



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

MAR 29 1992  
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

NATIONAL PLACE LTD. PARTNERSHIP, :	:	
	:	
Petitioner,	:	
	:	
v.	:	Tax Docket Nos. 5292-92
	:	
DISTRICT OF COLUMBIA,	:	
	:	
Respondent.	:	

MEMORANDUM OPINION AND ORDER

This matter came before the Court for trial upon the petition for a partial refund of real property taxes for Tax Year 1992. The parties filed stipulations pursuant to Rule 11(b) of the Superior Court Tax Rules. Upon consideration of the stipulations, the evidence adduced at trial, the applicable law, and having resolved all questions of credibility, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Petitioner, National Place Ltd. Partnership, is the owner of the land and improvements on Lot 837 in Square 254, located at 1331 Pennsylvania Avenue, N.W., in the District of Columbia ("subject property").
  
2. The subject property consists of approximately 100,910 square feet of land, zoned DD/C-5 PAD-PUD. That land is improved by a fifteen-story mixed-use commercial building, with two to

five subfloors, built in 1983. The 790,289 total square feet of gross building area comprises approximately 72,118 square feet of retail space, 409,013 square feet of office space, 13,958 square feet of storage space, a hotel component, and 402 underground parking spaces. The hotel component provides for 773 guest rooms, a lobby, restaurants, meeting rooms, and other hotel-related space. The retail area is under a long-term master lease with the Rouse Company, which is responsible for the build out of space and maintenance of this portion and its related equipment.

3. The assessed value of the subject property for Tax Year 1992 is \$232,946,000. The Petitioner timely filed an appeal with the District of Columbia Board of Equalization and Review (BER), which sustained the assessment.

4. Petitioner timely paid all real estate taxes assessed against the subject property valued at \$232,946,000 for Tax Year 1992, as required by law, and timely filed a petition for reduction of assessment and refund of excess taxes paid.

Petitioner initially asserted that the fair market value of the subject property for Tax Year 1992 was \$192,400,000, which it reduced at trial to \$186,550,000, reflecting the value set by its expert appraiser. The District, at trial, sought to uphold the assessor's assessment of \$232,946,000.

5. The tax assessor for Tax Year 1992, Larry Hovermale, of the Department of Finance and Revenue, was called as a witness on behalf of the Petitioner.

6. To reach his assessment for the subject property of \$232,946,000, Mr. Hovermale performed an independent estimation of the total value of the office/retail portion of the property, and an independent estimation of the total value of hotel portion of the property. For both estimations, he used a capitalization of income approach to value, which entailed dividing the net operating income (NOI) by the capitalization rate. See Rock Creek Plaza-Woodner Ltd. v. District of Columbia, 466 A.2d 857, 858 (D.C. 1983).

7. For the office/retail portion of the subject property, Mr. Hovermale calculated a NOI of \$11,585,089 which he divided by a capitalization rate of 0.085. This calculation resulted in an estimated value for the office/retail space of \$136,295,165.

8. In calculating the NOI for the office/retail portion of the subject property, Mr. Hovermale testified that while he "considered" the owner's income and expense history, he applied instead net effective market rates of \$30/SF (square foot) for the office space, \$30/SF for the retail space, \$2,100/space for the parking spaces, \$13/SF for storage space, \$7/SF for expenses, and estimated vacancy at 4%. At the date of valuation, however, the Rouse Company had a master lease for the entire retail area of \$22.50/SF.

9. Mr. Hovermale selected his 0.085 capitalization rate that he used for the office/retail portion from a list of rates ranging from 0.0825 to 0.095, developed by the Office of

Standards and Review based on actual sales, income, and expense data from other comparable properties.

10. For the hotel portion of the subject property, Mr. Hovermale calculated a NOI of \$12,552,067, which he divided by a capitalization rate of 0.10 to achieve an estimated value for the hotel portion of the property of \$125,520,670. This value was discounted by 23% to \$96,650,916 to account for personal property and goodwill.

