

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

EXECUTIVE BUILDING CORPORATION	:	
	:	
Petitioner	:	
	:	
v.	:	Tax Docket Nos. 5689-93
	:	6133-94
DISTRICT OF COLUMBIA	:	
	:	
Respondent	:	

PETITIONER'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND JUDGMENT

These consolidated cases came on for trial before the Court on August 7, 8 and 9, 1995, upon the Petitions for partial refunds of real property taxes paid by Petitioner for the same real property for Tax Years 1993 and 1994. The real property that is the subject of these appeals is Lot 839 in Square 198, improved by a 12-story commercial office building known as The Executive Building, 1030-15th Street, N.W.

Upon consideration of the Petitions, the stipulations of the parties at pretrial and the evidence adduced at trial, and having resolved all issues of credibility, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The real property in question is Lot 839 in Square 198 in the District of Columbia, improved by premises known as The Executive Building, 1030-15th Street, N.W. (hereinafter sometimes referred to as the "subject property").

2. At all times relevant, Petitioner Executive Building Corporation was the owner of the subject property. Petitioner is therefore the party aggrieved by the assessments in question in these appeals.

3. The parties stipulated to the following facts at pretrial:

(a) Respondent District of Columbia assessed the subject property at \$21,141,000 for real property tax purposes for Tax Year 1993. Petitioner filed a timely appeal from the proposed assessment with the District of Columbia Board of Equalization and Review. After hearing, the Board sustained the proposed assessment.

(b) Petitioner timely paid the real estate taxes due for the subject property for Tax Year 1993 in full to Respondent in the amount of \$454,531.50.

(c) Respondent assessed the subject property at \$22,475,000 for real property tax purposes for Tax Year 1994. Petitioner filed a timely appeal from the proposed assessment with the Board of Equalization and Review. After hearing, the Board sustained the proposed assessment.

(d) Petitioner timely paid the real estate taxes due for the subject property for Tax Year 1994 in full to Respondent in the amount of \$483,212.50.

(e) The Tax Year 1994 assessment was also the basis for the real estate tax payment due on September 15, 1993 for the so-called "stub year" (July 1, 1993 through September 30, 1993). D.C. Code §47-811(d) (1995 Supp.). Petitioner timely paid the real

estate taxes due for the "stub year" to Respondent in full in the amount of \$241,606.25.

4. Lot 839 in Square 198 has a land area of 18,646 square feet. The improvements consist of a 12-story commercial office building with parking in an underground garage. The Executive Building was built in 1964. It contains approximately 175,600 square feet of net rentable area, of which 12,400 square feet are devoted to retail uses on the ground floor and 163,200 square feet are available for lease to office tenants. The site is zoned C-4, which allows commercial development to a floor area ratio ("FAR") of 10.0.

5. The tax assessor for both Tax Years was Larry Hovermale. Mr. Hovermale is a commercial assessor with the District of Columbia Department of Finance and Revenue.

6. Mr. Hovermale was called as a witness by Petitioner. Mr. Hovermale testified that he assessed the subject property at \$21,141,000 for Tax Year 1993. Of that total value, he allocated \$20,007,158 (\$1,073 per square foot, or \$107.30 per FAR foot) to be the value of the subject land. He allocated \$1,133,842 as the value of the improvements, which he described as a nominal value.

7. Mr. Hovermale did not perform an inspection of the interior of the building in connection with his assessment for either Tax Year.

8. Mr. Hovermale testified that the land value for Tax Year 1993 was fixed by reducing the land assessment for Tax Year 1992 by 18%. He explained that he did not make an independent

determination as to the value of the subject land for Tax Year 1993, nor did he analyze specific land sales in order to convert them into a specific value indication for the subject property. Instead, he followed a directive from the Standards and Review Division of the Department of Finance and Revenue to simply reduce the value assigned to the land from the prior tax year by 18%. Mr. Hovermale could not explain the factual basis for that across-the-board reduction.

Mr. Hovermale was likewise not able to explain the market evidence or other factual support for the land assessment placed upon the subject property for Tax Year 1992.

