. Wolf has been an attorney since 1954. His law practice has been concentrated on office building development, sales, financing and leasing of real property. He has been a part of the development team for eight downtown office buildings. Mr. Wolf has served as counsel for approximately 100 clients involved in the development and financing of real property. In the course of these transactions, Mr. Wolf has been called upon to provide an opinion on financing. Consideration had to be given to the value of the property by Mr. Wolf. Mr. Wolf has not taken any assessment courses. He does not purport to be an assessor nor a real estate appraiser.

10. Mr. Wolf estimates the value of the subject land at \$385 per square foot. He started with the premise that the District's allocation of a value to the land

component of \$330 per square foot in tax year 1986 should be accepted. The witness was of the view that a 4% increase in the Consumer Price Index during the "Reagan years" justified a 16% increase. Mr. Wolf developed a proposed land value of \$3.85 per square foot for tax year 1987 by increasing the value allocated to the land value for tax year 1986 by 16%. The method by which the 16% increase was determined was not shown. The value assigned to the land for tax year 1985 (with a valuation date of January 1, 1984) was also \$330 per square foot. The increase in estimated market value from January 1, 1984 to January 1, 1985 (the date from which the witness began his analysis) was not considered or shown by the witness.¹

11. Mr. Wolf pointed out that the location of the property depresses the value of the land. The property is located south of 14th Street at the edge of the "red light" District. No evidence was presented about the extent to which this factor depresses the land value. There were land sales identified by respondent in that same area ranging between \$411.11 to \$846.26 per square foot of land area. A property at 14th and L Street, N.W. sold on April 29, 1985 for \$533.64 per square foot of land area. One at 14th and Eye Streets, N.W. sold at \$619.90 per square foot of land area. A property on 14th Street sold at \$411.11 per square foot of land area. Other properties identified by respondent's witness on

¹The District did not reassess the subject property for tax year 1986.

Respondent's Exhibit K at page 3 support the District's conclusion of a value of \$500 per square foot for petitioners' property as of January 1, 1986. The area in which petitioners' property is located in one of transition and rapid change. During the period pertinent to the valuation date for tax year 1987, there was a strong demand for land for development. Investors continued to build in the area in spite of the neighborhood's reputation. All of this evidence weighs against the estimate of land value proposed by petitioners.

12. Petitioners' witness questioned, but was unable to determine, the comparability of the properties considered by the District because of the absence of complete information on the terms of the sales and the financing. It was his opinion that such information was necessary before comparability could be established. However, a number of points of comparability are reflected on the documents used by the District's assessor in making the analysis. The locational and zoning characteristics are the same as the subject. The allowable FAR for the properties compared are the same as the subject. The time of the sales are close to the valuation date. The size of the land is listed for comparison purposes. Other comments are provided that bear upon the terms of the sales. The District's assessor also compared the prices per square foot of FAR. The conclusion reached for the subject of \$50 per point of FAR is consistent with those shown for other

properties. The assessor had some information on whether the sales were all cash. The testimony of the District's assessor as to the points of comparability considered and the explanation for same provide support for his conclusion that the properties studied to determine the land component supported the value determined by the assessor.

13. The petitioners lease the land for \$78,000 per year. The initial term was thirty-two years with the option to renew for an additional twenty-eight years. The lessees also have an option to purchase the property for \$1.5 million according to petitioner William Wolf, Jr. The estimated market value of the land today is not based upon the financial terms of the lease. The lease was entered in 1966. The terms may have been fair and reasonable at that time, but the terms are not indicative of the market today. The existence of this lease has some impact on the value of the land. The magnitude of the impact was not proven by the evidence presented by the petitioners.

