FILED

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

JUL 18 3 03 PM '95

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA TAX DIVISION

SQUARE 345 ASSOCIATES LIMITED PARTNERSHIP,

v.

DISTRICT OF COLUMBIA

Tax No. 5784-93

MEMORANDUM OPINION AND ORDER

This case came before this Court for a trial de novo on May 5, 1995, as an appeal of the tax assessment for an office building known as "Washington Center," 1001 G Street, N.W., located in Lot 41, Square 345 of the District of Columbia. The period of taxation in question is tax year 1993. Recognition of the expenses of operating an office building is one of several essential factors embraced in the familiar "capitalization of income approach" to the valuation of commercial property. The legal and factual issues in the instant case primarily focus upon the sufficiency of the expense deductions that should apply to this "lease-up" year for this particular building, as well as the soundness of the capitalization rate that influenced the assessment.

Petitioner herein seeks relief from the District's decision to value this property for this tax year at $80,835,000. On the basis of the applicable law and the following findings of fact and conclusions of law, this Court is convinced that the petitioner has shown by a preponderance of the evidence that the District's assessment was incorrect and that the fair market value of this property is $61,800,000. The applicable taxes have already been paid and an appropriate refund with interest will be ordered as the final judgment in this action. A review of the controlling law is useful as a framework within which to understand the trial issues.

I. APPLICABLE STATUTE AND CASE LAW

In the District of Columbia, real property taxes are based upon the estimated market value of the subject property as of January 1st of the calendar year that precedes the tax year for an annual assessment and, as of December 31st for a second half supplemental assessment. This is prescribed clearly in the District of Columbia Code. See 47 D.C. §§ 820 and 830 (1990 Repl.); see District of Columbia v. Washington Sheraton Corp., 499 A.2d 109, 112 (D.C. 1985). "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.

47 D.C. § 47-802(4)(1990 Repl.).

The Court of Appeals in Washington Sheraton further emphasized, "[i]n determining the estimated market value, the assessment shall take into consideration:

> [A]ll available information which may have a bearing on the market value of the real property including but not limited to government imposed restrictions, sales

> information for similar types of real property, mortgage or other financial considerations, replacement costs less accrued depreciation because of age and condition, income earning potential (if any), zoning, the highest and best use to which the property can be put, and the present use and condition of the property and its location.

Id. at 112.

A person who appraises a commercial property for the purpose of determining its value for taxation

> may apply one or more of the three generally recognized approaches of valuation when considering the above factors. Those three approaches are the replacement cost, comparable sales, and income methods of valuation. Usually the appraiser considers the use of all three approaches, but one method may be most appropriate depending on the individual circumstances of the subject property.

Id. at 113 [citations omitted].

The preferred methodology for the valuation of an office building is the "income approach." The choice to be made among the three standard approaches to value is not a dispute in the instant case.

As to the "income approach," the District of Columbia Court of Appeals has articulated the fundamental factors in the application of this appraisal method.

> This method entails deriving a 'stabilized annual net income' by reference to the income and expenses of the property over a period of several years. That annual net income is then divided by a capitalization rate -- a number representing the percentage rate that taxpayers must recover annually to pay the mortgage, to obtain a fair return on taxpayers' equity in the property, and to pay real estate taxes.

Rock Creek Plaza-Woodner Ltd. v. District of Columbia, 466 A.2d 857, 858 (D.C. 1983).

Both contract rents and market rents must be considered in arriving at the fair market value of an office building, when using the income capitalization approach. See Wolf v. District of Columbia, 597 A.2d 1303, 1309 (D.C. 1991). To be sure,

> [e]stimated market value is not determined. . . . by reference to 'income available to the property as of the assessment' but by reference to 'income earning potential.' The fundamental notion that the market value of income-producing property reflects the 'present worth of a future income stream' is at the heart of the income capitalization approach.

District of Columbia v. Washington Sheraton Corp., supra, 499 A.2d at 115 (citations omitted).

In Wolf v. District of Columbia, supra, the Court of Appeals stressed,

> Actual 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.

Wolf v. District of Columbia, supra, 597 A.2d at 1309.