9. Mr. Hovermale agreed that the condition of the building was such that it would not attract tenants willing to pay economic rents typical for that area. Moreover, the property was not earning enough income to support determining its fair market value by means of the direct income capitalization of income technique. It would be necessary to renovate the building before it could generate enough income to at least satisfy the value he placed on the land.

Mr. Hovermale acknowledged that he did not give any consideration to the cost to renovate the building, nor did he perform any analysis to determine if renovation would be financially prudent.

Mr. Hovermale also acknowledged that he did not perform any financial analysis to determine if development of a new office

building on the subject site would be financially prudent under prevailing market conditions.

10. Mr. Hovermale testified that he assessed the subject property at \$22,475,000 for Tax Year 1994. Of that total assessment, he allocated \$20,007,158 to represent value of the subject land, and assigned \$2,467,942 to be the value for the improvements.

11. Mr. Hovermale testified that he placed the same value on the subject land for Tax Year 1994 as he had assigned for Tax Year 1993. He explained that he had been instructed by his superiors not to change land values. He did not make an independent analysis of land sales which occurred in 1992, nor did he make an independent determination as to the fair market value of the subject land for Tax Year 1994.

12. For Tax Year 1994 Mr. Hovermale applied the capitalization of income approach in assessing the property. He created his own estimates of income and expenses in order to arrive at an estimate of net operating income for calendar year 1993.

Mr. Hovermale based his gross income estimate primarily on a net office rental rate of \$20.46 taken from the "low end" of a range of economic rents set forth in the Department's Pertinent Data Book for Tax Year 1994. He did not perform any analysis to determine how his "economic" rental rate compared to the actual experience within the property.

Mr. Hovermale testified that he did not give any consideration to the cost of renovating the building. He acknowledged that,

acknowledged that, given the condition of the improvements, the building was not likely to attract the most successful or prestigious tenants.

A key element of Mr. Hovermale's income estimate was his assumption that the occupancy rate for the subject property would be 98%. He acknowledged, however, that an actual vacancy rate of approximately 50% had been reported for calendar year 1991. He also admitted that he did not give any consideration to the practical likelihood whether occupancy could be immediately increased to 98%. Mr. Hovermale acknowledged that the Department has developed a formula to be used when valuing properties with "excess vacancy" situations, but he did not use that formula in this case. Mr. Hovermale further stated that he did not give any consideration to the credit-worthiness of prospective tenants, nor did he take into account their ability to pay rent or to stay current in their rent payments.

Mr. Hovermale used an estimate for "typical" operating expenses of \$7.00 per square foot. He selected that figure from survey data summarized in the Department's Pertinent Data Book. However, Mr. Hovermale acknowledged that the subject property was not a typical situation and that he did not know how the physical condition of any of the properties surveyed by the Department might compare with the condition of the subject property. Mr. Hovermale also testified that he did not give any special consideration to the costs that would be incurred in order to achieve 98% occupancy.

Based on his estimated income analysis, Mr. Hovermale projected that the net operating income to be produced by the subject property in 1993 would be \$2,501,432.

In order to obtain an overall value, Mr. Hovermale divided his net operating income estimate by an overall capitalization rate of 11.13%. He selected that rate from a range of rates given to the assessors by the Standards and Review Division. Standards and Review developed those rates by using a mortgage equity technique. The formula for the rate selected by Mr. Hovermale was premised upon an equity yield rate of 11%. See Exhibit 5. Mr. Hovermale was not certain how that yield rate was selected, nor did he know how it compared with market rates and yields available for other kinds of investments.

13. Only Petitioner offered expert testimony. Mr. Jerrold Harvey, MAI, testified for Petitioner. The Court accepted Mr. Harvey as an expert witness.

14. Mr. Harvey presented his opinions of the fair market value of the subject property as of the relevant valuation date for each tax year involved in the form of written appraisal reports and through oral testimony at trial. See Exhibits 13 and 14.

15. Mr. Harvey valued the subject property at \$14,500,000 for Tax Year 1993. He explained that, as of January 1, 1992, the Washington metropolitan region was still in the grip of a fairly strong recession, which had the effect of significantly hampering employment growth. In fact, employment had actually been declining. Declining employment has a negative effect on real

estate values generally, because it adversely affects the demand for commercial office space.

