SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

L'ENFANT PLAZA PROPERTIES, INC. et al.,	:		
Petitioners	:		
v.	:	Tax Docket Nos.	4075-88
	:		4260-89
DISTRICT OF COLUMBIA,	:		4475-90
	:		4820-91
Respondent	:		

OPINION AND ORDER

This matter came before the Court for trial on November 2, 1992. Petitioners, the fee simple owners of real property located at 990 L'Enfant Plaza, S.W., and 825 Frontage Road, S.W. Lot 61 in Square 435 and Lot 187 in Square 387 (hereinafter the "subject property") challenged the real property tax assessed against the subject property for tax years 1988, 1989, 1990 and 1991 pursuant to D.C. Code § 47-820 (1981 ed.).

Respondent, the District of Columbia, assessed the subject property for tax assessment purposes for tax year 1988 at $93,232,414 consisting of $29,161,781 for land and $64,070,633 for improvements. The respondent assessed the property for 1989 at $97,382,000 consisting of $29,161,781 for land and $68,220,219 for improvements. The 1990 assessment was $102,202,000 with $33,117,480 for the land and $69,084,520 for the improvements. For 1991, the respondent assessed the property at $103,890,200 consisting of $33,117,480 for the land and $70,772,720 for improvements.

The petitioners timely appealed all four assessments to the

Board of Equalization and Review (BER), which sustained the assessments. Taxpayers timely paid all taxes and timely filed these four lawsuits.

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 990 L'Enfant Plaza, S.W. and 825 Frontage Road, S.W. on Lot 61 in Square 435 and Lot 187 in Square 387 ("subject property").

2. Petitioner L'Enfant Plaza Properties, Inc. (hereinafter referred to as "L'Enfant Plaza") is the successor by merger, as of June 30, 1974, to L'Enfant Plaza East, Inc. Both corporations are or were incorporated in and operating in the District of Columbia. The principal office of both corporations is or was P-114, L'Enfant Plaza North, S.W., Washington, D.C. 20024. L'Enfant Plaza is the owner of the improvements and lessee of the subject property, Lot 61 in Square 435 and Lot 187 in Square 387, in the District of Columbia.

3. Petitioner, L'Enfant Plaza Corporation is a corporation organized and existing under the laws of the District of Columbia. L'Enfant Plaza Corporation is the owner of the subject property.

4. Petitioners are obligated to pay all real estate taxes assessed against the subject property.

5. Respondent District of Columbia is a municipal

corporation, created by the United States Congress, Section 1-101 of the District of Columbia Code.

6. The subject property is the key structure of a development in Southwest Washington built in 1968 and known as the L'Enfant Plaza. The development consists of three free standing buildings forming a U shape around a masonry plaza and a fountain opening onto L'Enfant Promenade which runs southward from Independence Avenue, S.W. The subject property is the East Building. The North Building and South Building are twin office buildings. Underground the buildings are connected by means of an open shopping arcade called the Promenade Level. The East Building and the North Building are in common ownership. The South Building has been sold but unfortunately the terms are those of sale/leaseback and are hence unsuitable for comparison purposes.

7. The subject property contains two lots totalling 91,993 square feet of land improved by a fifteen story building plus three sub floors. It is in mixed use containing a hotel, offices, commercial space and a parking area. 383,557 square feet is in office space. The hotel contains 370 guest rooms plus 58,672 square feet of lobby, restaurants, meeting rooms and other hotel related uses. The architecture is monumental and more in keeping with the nearby federal, museum, and gallery structures than it is comparable to downtown or southwest office buildings. The architecture, location and mixed use type of the subject property render it unique and without sufficiently comparable structures. These attributes preclude the use of the sales comparison approach

to valuation for this property. Similarly, these factors, as well as the age of the building, render the cost approach to valuation irrelevant. Hence, the income capitalization approach is the appropriate method to be used to determine the fair market value of this property.