Addressing the practical aspects of the petitioner's burden of proof, the District of Columbia Court of Appeals long ago rejected the Government's contention that a petitioner must establish precisely the correct value of the subject property. In a case involving an appeal of a commercial assessment, the Court held:

> The taxpayers were not required to establish the correct value of their property in order

> to meet their burden of proof; rather, the taxpayers bore the burden of proving the incorrectness of the government's assessment. The taxpayers met that burden when the evidence showed that the District's 1983 valuation was flawed.

Brisker v. District of Columbia, 510 A.2d 1037, 1039 (D.C. 1986) [citations omitted]. As a practical matter, the petitioner's task, then, is to identify specific "flaws" in the District's assessment and to articulate how such flaws have caused the property to be over-valued.

II. FINDINGS OF FACT

The subject property is owned by an entity known as Square 345 Associates Limited Partnership, Centerrock Limited Partnership, General Partner. This is a limited partnership organized and existing under the laws of the District of Columbia. This petitioner is obligated to pay all real estate taxes that are assessed against the subject property.

This particular property is land that is improved by a new twelve-story office building that was erected in the period of 1987-1989. It has five levels of underground parking, plus the shell of the former nine-story McLachlen Building with a new interior. The property has 399,727 square feet of gross building area above grade. Further, it has 327,325 square feet of leasable office space and 15,457 square feet of leasable retail space. The property also has 31,675 square feet of storage space, a 9,438 square foot exercise facility, and approximately 239 parking spaces. The property is zoned C-4 and is developed to a 10.0 FAR.[1]

The original assessed value that was determined by the Department of Finance and Revenue was $80,835,000. Petitioner timely pursued an appeal with the Board of Equalization and Review (the BER). Following a hearing before the Board, the BER reduced the assessed value to $70,000,000. Petitioner has pursued its appeal rights further to this Superior Court, suggesting that the reduction ordered by the Board was not satisfactory to the petitioner. Petitioner, with leave of the Court, amended its petition to assert that the fair market value of this property for tax year 1993 was $61,800,000.[2]

The parties have stipulated that the fair market value of the land portion of this property is $41,528,550.[3]

The assessor for this particular tax year for this property was Quentin Harvell. He was called as a witness in the petitioner's case. He recounted for the Court exactly how he arrived at the original assessment. The assessment valued the property as of January 1, 1992.

Certain facts are clear with respect to what he did and did not do, once he selected the "income capitalization" approach over

---

[1]This acronym refers to "floor to area ratio."

[2]This amendment conforms to the value that is actually supported by petitioner's expert evidence at trial.

[3]It is relevant for the parties to account for the value of the land, because the law requires that an assessment be expressed in a manner that apportions a value to the land and a separate value to the improvements thereon. See 47 D.C. § 821(a). Ultimately, of course, the Court must determine whether the overall assessment was correct.

the other two major methodologies of valuation.

As the first step in using the "income" approach, Mr. Harvell developed a figure to represent the net operating income for this property (hereinafter "NOI"). In his testimony, he verified that he calculated the NOI by reference to "economic income," rather than relying upon the actual income that was reported by the owner to the Department of Finance and Revenue. Harvell stated, more specifically, that he "considered" the Income and Expense form that had been filed with the Department for this property, as well as similar data for other properties. However, he did not use such data in his calculations. He did not explain why he did not do so.

Mr. Harvell's official assessment "worksheet" shows that the economic NOI figure is dramatically higher than the actual, reported NOI for this property.

The assessor's calculation of the NOI was $7,679,289. In stark contrast, the actual NOI shows a negative income: minus $78,693. Thus, in actuality, this property operated at a distinct loss. The assessor, for purposes of determining the taxable value of this property, instead estimated that it was producing millions of dollars in income.

Where expenses are concerned, there is wide disparity between the assessor's estimated expenses and the actual expenses that were incurred in operating this property during 1991. The chief areas of disparity are the categories of "vacancy and credit loss" and "operating expenses."