14. Troy Davis was responsible for the assessment of petitioners' property for tax year 1987. Mr. Davis is a senior commercial real estate assessor for the District. He has been a commercial assessor for six years. Prior to that time, he worked as an assessor of multi-family residences. Mr. Davis also worked in Arlington County as a real estate assessor. Mr. Davis has a B.S. degree in economics. In addition to his experience as an assessor, Mr. Davis has taken

various courses in the field including, Principals of Assessing, Income Capitalization and Case Studies in Real Estate Appraising. Mr. Davis attends seminars each year for assessors and keeps up with the literature on the subject. Mr. Davis has assessed properties from Pennsylvania Avenue to Massachusetts Avenue and from Ninth Street to Connecticut Avenue, N.W. in the District.

15. The assessor valued the entire property. He used the building residual technique to allocate between land and improvement. This approach is a recognized and accepted one. After estimating the value of the whole property, he estimated the value of the land. The value of the improvement was determined to be the difference between the total value and land value.

16. To arrive at a total value for the property, the assessor considered and rejected the cost approach to value for the subject property. He rejected the cost approach because the building is an older one with a great deal of depreciation. The cost approach is not considered appropriate under the circumstances. The assessor used the income capitalization approach to value in conjunction with the comparable sales approach.

17. The assessor applied a capitalization rate to a stabilized net operating income to arrive at an estimate of value by the income capitalization approach. To determine a stabilized net income for the property, the assessor examined

the income and expense statements submitted by petitioners. He examined the lease terms and rents from which he estimated that \$20.00 per square foot of gross area was the appropriate stabilized rent. He allowed a 5% vacancy factor, although there were no vacancies. He deemed a vacancy factor appropriate in stabilizing the income. In stabilizing income, the assessor is determining and stabilizing future benefits which the owner can derive from the property. The assessor found that \$5.50 per square foot was appropriate for stabilized expenses for the building based upon the expense information provided by the owners. The assessor noted an increase in income from 1983 to 1985 for the subject. He stabilized the income at \$2,250,515 (\$13.50 per square foot of gross finished area and \$16.82 per square foot of net rentable area). The stabilized income figure reached takes into account the property's experience.

18. The assessor used an overall capitalization rate of 12.65%. This figure includes the adjustment for real estate taxes not included in net operating income. The capitalized rate was developed by the Standards and Review Section of the department where Mr. Davis is employed. It was recommended for use where applicable. The rate was arrived at by utilization of a widely recognized method known as the mortgage equity technique according to the witness. The capitalization rate was developed from actual sales. For each office building, the estimated stabilized net operating income

was determined and divided by the sales price. From this calculation an overall capitalization rate was determined by the department. Mr. Davis tested the rate for the subject and, in his judgment, found it to be an appropriate, if a somewhat conservative, capitalization rate. Therefore, he used it. The technique used by the department is a way of attaining a standardized capitalization rate for properties in similar locations with similar uses. The determination made by the assessor that this capitalization rate is viable for the subject is credited. There was no credible evidence to refute this evidence. Applying a capitalization rate of 12.65% to the stabilized net operating income for the property, a value of \$17,790,869 is indicated as set forth below:

$$\frac{\$2,250,545}{.1265} = \$17,790,869$$

The indicated value above is slightly greater than the assessed value determined by the District in the amount of \$17,788,000. The accuracy of the analysis can be proved by estimating the taxes on the value found and deducting it from net income and capitalizing the net income by the unadjusted capitalization rate. The following results:

Tax rate on \$17,790,869	@	\$2.03/100 =	\$ 361,153
Net income before taxes		\$2,250,545	
Less Real Estate taxes		<u>361,153</u>	
		\$1,889,392	

<u>Net Income</u>			
Unadjusted	=	Value	<u>\$1,889,392</u> = \$17,790,885
Cap Rate			.1062

19. The assessor used the income capitalization approach in concert with the comparable sales approach. The assessor examined comparable properties to determine the sales price per square foot of net rentable area. (See respondent's exhibit J). The value per square foot of net rentable area for the subject at the rate indicated is \$132.92 per square foot of net rentable area. He found this value to be supported by the price per square foot of net rentable area for the most comparable properties.

20. The allocation between the land and improvement was determined by the building residual technique as above described. The assessors use a basic locational rate for land in the same general location. The basic locational rate is the land value in a particular area before adjustments are made for different characteristics of a property which render it more or less valuable.