The District of Columbia commercial office market was adversely affected by those recessionary influences. The vacancy rate for commercial office space was at an all-time high. A record amount of new office space entered the market in the late 1980s and early 1990s. Absorption was declining. The resulting oversupply had a clear downward effect on the market values of commercial properties.

16. As of January 1, 1992, the building was 28 years old and suffered from a variety of physical and functional problems. Those problems adversely affected the ability of the subject property to compete in the Downtown office rental market. Among other problems, the building had a "dated" facade and cosmetically inferior common areas. Its HVAC system and the electrical system were not adequate by modern standards, and there was still some asbestos removal to be completed.

17. In order to determine the fair market value of the subject property, Mr. Harvey first undertook to determine the "highest and best use" of the subject property. Determination of highest and best use is a requirement for any professional appraisal analysis.^{1/} That analysis is particularly important in this instance, because the age and condition of the improvements were such that they would not generate the highest return to the land.

^{1/} See also 9 DCMR §307.1(g)(1994).

In order to determine "highest and best use," Mr. Harvey explained that it is necessary to determine which among the various possible use or uses is/are (a) most profitable, (b) physically possible, (c) legally permissible, (d) financially feasible, and (e) provide the highest return. The property is analyzed as if vacant land and as improved.

Mr. Harvey concluded that the highest and best use of the subject property was to hold the property until December 1994 for development with a new commercial office building. Based on his research of prevailing conditions in the office rental market, Mr. Harvey determined that the income reasonably likely to be generated by operating the existing building would not produce a greater value than if the subject property were only vacant land, even if the building were fully renovated at a cost of \$5,000,000.

Mr. Harvey concluded that redevelopment of the property with a new high-rise commercial office building was both physically possible and legally permissible. However, prevailing market conditions led him to conclude that such development would not be financially feasible for at least 3 years. Among other reasons, the oversupply of commercial office space meant that a new building would not produce enough income to cover the cost of construction and provide an adequate return on equity invested until that oversupply had been absorbed and the market indicated a demand for new space. Financing was not readily available, and those lenders who were in the market imposed high debt-coverage ratios and required substantial equity contributions. Mr. Harvey therefore

concluded that the highest and best use of the subject property was for continued use as an office building until December 1994, when he believed the market would have sufficiently improved to warrant new commercial office development.

18. After having determined the highest and best use of the property, Mr. Harvey employed a two-step approach to reach his value conclusion.^{2/} He first determined the value of the land by the sales comparison, or market, approach. He then employed the income approach, by discounted cash flow analysis, to calculate the value added, if any, by cash flows contributed from operation of the property until the reversionary value of the land could be realized. The sum of the present worth of those values would be the present value of the subject property at January 1, 1992.

First, Mr. Harvey researched sales of vacant land in order to determine an appropriate unit value and to establish an appropriate holding period. He found that most of the sales occurred in 1988-1990, when the market was "very overheated." He also found that limited sales activity took place after 1990, and that those sales which were reported had actually been negotiated in 1988 and 1989 when the market was strong and a significant amount of financing capital was available. In contrast, at January 1, 1992, there was a super-abundance of office space, and capital to finance

^{2/} Because the existing use was not the highest and best use, he explained that it was not proper appraisal methodology to try to value the property using the cost approach or the sales comparison approach using improved properties.

acquisition of potential development sites or new construction was not readily available.

Mr. Harvey analyzed 6 land sales which he determined involved parcels having comparable locations, similar zoning and similar highest and best use potential as the subject property. They were all arms'-length transactions and none were made under duress. The details of each sale are set forth at pages 45-52 of Exhibit 13. The sales ranged in value from \$90 per square foot of allowable commercial floor area to \$150 per FAR foot. However, Mr. Harvey explained that it was necessary to make certain adjustments to those values in order to account for differences between the sale properties and the subject property, and to relate the reported sales prices to January 1, 1992. Adjustments were necessary to account for such differences as superiority of location, size of site, size of building floor plates, and the decline in market conditions. The particular adjustments are detailed at pages 53-54 of Exhibit 13. Mr. Harvey concluded that the adjusted sales prices ranged from \$90 to \$125 per FAR foot. He gave the greatest weight to the December 1989 sale of a 12,302 square foot parcel at the Northwest corner of 15th and M Streets, N.W. (adjusted sale price = \$116 per FAR foot).