11. In calculating the NOI for the hotel component, Mr. Hovermale was given an estimated ADR (Average Daily Room Rate) for calendar year 1989 of \$131.25. In order to get an estimate of the ADR for calendar year 1990, Mr. Hovermale added 2% to the ADR for 1989, which resulted in a \$134.00 ADR rounded to the nearest dollar. Mr. Hovermale then multiplied this 1990 ADR by the 773 rooms in the hotel, which he multiplied by the 365 days in a year and an occupancy rate of 83% to obtain an amount of \$31,380,167 for the room income. He then converted this value into the total income for the hotel by using a ratio of 60%, given to him by Standards and Review, to yield \$52,300,278. Finally, Mr. Hovermale converted the total income for the hotel into the NOI for the hotel by applying a ratio of 24%, yielding \$12,552,067. The 24% figure was again given to Mr. Hovermale by Standards and Review.

12. Adding the \$136,295,165 estimated value of the office/retail space to the \$96,650,916 estimated value for the

hotel yields the total assessment of \$232,946,000, which is rounded.

13. Petitioner's entered into evidence a Tax Year 1992 cash flow analysis for the subject property labeled as Plaintiff's Exhibit 11. This cash flow analysis was submitted to test the adequacy of the capitalization rate but at the same time confirm the adequacy of the experts figures as one component of the overall process of seeking the tax fair market or assessed value. One, but not the only definition of [the] capitalization rate is a number representing the percentage rate that taxpayers must recover annually to pay the mortgage, to obtain a fair return on taxpayer's equity, and to pay real estate taxes.

Rock Creek Plaza-Woodner v. District of Columbia, 466 A.2d at 858. See Also, District of Columbia v. Rose Associates, 697 A.2d 1236 (D.C. 1997).

14. Mr. Hovermale also performed an independent calculation of the land component of the subject property. Based on data from comparable properties in the market, the assessor estimated the value of land at \$123,816,517, which when subtracted from the total value of \$232,946,000 yields an estimated value of the improvements component of the subject property of \$109,129,483.

15. The Petitioner presented as an expert witness in the area of commercial real estate appraisal, Mr. Harry A. Horstman who testified without having his testimony challenged by an opposing expert.

16. To reach his appraisal for the subject property of \$186,550,000, Mr. Horstman, like Mr. Hovermale, performed an independent estimation of the total value of the office/retail portion of the property, and an independent estimation of the total value of hotel portion of the property. For both estimations, he used the capitalization of net operating income approach to value.

17. For the office/retail portion of the subject property, Mr. Horstman calculated a NOI of \$10,769,119, which he divided by a capitalization rate of 0.1119. This calculation resulted in an estimated value for the office/retail space of \$96,250,000, rounded.

18. For the hotel portion of the subject property, Mr. Horstman calculated a NOI of \$11,453,924, which he divided by a capitalization rate of 0.1192 to achieve an estimated value for the hotel portion of the property of \$96,089,966. This value was discounted to \$90,300,000 to reflect the value of furniture, fixture and equipment.

19. Adding the \$96,250,000 estimated value of the office/retail space to the \$90,300,000 estimated value for the hotel yields the total assessment of \$186,550,000.

20. Mr. Horstman also calculated an independent value for the land portion of the property. Mr. Horstman's value was \$82,575,000, rounded.

21. For the office/retail component of the property, in 1991, the applicable tax rate was 2.15%, the loan-to-value ratio was 0.692, the mortgage constant was 0.103981, the equity-to-value ratio was 0.308, and the equity dividend rate was 0.06.

22. For the hotel component of the subject property, in 1991, the applicable tax rate was 1.85%, the loan-to-value ratio was 0.745, the mortgage constant was 0.104369, the equity-to-value ratio was 0.255, and the equity dividend rate was 0.09.

#### LEGAL ANALYSIS

This Court has jurisdiction over this matter pursuant to D.C. Code §§ 47-825 and 47-3303 (1990 Repl.). The Superior Court's review of a tax assessment is a trial de novo necessitating competent evidence to prove the matters in issue. Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980).

"The assessed value of property for real property taxation purposes 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) (1981)). In this case, the property was assessed on January 1, 1991 for Tax Year 1992. 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 being in a position to take advantage of the other.



D.C. Code § 47-802(4) (1990 Repl.).