21. Respondent's exhibit M is a portion of a map prepared by Standards and Review which reflects the basic locational rates in the area of the subject. The locational rate for the subject was \$36.00.² The assessor agreed that the amount was appropriate and used it. To the basic

²Some question was raised as to which figure on the map represented the locational rate. The assessor testified that \$36.00 was the basic locational rate which was derived from an analysis of sales. Similarly, two figures appear for other parcels on the map. Parcels to the east of subject have handwritten figures of 36. Those to the south of the subject show 40 to 44. The Court credits the assessor's testimony that \$36.00 is the appropriate locational rate for the time in question. The figure was inserted on the map in 1985.

locational rate, adjustments were made. A corner lot commands a higher price. Thus, an adjustment of 10% upward was made for the corner lot raising the rate to \$39.6. Adjustments are made for larger parcels since they also command a higher price. For property containing less than 4000 square feet, no adjustment is made for size. For land area of 10,000 square feet or more, a 20% adjustment is made. For land areas containing 12,500 feet or more, an adjustment is made of 25%. These adjustments were standard for properties located in the same area.

22. The assessor adjusted the locational rate for the subject by 10% to reflect its increased value by reason of its corner location with two fronts. An adjustment was also made by the assessor for its size (in excess of 12,500) of 25%. An indicated value of \$50.00 per point of FAR was determined. Since the FAR was 10, the value is \$500 per square foot of land area. The assessor utilized his judgment in making the adjustments. He checked the values against the most recent comparable land sales. Since property values were rapidly escalating during the period, the assessor deemed the sales in 1985, which were close to the date of valuation, to be most comparable. Sales in the same area, east of 15th Street, N.W. were considered most comparable. Properties which sold in 1985 near the subject supported the results reached by the assessor. Among the sales considered were the

following:

<u>General Location</u> ³	<u>Price Sq/Ft of Land Area</u>	<u>Price P/FAR</u>
14th & L Street, N.W.	\$533.64	\$53.36
1420-22 K Street, N.W.	591.98	59.20
1420 N.Y. Ave., N.W.	846.26	84.65
14th & Eye Streets, N.W.	619.90	61.99
607-613 14th Street, N.W.	411.11	41.11

The value determined by the assessor for the subject property at \$500 per square foot of land area and \$50.00 per point of FAR appears to be supported by the comparable sales identified. The terms of the sales were considered by the assessor. He also provided reasons that other sales were not deemed as comparable. For example, the price for the 13th & K Street property (Lots 803, 804, 813 and 816 in Square 248) was reported to have been negotiated some 5-6 years earlier. Thus, it was not relied upon by the assessor. The assessor's value for the land component is supported by the credible evidence presented at trial. No persuasive evidence to the contrary refutes it.

23. The land value determined for the subject by the assessor in the manner indicated was \$8,030,500 (16061 square feet X \$500). Using the building residual technique, which assessors use 95% of the time, the allocation was made by the assessor between land and building as follows:

9,757,500	Building
<u>8,030,500</u>	Land
17,788,000	Total assessed value

³For the lots and squares, see respondents's exhibit K at page 3.

24. When the building residual technique is used, any adjustment to the land component requires a readjustment of the value of the improvement. Thus, if petitioners' value of the land were accepted (and it is not) the value of the whole would remain, and the improvement value would be increased.

25. There is a ground lease for the real property. The ground lessee has an option to buy the land, and the ground lessor has an option to buy the building. Thus, either the owner of the ground or the owner of the building may acquire title to the whole. The evidence does not support that the ground lease and the option suppress the value of the property below the value as determined by the District.

26. Petitioners attempted to show that the value of the property as determined by the District would not produce a sufficient return on equity. The calculations made cover only a single year. Presumably, any willing buyer would be investing for a period of time over which the return would be measured. The potential yield includes a series of income streams and the remaining reversionary interest. According to the assessor, it is not uncommon for the "going in" cap rate to be low. These factors along with the substantial evidence supporting the District's value require a rejection of petitioners' position.