Based on his market analysis, Mr. Harvey concluded that the subject property could have been sold on January 1, 1992, for \$22,375,200 (\$120 per FAR foot), if the market had been ready for the development of a new office building containing approximately 186,460 square feet (18,646 square foot site at 10.0 FAR) of new

commercial space. In view of the depressed market, however, Mr. Harvey concluded that it would take 3 years for the subject property to sell at that price, with development to follow.

19. In order to determine how much to pay on January 1, 1992, for the opportunity to build a new office building on the subject site at the end of 1994, a prudent investor would recognize what the value of the land would be upon development of the property and then discount that value back to determine its present value. The prospective purchaser would also take into account the cost to demolish the improvements and the costs of sale.

Mr. Harvey explained that a discount rate is a rate of return on capital which investors use to convert future payments or benefits to present value. The principle is based on the time value of money. The rate should represent the annual rate of return necessary to attract investment capital. The rate is influenced by many considerations, including risk, market attitudes with respect to inflation, rates of return for alternative investment opportunities, historical rates of return earned by comparable properties, and the supply of and demand for mortgage funds. Based on his survey of investment criteria employed by real estate investors and the investment returns available in the financial markets, plus a factor to guard against erosion of investment return by inflation, Mr. Harvey concluded that a discount rate of 12% would be required to attract a prospective purchaser to this property.

Mr. Harvey estimated that demolition costs would be approximately \$1,400,000 (\$5.00 per square foot), and that the costs of sale would be 5% of the sale price.

Applying those factors to the reversionary value of the subject property 3 years hence, Mr. Harvey concluded that the present worth of the land at January 1, 1992 was \$14,183,111. See Exhibit 13, following p.81.

20. Mr. Harvey opined that a prospective purchaser would also recognize that there was an existing use which could generate cash flow during the holding period. In order to calculate the contribution to value from the interim use, Mr. Harvey performed an analysis whereby he estimated the value at January 1, 1992, of the net cash flows to be generated by operation of the existing building during the holding period.

At the valuation date, approximately 51% of the available space within the building was occupied. Mr. Harvey based his interim operating income estimates on the assumption that occupancy could be increased to 70%. He recognized that only short-term occupancies would be offered, that limited tenant improvements could be made, that vacant space would not command market rental rates, and that the space would appeal primarily to less financially sound tenants. As previously noted, substantial capital improvements would not be prudent. Within those parameters, however, a prudent owner would try to maximize occupancy. Under those circumstances, Mr. Harvey determined that the current leasing activity within the property was the best

indicator of achievable rents. Accordingly, he based his income estimates on a gross office rental rate of \$16 per square foot. See Exhibit 13, following p.66.

After reviewing the historical operating experience of the property and comparing it with expenses reported by other properties, Mr. Harvey determined that it would be appropriate to deduct operating expenses of \$9.46 per square foot.^{3/}

As a result of that analysis, Mr. Harvey estimated that the building would generate a negative cash flow of \$115,288 in the first year, followed by positive totals of \$250,070 in 1993 and \$298,789 in 1994.

Mr. Harvey explained that it would not be appropriate appraisal methodology to employ a direct capitalization approach to value such an interim use. The proper technique is to utilize a discounted cash flow analysis over the short holding period. It is still necessary, however, to convert those future cash flows into present value. Again employing a 12% annual discount rate, Mr. Harvey concluded that the present value of those interim cash flows was \$309,091. See Exhibit 13, following p.81.

21. In order to reach his final conclusion of value for Tax Year 1993, Mr. Harvey added his estimate of the present worth at January 1, 1992 of the net reversionary value of the land 3 years hence (\$14,183,111) to the present worth at January 1, 1992, of the

^{3/} By way of comparison, real estate taxes (based on the Tax Year 1994 assessed value) would add approximately \$2.75 per square foot to the assessor's operating expense estimate. However, the assessor dealt with taxes in his overall capitalization rate.

net cash flows achieved during the 3-year holding period (\$309,091), for a total value of \$14,492,202, which he rounded to \$14,500,000.