The factors that the assessor must consider in assessing real property are specified in § 47-820(a) of the D.C. Code:

The Mayor shall take into account any factor which might have a bearing on the market value of the real property including, but not limited to, sales information on similar types of real property, mortgage, or other financial considerations, reproduction cost less accrued depreciation because of age, condition, or other factors, income-earning potential (if any), zoning, and government-imposed restrictions.

D.C. Code § 47-820(a) (1990 Repl.).

According to Super. Ct. Tax R. 11(d), with respect to tax assessment challenges, "[t]he burden of proof shall be upon the petitioner, except as otherwise provided by law." See Wyner, 411 A.2d at 60 (citing Rule 11(d)). The Petitioner can satisfy its burden of proof by showing that the assessment is incorrect, erroneous, arbitrary, or unlawful. See Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. 1986); District of Columbia v. Burlington Apt. House Co., 375 A.2d 1052, 1057 (D.C. 1977). The petitioner is not required to establish the correct value of the property in order to meet this burden. See Brisker, 510 A.2d at 1039. Furthermore, a taxpayer bears the burden of proving that an assessment is incorrect or illegal, not merely that alternate methods exist giving a different result. See Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207, 211 (D.C. 1987).

In this matter, Petitioner has met its burden of proving incorrectness in the District's assessment. In its case, Petitioner advances four arguments: (1) that the District was erroneous in its calculation of the land portion of the subject

property; (2) that the District erred in failing to take into account the actual income, expenses, leases, and vacancies in determining the NOI for the office/retail component of the subject property; (3) that the District erroneously calculated the NOI for the hotel component of the subject property; and (4) that the capitalization rates used by the District assessors were not high enough to meet the requirements as stated in Rock Creek Plaza. This Court finds at least three of these arguments meritorious. The Court agrees with petitioner's first three arguments, but does not agree with its fourth argument.

#### LAND PORTION CALCULATION

Petitioner first contends that the District assessor erred in his calculation of the land portion of the assessment. The expert appraiser, Mr. Hovermale, explained that the assessor's land valuation of \$123,816,570 "is based on old historic data and is unreasonable given current market evidence." See Petitioner's Exhibit 12 at 40. According to the testimony of petitioner's expert, the value indicators reflect a significant down turn in the market for land, a factor not considered by the assessor. A second flaw in the assessors valuation of the land represents the failure of the assessor to take into account a weighed or blended rate for the land supporting the mixed use improvements occupying the land in this case. Generally values for land supporting hotel improvements are about fifty (50) percent of those supporting office building improvements. The expert appraiser's analysis supporting his land valuation as testified to in Court is found on pages 39-41 of Petitioner's Exhibit 12

(the appraisal report) that was admitted into evidence. This Court finds that the expert appraiser conducted a thorough analysis in determining his land portion value of \$82,575,000. Furthermore, since the District did not present an expert witness to challenge the appraiser's analysis, this Court accepts the value achieved by the expert appraiser.

#### MARKET DATA v. ACTUAL DATA

Petitioner next argues that the District erred in solely relying on market data to calculate the net operating income for the office/retail component of the subject property under the capitalization of income approach to value. The capitalization of income approach entails deriving a "stabilized annual net income" by reference to the income and expenses of the property over a period of several years. Rock Creek Plaza-Woodner Ltd. v. District of Columbia, 466 A.2d 857, 858 (D.C. 1983). Petitioner argues that in deriving its stabilized net annual income for the office/retail component, the District failed to give adequate weight to the actual income, actual expenses, current leases, and vacancy of the subject property. Consequently, Petitioner argues, the District's reliance upon only market rates to derive a stabilized net operating income is arbitrary and incorrect.

The Court of Appeals has provided guidance for determining "estimated market value" under the capitalization of income approach for commercial real property. In Wolf v. District of Columbia, 597 A.2d 1303 (D.C. 1991), the court explained that "[a]ctual earnings, of course, may be relevant evidence of a building's future 'income earning potential,' but it is the

future potential, not the current earnings themselves, that must constitute the legal basis for valuation." 597 A.2d at 1309. See D.C. Mun. Regs. tit. 9, § 307.5(a) (1994) ("An indication of the value of an income producing property may be estimated by computing the present worth of a future income stream."). While the District may interpret this language to mean that because estimated market value is determined by the property's future income earning potential rather than current earning potential, it is entitled to disregard current earnings in its assessments, nowhere in the court's reasoning is this assertion warranted. In this respect, the Court's decision in Wolf comports with § 47-820(a) of the D.C. Code, which mandates that an assessor "take into account any factor which might have a bearing on the market value of the real property . . . ." D.C. Code § 47-820(a); see D.C. Mun. Regs. tit. 9, § 307.1 (1994).