8. The real estate tax history in respect of the subject property for each tax year from 1983 to 1989 shows gross overassessments followed by sharp corrections either by the Board of Equalization and Review or the Superior Court or both, to wit,

Tax Year	Assessment	BER	Superior Court
1983	$56,000,000	$48,000,000	N/A
1984	$53,500,000	$45,003,000	N/A
1985	$83,747,000	$65,150,600	$44,500,000 (Wagner, J., 7/90)
1986	$98,538,000	$62,069,000	$54,600,000 (Wagner, J., 7/90)
1987	$93,232,414	Sustained	$63,400,000 (Wagner, J. 7/90)

9. The assessment for tax year 1988, the first appeal now at issue is, to the dollar, identical to the assessment for 1987 which was discredited by the Court,

Tax Year 1987 Assessment: $93,232,414

Tax Year 1988 Assessment: $93,232,414

10. There was not a reassessment for tax year 1988. Upon orders the Assessor repeated the tax year 1987 assessment. Identical income and expense figures were used. As well an identical capitalization rate was applied. The same methods found to be erroneous and to result in grossly unfair overassessment in tax year 1987 were used in tax year 1988.

11. The only support for the tax year 1988 assessment is the District's consistently asserted theory that the Superior Court's

judgment in tax cases is absolutely limited and confined to the tax year under appeal and has no effect on any subsequent year's assessment. As is further explained in the Conclusions of Law herein and in T4474-90 and T4821-91 decided separately this date the Court disagrees with this legal opinion.

12. This Court considers itself collaterally estopped from ruling otherwise than the ruling of Judge Wagner in T3942-87 and finds that the proper alternative in the premises is to declare and it does declare that the assessment for tax year 1988 is invalid and the assessment found proper by this Court for tax year 1987 continues over for tax year 1988, i.e. $63,400,000 of which $27,600,000 is for land and $35,800,000 is for improvements.

13. This leaves for consideration appeals regarding assessments for the subject property in tax years 1989, 1990 and 1991. In respect of these years the Court chose to hold a further evidentiary hearing for a trial de novo. The challenged assessments for tax years 1989, 1990, and 1991 are,

Tax year 1989: $97,382,000

Tax year 1990: $102,202,000

Tax year 1991: $103,890,200

14. The District of Columbia and the taxpayers have submitted expert testimony in respect of the fair market value of the subject property during tax years 1989, 1990 and 1991. For the taxpayers there appeared Mr. Harry Horstman and Mr. William McKnight. For the District there appeared Mr. Lindell Younger. The expert testimony of all three was received without objection. The

estimates of fair market value were,

Tax Year	Horstman/McKnight	Younger	Difference
1989	$67,000,000	$98,820,000	$31,820,000
1990	$59,490,000	$102,825,000	$43,335,000
1991	$60,965,000	$106,222,000	$45,257,000

These differences are so extreme that it is difficult to realize that they apply to the same property.

15. Since both parties have considered the income capitalization method the most suitable for appraisal of the subject property it is appropriate to compare the respective figures the experts used as the central factors for such a method, i.e. the net operating income and the capitalization rate. They are for the net operating income:

Tax Year	Office Component		Hotel Component	
	Horstman	Younger	McKnight	Younger
1989	$5,555,000	$7,784,816	$2,543,345	$3,506,125
1990	$4,849,256	$8,087,025	$2,259,360	$3,663,365
1991	$5,140,346	$8,120,477	$2,098,080	$3,509,403

In sum the District's expert estimates the net operating income to be approximately four million dollars ($4,000,000) per annum in excess of what the taxpayers' experts find it to be.