22. Mr. Harvey did not allocate his value conclusion between the land and the improvements. However, he testified that, since the present value of the land was \$14,183,111, it would be appropriate to allocate the balance of his overall value conclusion (\$316,889) to represent the value of the existing improvements.

23. Mr. Harvey valued the subject property at \$11,900,000 for Tax Year 1994. He employed the same valuation approach he used for Tax Year 1993. He paid particular attention to trying to identify any significant changes in the market. He noted that market vacancies had increased slightly by year end 1992. However, investors and capital markets were still not investing in commercial real estate, particularly office buildings.

24. Mr. Harvey re-examined the question of highest and best use, and determined that his previous conclusion was still valid. Because he thought that the market was on track toward recovery, he maintained his original position that the property could sell by the end of 1994 and shortened his holding period to 2 years.

25. Mr. Harvey testified that he found 5 sales of vacant land within the Central Business District which reportedly occurred in 1992. Several of those properties had been on the market for several years. One property was clearly superior to the subject property; 3 others, he considered to be inferior parcels. Mr.

Harvey explained that he considered the October 1992 sale of 1200 New York Avenue, N.W. to be the most instructive transaction.

Before adjustments, the sales ranged from \$73 per FAR foot to \$123 per FAR foot. See Exhibit 14, p.6. After making appropriate adjustments, Mr. Harvey concluded that the reversionary value of the subject land at the end of 1994 was \$16,781,400 (\$90 per FAR foot).

In order to determine the fair market value of the land as if vacant and available for development on January 1, 1993, Mr. Harvey again deducted the cost to demolish the improvements and the costs of sale, yielding a net reversionary value of \$14,612,330. As with Tax Year 1993, he calculated the present worth of that reversionary value by applying an annual discount rate of 12%, for a value of \$11,648,860 at January 1, 1993.

26. Mr. Harvey also considered the contribution to value from the use of the property during the holding period. As he did for Tax Year 1993, he projected the net cash flows likely to be generated in each year. However, he reduced his income estimates because management reported that occupancy had actually declined despite their leasing efforts.

Again employing a 12% annual discount rate, Mr. Harvey calculated that the present value at January 1, 1993 of the projected cash flow for 1993 was \$168,607, and \$67,206 for 1994.

27. In order to reach his final conclusion of value for Tax Year 1994, Mr. Harvey added his estimate of the present worth at January 1, 1993, of the net reversionary value of the land 2 years

hence (\$11,648,860) to the present worth at January 1, 1993, of the net cash flows achieved during the 2-year holding period (\$235,813), for a total value of \$11,884,673, which he rounded to \$11,900,000.

28. As previously noted, Mr. Harvey testified that the direct capitalization of income approach was not an appropriate methodology by which to value this property for Tax Year 1994. Even assuming that it would be an appropriate valuation technique despite the atypical situation of this property, Mr. Harvey found fault with the validity of the assessor's income capitalization approach in 3 important respects.

First, the assessor's projected net operating income was too high. The assessor used "economic" rents which exceeded the average of recent leases by almost \$4.00 per square foot. Moreover, Mr. Harvey stated that the building could not achieve 98% occupancy unless it had been renovated.

Mr. Harvey also opined that the assessor's capitalization rate was unreasonably low. The overall rate was too low because the equity yield rate component used to calculate that rate was only 11%. In his opinion, the appropriate rate for investment grade properties would be 12-13%, and the Executive Building was not of that caliber. Given the investment risk inherent in the poor condition of the improvements and the speculative aspects of redeveloping the site, a prudent prospective purchaser would demand

a return on equity of 14%, 15% or more, which would increase the overall capitalization rate by 1-2%.^{4/}

The Court concurs in land and adopts those criticisms of the assessor's valuation approach for Tax Year 1994. Mr. Hovermale's estimate of net operating income is based on unrealistic assumptions. A potential purchaser would realize that it would not be possible to achieve that level of income because (a) it was highly unlikely that occupancy could be immediately increased to 98%, and (b) those rents could probably not be achieved without substantial leasing costs and capital expenditures to upgrade, if not renovate, the building. By not taking the actual condition of the property fully into account, Mr. Hovermale's income figures are not relevant to the subject property and cannot be deemed reliable.