Both the D.C. Code and the D.C. Municipal Regulations require the assessor to take into account the current earnings if they might have a bearing on the market value of the property. While future income earning potential is determinative of estimated market value, to the extent that actual earnings bear on the future "income earning potential," they must be taken into account. See D.C. Code § 47-820(a); D.C. Mun. Regs. tit. 9, § 307.1; Wolf 597 A.2d at 1309.

The Court of Appeals, in both District of Columbia v. Washington Sheraton Corp., 499 A.2d 109 (D.C. 1985), and Wolf, supra, has rejected the argument that assessors are entitled to rely solely on market rates to determine future income earning potential where the property's actual income and expenses differ

significantly from the market rates in existence as of the valuation date. In Washington Sheraton, the Court recognized that "past earnings assist the assessor in projecting future earning ability. Profit data for the past several years may indicate a trend and 'help avoid error which could be cause from examining a short, possibly abnormal period.'" 499 A.2d at 115 (citing California Portland Cement Co. v. State Board of Equalization, 432 P.2d 700, 704 (Cal. 1967)). While the Court in Washington Sheraton considered past earnings most useful in avoiding excessive reliance on the data of a particularly abnormal year, the case does illustrate that the subject property's earnings can in fact have a bearing on the calculation of the future income earning potential of a property.

The Court of Appeals's reasoning in Wolf is more helpful than Washington Sheraton in resolving the issues in this case. In Wolf, the Court reiterated the fact that the income approach "bases assessed value on the amount that investors would be willing to pay to receive the income that the property could be expected to yield . . . ." 597 A.2d at 1309 (citing D.C. Mun. Regs. tit. 9, § 307.5); see also D.C. Code § 47-802(4). The Court explains that the point of measuring future income potential rather than actual income is that the actual income of the property may not reflect the future income that the property could be expected to yield. See 597 A.2d at 1309. For example, where the owner of a building secures non-arm's length leases below market rates in order to minimize tax payments, the actual income statements produced by the owner would not reflect the future income potential of the property if arm's length leases

were secured. See id. This Court certainly supports the use of market rents over actual leases in those situations, for example, where the owner has attempted to avoid tax obligations.

The Court of Appeals in Wolf, however, also addresses the opposite situation in which the property is encumbered by long-term below-market leases entered into at arm's length, which the purchaser would be required to assume. See id. at 1310. The Court recognizes that in these situations where the property cannot generate income at market rates, the purchaser "would probably be unwilling to pay full market value for [the] property." See id. In order to achieve an accurate estimate of fair market value in both of these situations, the Court held that "[p]roper application of the definition of 'estimated market value' found in § 47-802(4) requires consideration not merely of actual earnings, but of an adjusted income figure reflecting a variety of factors (including the impact of current leases) that influence the market value of the potential income stream of the building." See id. A prospective purchaser would consider both in estimating current and future income, and therefore, [the District's expert] must too. The District's failure to take into account the property's actual income constituted error.

Assessors are prohibited from relying solely on market rates to derive net operating incomes for a particular property while failing to take into account where appropriate.

Before this Court addresses the facts of the present case, there are three additional points to be made.

First, while the use of market rents over actual incomes to calculate future income earning potential is appropriate where

the owner of a property has intentionally entered into below-market non-arm's length leases for the purpose of reducing taxes, there has been no allegation by the District to that effect nor any evidence substantiating such a claim. In fact, the assessor's employment of the comparable sales approach both to substantiate the assessment calculated under the capitalization of income approach illustrates the assessor's assumption that all of the leases in the subject property were secured at arm's length, for all of the comparable properties were comprised of arm's length leases. That the District, in supporting the assessments at trial, did not disagree with the use of comparable sales comprised solely of leases secured at arm's length further demonstrates its assumption that all of the leases in the subject property were secured at arm's length. As a result, the rationale in Wolf supporting the use of market rents for those situations in which the owner of a property has intentionally secured below-market leases in order to reduce taxes cannot be relied upon in this case.