16. The $4,000,000 difference in N.O.I. figures are largely traceable to the difference in expenses for both the office and the hotel components:

EXPENSES

Tax Year	Office Component		Hotel Component	
	Horstman	Younger	McKnight	Younger
1989	$4,802,000	$2,819,507	$13,112,900	$12,950,853
	Difference: $1,982,493		Difference: $162,047	

1990	$4,422,500	$3,009,275	$13,560,000	$13,493,305
	Difference: $1,413,225		Difference: $66,695	
1991	$5,102,000	$3,069,583	$15,072,000	$13,611,196
	Difference: $2,032,417		Difference: $1,460,804	

These differences in expenses are due to the District's expert's method of relying on statistical information such as BOMA figures instead of considering the historical expenses of operating this complex. Mr. Younger admitted under cross examination that he did not perform any analysis to determine if the property could actually be operated at his lower expense figures. Previous adjudication of this same property has determined that higher than average expenses are necessary due to the subject property's characteristics. See, L'Enfant Plaza Properties, Inc. v. District of Columbia, Tax Nos. 3807-86, 3942-87 (D.C. Super.Ct. July 10, 1990, Wagner, J.). Additionally, prior litigation of the North building in the same complex has also found that actual expenses should be used in calculating net operating income because of the unique features of this complex. See, L'Enfant Plaza Properties, Inc. v. District of Columbia, Tax No. 3650-85 (D.C. Super. Ct. September 20, 1989, Barnes, J.), L'Enfant Plaza Properties, Inc. v. District of Columbia, Tax No. 3806-86 (D.C. Super. Ct. August 23, 1989, Fauntleroy, J.), L'Enfant Plaza Properties, Inc. v. District of Columbia, Tax No. 3941-87 (D.C. Super. Ct. August 24, 1989, Fauntleroy, J.), L'Enfant Plaza Properties, Inc. v. District of Columbia, Tax Nos. 4083-88, 4202-89 (D.C. Super. Ct. April 17, 1992, Doyle, J.), L'Enfant Plaza Properties, Inc. v. District of Columbia, Tax Nos. 4474-90, 4821-91 (D.C. Super. Ct., Decided this

date, Doyle, J.). Accordingly, the Court finds that the use of standardized average expenses for the subject property will only perpetuate an assessment error. This mixed use premise is unique and has no true comparable building in the District of Columbia. It has been repeatedly found by D.C. Superior Court that this property requires heavier operating expenses than the typical office structure. Hence, use of typical average expenses results in an unfair assessment. The District's assessor and expert's calculations of fair market value for tax years 1989, 1990, and 1991 are flawed because of such use of standardized average expenses and the Court rejects Mr. Younger's appraisals for these years. The Court accepts the net operating income calculated by the petitioners' expert witnesses and referred to in finding 15.

17. The comparative capitalization rates of the experts are,

Tax Year	Office Component		Hotel Component	
	Horstman	Younger	McKnight	Younger
1989	.1198	.1100	.1233	.1250
1990	.1159	.1100	.1280	.1250
1991	.1174	.1050	.1221	.1215

18. The Court credits Mr. McKight's method of deriving the capitalization rates for the hotel and finds his rates to be more accurate than Mr. Younger's. The Court accepts Mr. McKnight's capitalization rates for 1989, 1990 and 1991.

19. The Court notes that the North Building is also an office building and is the subject of a separate opinion decided this same day. The capitalization rate for the North building has been found by this Court to be 10.95% for tax years 1988 through 1991. Mr. Horstman's capitalization rates for the East office building are

substantially higher than this 10.95% rate for an office in the same complex. The Court finds that there has been no adequate showing of evidence to warrant increasing the capitalization rate substantially above the rate of the North Building. Accordingly, the Court accepts Mr. Younger's 11.00% rate for tax year 1989 and 1990. For tax year 1991 the Court is not persuaded that the capitalization rate should decrease by 0.5% as Mr. Younger's analysis suggests. The Court finds the appropriate capitalization rate for the office building to be 11.00% for tax year 1991.