Conclusions of Law

Petitioners 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 the proving the assessments appealed from are incorrect. Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. 1986). Petitioners can meet this burden by showing that the District's valuation for the tax year in question was flawed. Id. The taxpayers are not required to prove the correct value of the property, but need only show the incorrectness of the District's assessment. Id. Petitioners have not met that burden of proof in this case.

Petitioners attempted to prove that the value of the land component was excessive. This contention is based primarily upon the following observations: that the land value assigned by the District exceeded the assessed value of the land for the prior tax year by approximately 50%; that the consumer price index increased by only 4% during the relevant period; that no change occurred in the sublease; that the property's income increased only modestly; and that petitioners deemed a 16% increase to be supported. The latter contention was not determined by any recognized approach to value nor supported by the facts. There is no proof that the increase in the value of real property can be determined by reference to the Consumer Price Index. The increase in the property's income was taken into account in the income capitalization approach used by the assessor which supports the assessed value as determined by respondent. The fact that

there was an approximate 50% increase over the prior year's land component requires scrutiny and consideration. Nevertheless, if the value determined for the property is in fact the estimated market value of the property, it must be used as the assessed value in spite of the magnitude of the departure from the prior year.

The assessed value of real property is the estimated value as of the valuation date. D.C. Code §47-820(a)(1981). Real property taxes are based upon the estimated value of the subject real property as of January 1, of the year preceding the tax year. Id. 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 various factors bearing upon the subject, including but not limited 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 sales and the 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. The evidence shows that the assessor relied upon two of the recognized approaches to value, the income approach and the comparable sales approach. He provided a reasonable basis for rejection of the cost approach to value.

The income approach to value requires the development of a stabilized net operating income and a capitalization rate for the property. The stabilized net operating income is derived from an examination of the property's history for a number of years to project the future earning ability of the property. Safeway Stores, Inc. v. District of Columbia, 525 A.2d at 213; District of Columbia v. Washington Sheraton Corp., 499 A.2d at 115. The assessor examined the history of the subject and reached a stabilized net operating income which is supported by the evidence and which was not challenged successfully at trial. The capitalization rate represents the percentage an investor must

recover annually to pay the mortgage, a fair return on equity and real property taxes. Rock Creek Plaza-Woodner Ltd. v. District of Columbia, 466 A.2d 857, 858 (D.C. 1983). The capitalization rate used by the District's assessor was developed from information related to actual sales. The rate selected was not successfully assailed at trial. Once the stabilized net operating income and the capitalization rate is determined, the indication of value is found by dividing the stabilized net income by the capitalization rate. See District of Columbia v. Washington Sheraton Corp., 499 A.2d at 113-114. Since the income approach to value is appropriate in this case for an income-producing property like the subject and the components of the formula are supported by the evidence, the indication of value developed should be accurate.⁴ The indicated value obtained by the assessor was checked against comparable sales and found to be supported.

Petitioners sought not to place the value of the building in issue. However, in assessing real property, the District determines the value of the whole and allocates between land and improvements. The tax levy is made each year on the "real property". D.C. Code §47-811. The assessed value of real property is the estimated market value as of the valuation date. D.C. Code §47-820(a). "Real property" is

⁴The assessor has used a slightly lower amount as the total estimated value for the subject than the result reached by application of the formula. The difference is negligible. Since estimated value is in a range rather than a finite number, an adjustment upward is not necessary.

defined in the Code as real estate identified according to lot and square together with any improvements thereon. D.C. Code §47-802(1)(1981). Thus, taxes are imposed on the estimated market value of the whole. A taxpayer who seeks reduction of an assessment substantially below fair market value must prove that his share of the tax burden is substantially greater than the share allocated to others generally. See In re Appeals of Kents 2124 Atlantic Avenue, Inc., 166 A.2d 763, 769 (N.J. 1961). If proof is not shown of this fact, then the fact that the assessment of either the land or improvement component might be excessive would not be of consequence. Id.