Second, there is a more subtle issue as to whether the assessor has complied with the statutory requirements for calculating estimated market value: "How much effort must be made by the assessor so that he is deemed to have sufficiently 'taken into account' the actual earnings of the property as required by D.C. Code § 47-820(a)?" The District may argue that by examining the actual income and expense data for the subject property, but opting to rely solely on market rents, the assessor has still sufficiently "taken into account" the actual income of the subject property. This Court finds that the language in Wolf

suggests an alternate interpretation. The Court in Wolf explained that "[p]roper application of the definition of 'estimated market value' found in § 47-802(4) requires consideration not merely of actual earnings, but of an *adjusted* income figure *reflecting* a variety of factors (including the impact of current leases) that influence the market value of the potential income stream of the building." 597 A.2d at 1310 (emphasis added). The Court of Appeals explained that the income figure used in the capitalization of income approach must reflect a variety of factors, explicitly naming current leases as an example. Thus, to the extent that the current leases have a bearing on the future income potential for the property, the assessor must adjust the NOI to reflect that influence. See id. at 1309-10; D.C. Code § 47-820(a). Herein this case it was not done.

In this case, the assessor testified that he reviewed the actual income for the subject property, but opted instead to rely exclusively upon market rates for his assessment. Petitioner has demonstrated that some of the actual leases have a significant effect on the calculation of the future income earning potential. As a result, the assessor, by failing to adjust his respective net operating incomes to reflect the effect of the actual leases, has not sufficiently "taken into account" those leases for purposes of D.C. Code §§ 47-802(4) or 47-820(a).

Third, in reference to the Court of Appeals's statement in Wolf that estimated market value is to be determined by considering the present worth of a property's future income earning potential, see Wolf, 597 A.2d at 1309, the issue arises



as to how long after the valuation date must the present leases endure to be considered representative of the "future" income earning potential.

While the Court in Wolf clearly explained that "it is the future potential, not the current earnings themselves, that must constitute the legal basis for valuation," see 597 A.2d at 1309, the Court gave no guideline as to how far into the future an assessor should look. See Wolf, 597 A.2d at 1309. Since current earnings cannot be the sole the basis of valuation, it seems clear that neither can leases due to expire the day after the date of valuation. While they are technically not "current" leases as of the valuation date, they are close enough that they would not impact on the future income earning potential of the property. Also, it seems unrealistic that the Court meant future to mean 100 hence, for by that time, most likely all existing leases will have turned over, rendering all current information obsolete.

The Court in Wolf also described the situation in which "a purchaser would probably be unwilling to pay full market value for property encumbered by *long-term* below-market leases which the purchaser would be required to assume." See 597 A.2d at 1310 (emphasis added). In measuring which leases are long-term to the extent that they affect the future income earning potential of the property, one can consider whether a purchaser would be willing to pay full market value for a property encumbered by the existing leases. If certain below-market-rate leases were to expire in the two months following the valuation date, a purchaser of the property would probably give these leases little

weight, if any, in negotiating the price of the property. If those leases were not to expire for ten years, however, then those below-market leases would most likely have a significant bearing on the price a purchaser would be willing to pay for the property.

"Future" income earning potential, as explained by the Court of Appeals in Wolf, can be interpreted as referring to at least two to three years after the valuation date. Those leases due to expire prior to that period would not seriously influence the "future" income earning potential of the property nor have a significant bearing on the price a purchaser would be willing to pay, while those expiring after that period would.

Since the assessor for the subject property applied market rents to all of the existing leases, both those due to expire shortly after the date of valuation and those not due to expire for several years, this Court finds that the assessor's calculation of the NOI for the office/retail component of the property is inaccurate.