20. Under the income capitalization method to real estate appraisal the fair market value is derived by dividing the net operating income by the capitalization rate. Based on the above findings the Court makes the following calculations of fair market value:

1989:
Hotel N.O.I.= $2,543,345, Hotel Cap. Rate = 12.33
Office N.O.I. = $5,555,000, Office Cap. Rate = 11%
FMV = ($2,543,345/.1233) + ($5,500,000/.11) =
$20,627,291 + $50,500,000 = $71,127,291

1990:
Hotel N.O.I. = $2,259,360, Hotel Cap. Rate = 12.80%
Office N.O.I. = $4,849,256, Office Cap. Rate = 11%
FMV = ($2,259,360/.1280) + ($4,849,256/.11) =
$17,651,250 + $44,084,146 = $61,735,396

1991:
Hotel N.O.I. = $2,098,080, Hotel Cap. Rate = 12.21%
Office N.O.I. = $5,140,346, Office Cap. Rate = 11%
FMV = ($2,098,080/.1221) + ($5,140,346/.11) =
$17,183,292 + $46,730,418 = $63,913,710

21. The Court finds that the District's assessor's values for the land only in tax year 1989, 1990 and 1991 is not meaningfully different from the petitioners' proposed values. Therefore, the

Court upholds that the assessor's land values for tax years 1989, 1990 and 1991 at $29,161,781, $33,117,480, and $33,117,480 respectively.

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. In appealing from assessments of real property for tax purposes, the taxpayer has the burden of proving that the assessment was incorrect or flawed. Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. 1986). The petitioners are not required to establish the correct value of their property. Id.

2. The Court finds that the petitioners have met their burden of proving that the assessment for tax year 1988 is incorrect. The 1988 assessment of $93,232,414 is exactly the same as the 1987 assessment which Judge Wagner found to be over stated by about $30,000,000. No justification has been provided to support such a substantial increase in value during a one year period. Based on principles of collateral estoppel, the Court refuses to relitigate the same exact assessment for tax year 1988 which has been found to be grossly excessive for tax year 1989.

3. The District's position that a Superior Court judgment in a tax case has no relevance in subsequent years was rejected by the Court of Appeals in District of Columbia v. Burlington, 375 A.2d 1052 (D.C. 1977),

> The crucial inquiry concerns the legal effect to be accorded the trial court's modification

> of the Board's valuation until such time as the District undertakes a genuine reappraisal of the property. All relevant authorities, including prior decisions of this court, the statutory structure, the trial court's rules of procedure, and traditional equitable principles, lead us to conclude that the trial court's valuation must constitute the continuing basis for taxation until there is a superseding valuation which has been made according to law. Id. at 1056.

4. In Brisker v. District of Columbia, 510 A.2d 1037 (D.C. 1986), the Court reaffirmed the option of the trial court to cancel the present assessment; leaving in place the last lawful assessment. Id. at 1040.

5. The District argues that since the time intervals for appeal make it inevitable that the certification of the tax roll will come before the decision of the Superior Court this protects assessments subsequent to the one challenged even though the challenge may be successful. Changes, however, may be made by court order under D.C. Code § 47-835g and the Court hearing a subsequent challenge may be bound by the doctrine of collateral estoppel (issue preclusion). In this case, based on principles of collateral estoppel the Court refuses to relitigate the appropriateness of using the above described methods to assess the value of the subject property for tax year 1988.

6. Although the doctrine of collateral estoppel has not yet been specifically applied to tax cases in the District of Columbia there is ample federal law upholding such application. The Supreme Court addressed the issue in Commissioner of Internal Revenue v. Sunnen, 68 S.Ct. 715 (1948) and held that issue preclusion had

limited application in tax cases. Namely, if relevant facts in the two cases were at all separable then collateral estoppel would not apply. Id. at 721. However, the Supreme Court has since withdrawn this extreme aspect of Sunnen in its decision in Montana v. United States, 99 S.Ct. 970 (1979). Montana sets forth the following three part test to determine whether issue preclusion should apply in a particular tax case:

> 1. Are the issues presented in the second litigation in substance the same as those resolved in the first litigation;
>
> 2. Have controlling facts or legal principles significantly changed since the first litigation;
>
> 3. Are there other special circumstances warranting an exception to the normal rules of preclusion. Id. at 974-5.