29. The Court finds Mr. Harvey's analysis to be sound, his estimates and assumptions to be reasonable, and the reasons given in support of his analysis and conclusions to be credible.

30. The Court finds that errors by the assessor caused a substantial over-assessment of the subject property for Tax Year 1993. Accordingly, the Court finds that the assessor's assessment is in error and accepts Mr. Harvey's opinion that the proper value for Tax Year 1993 is \$14,500,000, of which \$14,183,111 represents the fair market value of the subject land and \$316,889 represents the value of the improvements as of January 1, 1992.

^{4/} Increasing the capitalization rate results in a reduction of the property's appraised value.

31. The Court finds that errors by the assessor caused a substantial over-assessment of the subject property for Tax Year 1994. Accordingly, the Court finds that the assessment is in error and accepts Mr. Harvey's opinion that the proper value for Tax Year 1994 is \$11,900,000 of which \$11,648,860 represents the fair market value of the land and \$251,140 represents the value of the improvements as of January 1, 1993.

32. The District of Columbia did not present any expert witness to challenge the reasoning or analysis of Mr. Harvey. The record does not disclose why the District did not offer any competing expert evidence.

33. Accordingly, the Court, having credited Mr. Harvey's reports and testimony, finds that the that the market value and the appropriate assessments for the two tax years in suit are:

Tax Year 1993	\$14,500,000
Tax Year 1994	\$11,900,000

CONCLUSIONS OF LAW

This Court has jurisdiction over these appeals pursuant to D.C. Code §§47-825(i) and 47-3303(1990 Rpl.). Cf. §47-825.1(j)(1995 Supp.).

The Superior Court's review of a real property tax assessment is de novo, which necessitates the presentation of competent evidence to prove the issues. Wyner v. District of Columbia, 411 A.d. 59, 60 (D.C. 1980). Petitioner bears the burden of proving that the assessments appealed from are incorrect. Safeway Stores,

Inc. v. District of Columbia, 525 A.d. 207, 211 (D.C. 1987). However, Petitioner is not required to establish the correct value of the property. Brisker v. District of Columbia, 510 A.d. 1037, 1039 (D.C. 1986).

Petitioner can carry its burden of proof by demonstrating that the valuation of the subject property by the assessor was "flawed." Brisker v. D.C., 510 A.d. at 1039. Petitioner has met its burden of proving that each assessment in suit is incorrect. Moreover, there is sufficient credible evidence in the record from which the Court may determine the fair market value of the subject property for each tax year involved.

For the reasons stated in the foregoing findings of fact, the Court rejects the property valuations proposed by the District's assessor. The Court finds that Petitioner's appraisal expert was more credible than the assessor and that Petitioner presented credible evidence as to the proper value of the subject property for each of Tax Years 1993 and 1994. Upon review of the testimony and of the appraisal reports presented, the Court concludes that the valuation analyses were properly performed by Petitioner's expert, thereby producing reliable estimates of market value.

Real property taxes are based upon the estimated value of the subject property as of January 1st of the year preceding each tax year. D.C. Code §47-820(a)(1990 Rpl.). "Estimated market value" is defined as:

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)(1990 Rpl.).

The Tax Year 1994 assessed valuation was also the basis for the real property tax payment made by Petitioner in September 1993, for the so-called "stub year" (July 1, 1993 through September 30, 1993). D.C. Code §47-811(d)(1995 Supp.).

Flaws in the assessments are evident in several respects. First, the land portion of the assessment for Tax Year 1993 was derived arbitrarily and, therefore, is not correct. The assessor made no independent valuation of the land. He could not account for the underlying correctness of the value he assigned to the land for Tax Year 1993; he arrived at that value by doing nothing more than reducing the prior year's assessment by 18%. He could not explain the substantive underpinnings of this percentage, stating only that he had been told to use it. As Judge Long concluded in National Press Building Corp. v. District of Columbia, that is not an assessment; it is mere arithmetic. Tax Docket No. 5750-93 (June 16, 1995), Memorandum Opinion and Judgment at pp.19-21. Based upon the evidence contained in the trial record, the land assessment is nothing more than an arbitrary number that leaves the Court with no way to probe the reasons that generated the 18% reduction and no way to gauge whether those reasons were logical or factually supportable.