An accurate determination of the NOI for the office/retail component of the property requires applying actual rents to all the leases that will not expire until two to three years after the date of valuation, while applying market rents to those leases that will expire before that date as well as to the vacancy space. The expert's appraisal report, entered into evidence, contains sufficient information to determine the appropriate NOI for the office/retail component of the subject property. That report indicates that at the date of valuation, roughly 19,000 square feet of the 409,013 leasable square feet of

office space was vacant, and an additional 118,000 square feet contained leases that were to expire in 1992-1993. See Plaintiff's Exhibit 12 at 1, 56. For this space, the market rent of \$30/SF should be applied. For the remaining 272,000, the actual rent of \$29.25/SF should be applied. See id. at 56. Since the assessor applied the market rent of \$30/SF to the entire 409,013 square feet of office space, in order to correct this error that the Petitioner alleges, one must deduct from the estimated NOI \$0.75/SF for the 272,000 square feet of office space encumbered by long-term leases. That deduction amounts to \$204,000.

For the retail space, Petitioner's expert noted that the entire retail space was under a long-term master lease with the Rouse Company. Actual rents should also be applied to this space. The 1990 lease rate was \$22.50/SF, which the expert appraiser estimated would increase slightly by 3.5%. See Plaintiff's Exhibit 12 at 56. Thus, the resulting 1991 lease rate for the retail space would be \$23.29/SF, or \$6.71/SF below market rent. In order to adjust for the overestimation of rent attributed to the retail space, the income attributed to this space must be reduced by \$6.71/SF. Applied to the 72,118 square feet of retail space in the property, this deduction amounts to \$483,912. See Plaintiff's Exhibit 12 at 1.

As there was no indication in the appraisal report that the storage space or the parking spaces were subjected to long term leases, those spaces should be valued at market rents.

Thus, in achieving an accurate estimation of the NOI for the office/retail space, a total deduction of \$687,912 (\$204,000 + \$483,912) must be made to the District's estimated NOI.

#### CALCULATING HOTEL COMPONENT

The Petitioner alleges that the District assessor made four errors in calculating the NOI for the hotel component of the subject property: (1) the assessor used an ADR for the wrong calendar year; (2) the assessor used an inaccurate room occupancy rate; (3) the assessor failed to compute food and beverage income; and (4) the assessor did not deduct expenses from the income of the hotel. The Court finds the first and second arguments meritorious, but not the third and fourth.

First, Petitioner alleges that in calculating the NOI for the hotel component of the property, the assessor used the ADR value for 1990 of \$134.00 when he should have used the 1991 ADR value. This Court finds that for the valuation date of January 1, 1991, the 1991 ADR should be used.

This Court finds, however, that the 1991 ADR suggested by Petitioner's expert is an unacceptable estimation of the 1991 ADR. To achieve his estimated 1991 ADR of \$128.69, Petitioner's expert simply averaged the previous three years' ADRs of \$124.30 for 1988, \$126.78 for 1989, and \$134.98 for 1990. Considering the trend in the ADRs over these three years and the lack of any further analysis on the part of Petitioner's expert besides a simple averaging of the three years' ADRs, this Court finds that the ADR suggested by Petitioner's expert for 1991 is

insufficient. As this Court has no information in addition to the trend of an increase in ADRs for the previous three years to suggest an accurate value for the 1991 ADR, this Court conservatively finds that, based on the evidence available, the \$134.98 ADR for 1990 provides the closest estimate for the ADR for 1991.

The second argument is that the assessor erred in using a room occupancy rate of 83%. Based on the information in the expert's appraisal, this Court finds that the expert's suggested occupancy rate of 80% is accurate. The expert explained that the 80% rate "is reflective of [the property's] history and the upper limit considered achievable by industry underwriters." Plaintiff's Exhibit 12 at 44.

Performing the calculation of the hotel NOI starting with an ADR of \$134.98 is as follows: the \$134.98 ADR is multiplied by the 773 rooms in the hotel, times the 365 days in a year, times a room occupancy rate of 80% to yield a room income of \$30,467,146. This value is then converted into the total hotel income by applying a ratio of 60%, to yield an amount of \$50,778,576. Finally, the total hotel income is converted into NOI for the hotel by applying a ratio of 24% to yield a hotel NOI of \$12,186,858.