The Court of Appeals has affirmed a decision holding that land and improvements are severable elements of real property for purposes of assessment such that either can be deemed omitted property under D.C. Code §47-831. 1111 19th Street Associates v. District of Columbia, 521 A.2d 260, 268 (D.C. 1987). In 19th Street Associates, the Court was persuaded by various sections of the statute which require an allocation between land and improvements. The statute requires that the property be assessed with the value of the land and improvements identified separately. D.C. Code §47-821(a)(1981). It is also required that the Mayor compile a list of the preliminary assessments specifying the values of the land and the improvements. D.C. Code §47-823(1981). Neither the decision in the 19th Street Associates case nor the statutory scheme preclude the utilization of the

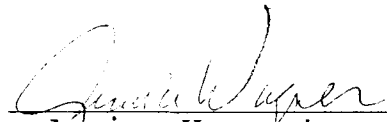
determination of estimated fair market value of the whole property and the determination of the allocation between land and improvements by the building residual technique employed in this case.

Petitioners have failed to prove by a preponderance of the evidence that they are entitled to the relief sought. On the other hand, the evidence establishes that the value of the land is consistent with value allocated to it by the District. The evidence does not show that the District's valuation for the property or for the land component was erroneous or flawed. Accordingly, the assessment must be affirmed.

Therefore, it is by the Court this 31st day of

July, 1990,

ORDERED, that the assessment made by the District for the subject property for tax year 1987 be, and hereby is affirmed.


Annice Wagner*
Judge
Signed In Chambers

*

Sitting by special designation pursuant to D.C. Code §11-707(b)(1981) on date of entry of decision. Trial heard by Judge Wagner while an Associate Judge of the Superior Court.

Copies mailed this 7th day of August, 1990, to each of the following:

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WILLIAM B. MOLE SR. ET AL

VS.

DISTRICT OF COLUMBIA

FREDERICK D. STONE, JR., CLERK,
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

DEAR MR. STONE:

THE ATTACHED CONTAINS COPY OF THE SUPPLEMENT AND
OPINION OR ORDER IN THIS APPEAL, PURSUANT TO RULE 91.1(f)
OF THE RULES OF THE DISTRICT OF COLUMBIA. THE COPY HANDLED TODAY
THIS DATE

JUDY A. [unclear]
[unclear] CLERK

DISTRICT OF COLUMBIA
COURT OF APPEALS

DISTRICT OF COLUMBIA COURT OF APPEALS

FILED APR 17 1992

No. 90-1011

WILLIAM B. WOLF, SR., ET AL., APPELLANTS,

v. TAX-3872-87

DISTRICT OF COLUMBIA, APPELLEE.

Appeal from the Superior Court of the
District of Columbia, Tax Division

(Hon. Annice M. Wagner, Trial Judge)

(Argued April 6, 1992

Decided April 17, 1992)

Before FERREN AND STEADMAN, Associate Judges, and GALLAGHER, Senior Judge.

MEMORANDUM OPINION AND JUDGMENT

Appellants raise numerous challenges to the District's 1987 real property tax assessment for the commercial property located at 1121 Vermont Avenue, N.W., and claim the trial court erred in upholding that assessment. After reviewing each of appellants' claims and finding no error, we affirm.

I.

Appellants are the lessees of land owned by the John Hancock Mutual Life Insurance Company. Under the terms of the lease, appellants, who own the office building on the land (the improvement), pay all real estate taxes. For tax year 1987, the District assessed the real property (land plus improvement) at \$17,788,00, allocating \$8,030,500 to the land and \$9,757,500 to the improvement. The assessment was sustained by the Board of Equalization and Review. For both 1985 and 1986, the District had assessed the property at \$12,510,000 (\$5,300,130 for land, \$7,209,870 for improvement). Appellants paid their 1987 taxes and then sued for a refund in Superior Court.