7. Several Circuits have followed Montana and applied collateral estoppel to tax cases. See, American Medical International v. Secretary of Health, Education and Welfare, 677 F.2d 118 (D.C. Cir. 1981); Starker v. United States, 602 F.2d 1341 (9th Cir. 1979); Disabled American Veterans v. Commissioner of Internal Revenue, 942 F.2d 309 (6th Cir. 1991); ITT Corporation v. United States, 963 F.2d 561 (2nd Cir. 1992). In particular, the Second Circuit explicitly stated in a per curiam opinion that, "Montana indicate[s] that it is appropriate to invoke collateral estoppel here to bar the Commissioner from relitigating with the same taxpayer the precise issue on which the Commissioner has

already lost for a prior year." Union Carbide Corporation v. Commissioner of Internal Revenue, 671 F.2d 67 (2nd Cir. 1982). This Court invokes issue preclusion to prevent the District of Columbia from relitigating the correctness of the $93,232,414 assessment of this property in tax year 1988.

8. Applying the three part Montana test to these issues the Court finds that the issues in the present case are in substance the same as those resolved in the first litigation. Also, no controlling facts or legal principles have significantly changed since the first litigation. The L'Enfant Plaza properties are still viewed as unique real estate which should not be compared to office buildings in the downtown Washington, D.C. business district. Finally, the Court finds no other special circumstances which would warrant an exception to the normal rules of preclusion. Montana at 974-5. Accordingly, the Court finds the tax year 1988 assessment for the subject property to be invalid because valuation methods previously held to be improper by this Court were employed to arrive at these figures.

9. For tax years 1989, 1990 and 1991 the Court concludes that the petitioners have met their burden of proving that the District's assessments are incorrect. Brisker, at 1039. The District's assessment procedure which applies standardized average expenses to the buildings in this unique complex is an error which has been repeated once again in tax years 1989, 1990, and 1991. The subject property has been found to have higher than average operating expenses. The District's failure to take into account

these increased expenses results in a significantly overstated net operating income and hence in an overassessment of the subject property for tax years 1989, 1990 and 1991 which must be corrected.

ORDER

Upon the findings of fact and conclusions of law made in the case above and upon the petitions filed herein, and upon the evidence adduced at trial, it is by the Court this 27th day of January, 1993, hereby,

1. ORDERED that the assessed value for the subject property for tax years 1988, 1989, 1990 and 1991 is determined to be as follows:

Tax Year 1988:

Land:	$27,600,000
Imrovements:	$35,800,000
Total Assessment:	$63,400,000

Tax Year 1989:

Land:	$29,161,781
Improvements:	$41,965,510
Total Assessment:	$71,127,291

Tax Year 1990:

Land:	$33,117,480
Improvements:	$28,617,916
Total Assessment:	$61,735,396

Tax Year 1991:

Land:	$33,117,480
Improvements:	$30,796,230

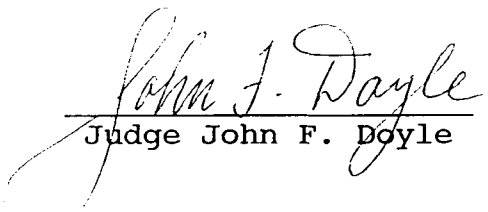
Total Assessment: $63,913,710; and it is

2. FURTHER ORDERED that respondent be and hereby is, directed to modify the assessment record card to reflect the value of $63,400,000 for tax year 1988, $71,127,291 for tax year 1989, $61,735,396 for tax year 1990, and $63,913,710 for tax year 1991 and for all subsequent years until a lawful reassessment has been performed; and it is

2. FURTHER ORDERED that respondent shall refund to petitioners, with interest, the excess taxes which have been unlawfully collected for tax years 1988, 1989, 1990 and 1991; and it is

3. FURTHER ORDERED that petitioners present a proposed order for refund, with interest from the dates of payment, no later than ten (10) days from the date of this Order.

SO ORDERED.



Judge John F. Doyle

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