Because the assessor assigned only a nominal value to the improvements, it is obvious that he believed the real value of the property was in the land. Indeed, he did not value the property for Tax Year 1993 by any other valuation method. This short-hand generic assessment technique bears only a faint resemblance to the market approach, particularly where, as here, the responsible assessor was not able to point to any specific land sales studied or to explain how, if at all, the across-the-board land value reduction was based "on the price or prices at which reasonably comparable properties have recently sold...." (9 DCMR §307.3). That weakness is compounded by the assessor's inability to explain the factual or substantive underpinnings for the Tax Year 1992 land assessment, which was the starting point for this exercise. Since the assessor did not use any other valuation method to justify the assessment, it cannot be sustained on any other basis.

The evidence produced by the Petitioner certainly makes a prima facie case that the District's land valuation for Tax Year 1993 is not correct, both because it is unexplained in substance and because other, more detailed expert testimony portrays a specific and practical analysis of what this land was worth on the valuation date.

As in the National Press Building Corp. case, the Government failed to produce any witnesses who might have been in a position to fill the void of information. The Government failed to call any witness to demonstrate that the arbitrary land value was nonetheless justifiable, even if the assessor could not shed light

on the subject, or an expert witness who could have appraised the land independently as a check on the figure that the assessor gave as a valuation. The lack of a factual basis for the land portion of the assessment means that a well-explained, detailed appraisal by an expert deserves greater credibility and evidentiary weight.

Petitioner has also carried its burden of showing that the Tax Year 1994 assessment was incorrect. The assessor's determination to carry forward the unjustified land valuation from the prior year means that this assessment is incorrect as well. Mr. Hovermale was told not to change land values. He could not explain how or why market transactions supported that conclusion.

The assessor's valuation for Tax Year 1994 is not correct because his valuation approach did not properly recognize the unique problems plaguing this property, which would surely be of critical concern to any prudent prospective purchaser. Mr. Hovermale based his income approach on several critical, but unrealistic and unsupported, assumptions.

Mr. Hovermale based his income estimate on a rental rate which he did not attempt to relate to actual recent leasing activity within the building. He was not able to explain whether the "economic" rent he used was in fact drawn from reports by properties with fairly comparable physical and functional deficiencies. In essence, he assumed a level of performance could be achieved, but did not give any consideration to the costs necessary to put the building into condition to achieve that level of performance.

The assessor's assumption that occupancy could be increased from 51% to 98% virtually overnight is not justified by logic or by the evidence, particularly without substantial and expensive renovation of the existing improvements. Yet the assessor did not take into account the cost to carry out any renovations, nor did he give any consideration to brokerage commissions or other costs necessary to achieve such a high level of occupancy.

The faulty derivation of the assessor's capitalization rate is itself a fatal flaw. An appropriate return on investment is a key consideration for a potential purchaser of the property. See Rock Creek Plaza-Woodner Ltd. Partnership v. District of Columbia, 466 A.2d 857, 858 (D.C. 1983). The capitalization rate applied by Mr. Hovermale for Tax Year 1994 did not satisfy reasonable investment criteria. It is too low to provide a fair return on the investor's equity, because it ignores the unique risks of this property. A commercial tax assessment is intended to represent the most probable price that a willing buyer who is "seeking to maximize" gains or profits would pay for the property in question. Nothing could be more critical than the candid recognition of the risks associated with operating and redeveloping this property. Moreover, the core premise of that capitalization rate is unsound in that it assumed that debt financing would be generally available for a property with the special problems which afflict the Executive Building. In view of the expert testimony that such financing was not generally available, the application of a generic capitalization rate in these circumstances was not proper. The

assessor's capitalization rate therefore does not pass muster under the test set forth in Rock Creek Plaza.

Under the totality of circumstances in this case, the assessor's reliance upon market data and general guidelines promulgated by Standards and Review cannot provide the information about the true situation of this property that would be of critical concern to a prospective purchaser.

The Court therefore concludes that the assessor did not correctly or properly estimate the fair market value of the subject property for either Tax Year 1993 or 1994 as required by law. He did not base his assessments on the amount that an informed buyer would have been willing to pay for the subject property on either valuation date.