In their petition, appellants challenged the valuation of the land but not the valuation of the improvement or the overall real property assessment. Accordingly, appellants moved to prohibit the District from introducing evidence concerning the value of the improvement and the combined value of the land and the improvement. The trial court denied the motion. We now summarize the findings of the court based on the evidence at trial.

The overall assessment was a two-step process. First, the assessor determined the total value of the real property (land plus improvement) using the income capitalization approach. This

approach resulted in a total value of \$17,790,869. The assessor then used the comparable sales method in effect to check the income capitalization figure. Those comparable sales are listed in District exhibit J. The resulting total assessed value was \$17,788,000.

Second, the assessor used the building residual method to allocate the total value between the land and the improvement. Under this method, the land value is determined and then subtracted from the total assessed value in order to get the value of the improvement. To obtain the value of the land, the assessor used a standard mathematical formula based on the specific site location, lot type (corner), and square footage of the assessed property. After computing that formula, the assessor arrived at a price per point of floor area ratio (FAR) of \$50.

The assessor then multiplied the \$50 price by the applicable FAR (10) to get a price per square foot of land area of \$500. This figure was within the range indicated by a second set of comparable sales used by the assessor. These comparables are listed in District exhibit K. The assessor then multiplied the \$500 figure by the square footage of the property to assess the land at \$8,030,500. Subtracting that figure from the overall assessment (\$17,788,000), he then allocated the remaining \$9,757,500 value to the improvement.

II.

As a threshold matter, we note that appellants' petition in Superior Court alleged that the District's assessment of the land -- not the District's overall assessment -- was in error. All of appellants' claims on appeal also focus on the District's assessment of the land, only. Furthermore, appellants request that we reverse the trial court's order upholding the District's assessment of the land and remand for an assessment of the land at either appellants' own figure (\$6,183,484) or at the District's assessment for tax year 1986 (\$5,300,130).

After the parties filed their briefs, this court decided *Washington Post Co. v. District of Columbia*, 596 A.2d 517 (D.C. 1991), in which we held that if the real property is fairly assessed in its entirety, then any misallocation of value between the land and the improvement provides no basis for a refund or damages. *Id.* at 519. In construing relevant D.C. Code provisions, we reasoned that "[t]hese provisions establish, in our view, that a tax payer is entitled to a refund when the assessment of the 'real property' -- the combination of land and improvements -- is excessive, not when the allocation of value between land and improvements is erroneous." *Id.* at 520. Because appellants do not challenge the District's overall assessment, even if the assessor did make a mistake in allocating the total value between land and improvement,

such an error provides no basis for relief, *i.e.*, a refund. *See id.* at 520-21.¹

Because appellants' counsel asserted during oral argument that a gross overvaluation of the land should have been considered in checking the overall valuation, we briefly address appellants' remaining claims on appeal.² First, they argue that the District violated D.C. Code § 47-821 (a) (1987) because the "assessor merely used a predetermined mathematical formula and his calculator." This argument is without merit. Section 47-821 (a) provides, in relevant part, that "[t]he Mayor shall assess all real property, identifying separately the value of land and improvements thereon." That is what the assessor did in this case. The fact that he did so by formula -- taking into account the property's site and corner location and its square footage -- is of no consequence, unless appellants can prove either that the basis of the formula is unlawful or that the assessor's computation of the formula in this case was inaccurate. *See Safeway Stores, Inc. v. District of Columbia*, 525 A.2d 207, 211 (D.C. 1987) (taxpayer has burden of proving that

¹ Appellants raise a valid argument that *Washington Post* should not be read to bar all challenges of the District's allocation between land and improvement. They argue, for example, that the rent they pay to the District for sub-surface space ("vault rental") is based "on the assessed value per square foot of the abutting land." In this case, however, appellants did not petition the trial court to remedy harm incurred because they paid too much in vault rental on account of the District's land assessment. We also note that there may be properties in the city where party A pays the taxes assessed to the land portion while party B pays the taxes allocated to the improvement portion. In such a situation, a misallocation might provide the basis for a claim of damages or an action against the District to correct a mistake. Again, that is not the case before us.