Petitioner's third argument is that the assessor failed to consider the income due to food and beverages. This Court finds that by converting the room income into total hotel income by applying the 60% ratio, the assessor did consider the food and beverages income. While this number was given to the assessor by the Office of Standards and Review, Petitioner bears the burden

of proving that that ratio does not adequately consider food and beverage income. In order to make such a proving, Petitioner would have to examine those at the Office of Standards and Review responsible for the calculation of the 60% ratio value to determine if that value sufficiently considers all other sources of income, which Petitioner did not do in this case. As a result, this Court finds that the 60% ratio used by the assessor to convert the room income into total hotel income is sufficient to account for food and beverage income.

Petitioner's fourth argument is that the assessor did not take into consideration the expenses incurred by the hotel. This Court finds that by using the 24% ratio to convert the total hotel income into net hotel operating income, the Petitioner did factor in the expenses incurred by the hotel in calculating the hotel NOI. Once again, for Petitioner to challenge the 24% ratio as insufficient to account for expenses, Petitioner would have to examine those at Standards and Review responsible for the number.

Thus, based on the previous analysis, this Court finds that the accurate value for the hotel NOI is \$12,186,858.

#### **CAPITALIZATION RATE REQUIREMENTS**

Petitioner's fourth argument supporting a finding of error in the District's assessment is that the capitalization rates used by the District under the capitalization of income approach were not high enough to meet common law requirements. Those requirements were arguably set out by the Court of Appeals in Rock Creek Plaza-Woodner v. District of Columbia: One definition of the "[The] capitalization rate [is] a number representing the

percentage rate that taxpayers must recover annually to pay the mortgage, to obtain a fair return on taxpayer's equity, and to pay real estate taxes." 466 A.2d at 858. The Court of Appeals later explained in District of Columbia v. Rose Associates, 697 A.2d 1236 (D.C. 1997) that the aforesaid definition of capitalization rate is not a binding and all-emcompassing definition of capitalization rate. Petitioner entered into evidence a cash flow analysis for Tax Year 1992, labeled as Plaintiff's Exhibit 11, in order to determine whether or not the capitalization rates used by the District assessor meet the requirements stated in Rock Creek Plaza-Woodner.

#### **TRUE SUBJECT PROPERTY VALUE**

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 this case, this Court has determined that in order to obtain an accurate estimate of the NOI for the office/retail component, a deduction of \$687,912 must be made to the District's estimated NOI. Accordingly, the District's NOI of \$11,585,089 is reduced to \$10,897,177. This Court determined that an accurate estimation of the hotel NOI is \$12,186,858. Furthermore, this Court determined that the appropriate capitalization rate to be used for the office/retail component is .085, and the appropriate capitalization rate to be used for the hotel component is .10.

Dividing the office/retail NOI of \$10,897,177 by the capitalization rate of .085 yields the value of 128,202,082 for

the office/retail component, minus the same 23% reduction for furniture, equipment and goodwill used by respondent to equal a fair market value of \$98,715,603. Dividing the hotel NOI of \$12,186,858 by the hotel capitalization rate of .10 yields \$121,868,580 as the value of the hotel component of the property. Combining these two components yields a total property value of \$220,584,183 for the subject property.

Furthermore, this Court has determined that the expert appraiser's \$82,575,000 value for the land portion of the property is accurate and supported by evidence.

Therefore, it is this 29th day of March 1999,

**ORDERED**, that the assessed value for the subject property is determined to be as follows:

Tax Year 1992:

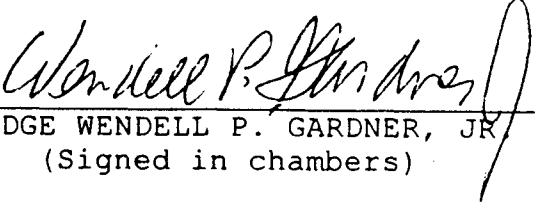
Land	\$82,575,000
Improvements	<u>\$138,009,183</u>
Total	\$220,584,183

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; and it is

**FURTHER ORDERED**, that the Petitioner shall submit a proposed order providing for a refund of the overpayment of taxes due to the Petitioner, along with interest as allowed by law. A copy of the proposed order shall be served on Respondent and filed with



the Court no later than fifteen (15) days following entry of this Order.

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

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