In determining the value of real property for tax assessment purposes, the value of the land and improvements must be identified separately. D.C. Code §47-821(a)(1990 Rpl.). The Court concludes that there was insufficient basis for the land values used by the assessor. In contrast, the Court concludes that the valuation method used by Mr. Harvey was clear, factually supported, and credible. Therefore, the Court adopts \$14,183,111 as the value of the land for Tax Year 1993 and \$11,648,860 as the value of the land for Tax Year 1994.

The remaining portion of the overall values are allocated to the improvements in each tax year.

Upon the findings of fact and conclusions of law made herein and upon the Petitions filed herein, the stipulations of the

assessor's capitalization rate therefore does not pass muster under the test set forth in Rock Creek Plaza.

Under the totality of circumstances in this case, the assessor's reliance upon market data and general guidelines promulgated by Standards and Review cannot provide the information about the true situation of this property that would be of critical concern to a prospective purchaser.

The Court therefore concludes that the assessor did not correctly or properly estimate the fair market value of the subject property for either Tax Year 1993 or 1994 as required by law. He did not base his assessments on the amount that an informed buyer would have been willing to pay for the subject property on either valuation date.

In determining the value of real property for tax assessment purposes, the value of the land and improvements must be identified separately. D.C. Code §47-821(a)(1990 Rpl.). The Court concludes that there was insufficient basis for the land values used by the assessor. In contrast, the Court concludes that the valuation method used by Mr. Harvey was clear, factually supported, and credible. Therefore, the Court adopts \$14,183,111 as the value of the land for Tax Year 1993 and \$11,648,860 as the value of the land for Tax Year 1994.

The remaining portion of the overall values are allocated to the improvements in each tax year.

Upon the findings of fact and conclusions of law made herein and upon the Petitions filed herein, the stipulations of the

parties and the evidence adduced at trial, it is, by the Court,
this _____ day of _____, 1995,

ADJUDGED, ORDERED AND DECREED as follows:

1. That the correct assessment for the subject property for
Tax Year 1993 is:

Land	\$14,183,111
Improvements	\$ 316,889
TOTAL	\$14,500,000

2. That the correct assessment for the subject property for
Tax Year 1994 is:

Land	\$11,648,860
Improvements	\$ 251,140
TOTAL	\$11,900,000

3. That the assessment record card and all other records for
the subject property maintained by Respondent shall be adjusted to
reflect the values determined by this Order.

4. That Respondent shall refund to Petitioner excess taxes
collected by Respondent for Tax Year 1993 resulting from an
assessed value which is in excess of the value determined for Tax
Year 1993 by this Order.

5. That judgment be, and it hereby is, entered in favor of
Petitioner against Respondent in the amount of \$142,781.50 with
interest thereon at 6% per annum as provided by law, from March 30,
1993, until the date of payment thereof.

6. That Respondent shall refund to Petitioner excess taxes
collected by Respondent for the tax payment made September 15,

1993, resulting from an assessed value for Tax Year 1994 which is in excess of the value for Tax Year 1994 determined by this Order.

7. That judgment be, and it hereby is, entered in favor of Petitioner against Respondent in the amount of \$227,362.50, with interest thereon at 6% per annum as provided by law, from September 27, 1994, until the date of payment thereof.

8. That Respondent shall refund to Petitioner excess taxes collected by Respondent for Tax Year 1994 resulting from an assessed value which is in excess of the value determined for Tax Year 1994 by this Order.

9. That judgment be, and it hereby is, entered in favor of Petitioner against Respondent in the amount of \$113,681.25, with interest thereon at the rate of 6% per annum as provided by law, from September 27, 1994, until the date of payment thereof.

JUDGE

Copies to:

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Petitioner's Proposed Findings of Fact, Conclusions of Law and Judgment was mailed, first-class, postage prepaid, to:

Joseph F. Ferguson, Jr., Esq.
Assistant Corporation Counsel, D.C.
441-4th Street, N.W.
Sixth Floor
Washington, D.C. 20001

this 13th day of October, 1995.

Michael A. Cain

Michael A. Cain