² Preliminarily, we reject appellants' argument that the trial court erred in approving a land assessment that was a little more than fifty percent higher than the preceding year's. As appellants themselves recognize, the size of the increase could simply reflect a previous underassessment. Contrary to appellants' bold assertion, there is no evidence that the District is now "penalizing" them for a previous year's underassessment by "jacking-up" the 1987 assessment.

Similarly, appellants' contention that the trial court erred in denying their motion to prohibit admission of evidence of the overall assessment is misguided. As we noted above, the assessment consisted of two steps, each integrally linked to the other. Furthermore, as we observed in *Washington Post*, the trial court reviews the overall assessment for accuracy and lawfulness.

assessment is incorrect or illegal). Although appellants claim the District did not assess their "particular" parcel of land and used "arbitrary" figures in its calculation, they adduced no evidence at trial to support those claims.³

Appellants next contend that the trial court erred in finding comparable the sales of land the assessor used in step two of his assessment process. They argue that such sales were not "reasonably comparable" within the meaning of 9 DCMR § 307.3 (1986), because the assessor did not take into consideration the terms of each sale or the encumbrances (such as leases) on each parcel. We rejected a similar argument in *Wolf v. District of Columbia*, 597 A.2d 1303, 1311 (D.C. 1991) (District entitled to presume sales prices of selected comparable buildings reasonably reflect spectrum of market forces and encumbrances). Furthermore, the trial court found that the comparable sales used by the assessor (listed in District exhibit K) appeared to support the \$50 per point of FAR the assessor obtained by using the mathematical formula. Appellants produced no evidence showing that the "usual criteria [of comparability such] as location, age, and configuration," *id.*, of the properties selected by the assessor for comparison were not "reasonably comparable."⁴

Finally, appellants argue that the District's assessment of the land was inaccurate or unlawful because it failed to take account of a ground lease and a purchase option -- "encumbrances" benefiting appellants as owners of the building and holders of the below market price lease and option -- which depress the property's "market value." In light of our disposition of the case on grounds stated in *Washington Post Co.*, we decline the opportunity presented by the parties to sort through the meaning and theoretical underpinnings of "market value" in the context of the purposes and policies of real property tax assessment. We note in passing that, although D.C. Code § 47-820 (a) provides that the assessor take into account "any factor which might have a bearing upon the market value of the real property," the trial court found, and appellants presented, no evidence of the magnitude of the ground lease's possible impact. If a factor is not shown to "have a bearing upon

³ The assessor, Mr. Davis, testified that he made an individualized determination but had concluded that the property did not possess any unique characteristics to warrant deviation from the standard adjustment figures he used.

⁴ The trial court found that the location and zoning characteristics and the allowable FAR of the properties compared were the same as appellants' property, and that the dates of the comparable sales were close to the valuation date of the subject property. Appellants do not challenge these findings, and we can find no clear error. See *Washington Post Co.*, 596 A.2d at 522-23.

the market value," then the assessor commits no misdeed in failing to consider it. *See also Safeway Stores*, 525 A.2d at 211-12 (sustaining trial court's approval of assessor's decision not to consider "sweetheart" leaseback arrangements).⁵

Accordingly, it is

ORDERED AND ADJUDGED that the judgment on appeal is hereby affirmed.

FOR THE COURT:

Joy A. Chapper

Joy A. Chapper,
Acting Clerk

Copies to:

Hon. Annice M. Wagner

Clerk, Superior Court

M. Paul Zimmerman, Esq.
1001 Connecticut Ave., NW, #1210 (36)

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Deputy Corporation Counsel

⁵ We also find no merit in appellant's argument that the trial court erred in not relying on Mr. Wolf's testimony that the District's valuation would produce a return on equity of only 4.357 percent, and that, therefore, the District's valuation was unreasonable. As the trial court found, Mr. Wolf's calculation only took into consideration a single year and failed to include the present worth of possible future income streams. Because the trial court had sound reasons for not relying on appellants' figures and calculations, we discern no clear error.