Mr. Harvell testified that during the process of composing an assessment for Tax Year 1993, he made no calculations whatsoever for the following types of expenses: (1) "free rent;" (2) "above standard finish" for tenants; (3) "unearned risk reward;" (4) "tenant improvements;" and (5) "leasing commissions."

"Free rent" and "above standard finish" are two examples of so-called concessions that are granted to tenants as an inducement to execute leases. This is normal in the negotiation of commercial leases. Mr. Harvell acknowledged that he understood this principle and he was able to give other examples of such concessions such as owner-paid moving expenses for new tenants.

Harvell claimed that he did take into account the factor of free rent, as a loss to this property owner. He explained that he accomplished this as part of his calculation of the "net effective rate" of commercial rent for this building. Instead of deriving rental rates from the actual rents for this building, he estimated a "market" rent of $38.00 per square foot by examining leases that had been signed for other office buildings. He adjusted this "market" rent rate by 19%, to account for tenant concessions. By this method, he determined that the net effective rental rate for this property was $30.78 per square foot.

Harvell acknowledged that the 19% adjustment was in fact something that was dictated to him by the Division of Standards and Review within the Department of Finance and Revenue. He simply applied this percentage without independently questioning its basis or accuracy. In any event, he used this 19% reduction as a substitute for examining the actual data concerning the property.

Vacancies are considered part of the losses associated with operating a commercial property. The rent that would have been produced by the vacant, rentable square footage is actual income that was never produced. Mr. Harvell testified that he did not make a deduction for the actual value of the lost rent from vacant space. He made no effort to determine the actual vacancy loss as a discrete expense for this tax year. Rather, Mr. Harvell purposely ignored this figure because he believed that it was not "typical" of the vacancy rate in downtown Washington.

Mr. Harvell assumed that a "normal" vacancy rate is 4% (four percent). This assumption was based upon nothing more than Harvell's perusal of leasing information about other office buildings. The 4% assumption bore no relationship to the actual experience of the subject property.

The assessor's treatment of the problem of substantial office vacancy deserves to be examined in further detail herein.

Harvell confirmed in his testimony that the Division of Standards and Review had attempted to make some recognition of the problem of rent loss during the "leasing up" phase of new office buildings. In fact, Standards and Review had issued a written directive to all of the commercial property assessors, stating:

> 1. Excess vacancy allowance is to be applied to office buildings that are either new or have undergone a major renovation (which required vacating the building). [<u>sic</u>]
>
> 2. Excess vacancy allowance is to be calculated for the initial lease-up period, using the following assumptions: Subject

> property requires a 3 year period to stabilize at typical occupancy levels[;] rent loss during lease-up period is discounted using the Present Worth of 1 table.

"Development of Excess Vacancy Allowance," Petitioner's Exhibit 6.[4]

The Division of Standards and Review further advised the assessors of the official procedure to be used in calculating the excess vacancy allowance. Three steps were mandated: (1) "Determine excess vacancy square footage;" (2) "Calculate rent loss (using Present Worth of 1 table);" and (3) "Deduct present worth of rent loss from estimated market value." Petitioner's Exhibit 6.

Harvell testified that in performing his assessment he did indeed have the Income and Expense form and rent roll for this building for calendar year 1990.[5] According to this data, as of the end of 1990 the subject property had only eight leases in place, or about 40,000 square feet of office space leased (out of a total of 333,000 square feet). Harvell stated that this property had a "huge amount of vacancy and credit loss." He explained that this was indeed the reason why the taxpayer reported a net loss of $78,693 for 1990. In fact, Harvell testified that he personally had spoken to a representative of the taxpayer, who had filled out the Income and Expenses form. This individual told Harvell that 292,104 square feet of office space and 7,569 square feet of retail space was vacant at the end of 1990. This was a concrete

---

[4]Mr. Harvell noted that the term "present worth of 1" meant the value compared to one dollar.

[5]Data that was current as of the end of calendar year 1990 was thus one year old as of the valuation date itself.

indication of the vacancy problem. Yet, Harvell ignored the actual experience of the property.

Harvell stated that he followed the dictates of Standards and Review in calculating an amount to account for vacancy loss. It is significant that he was told to spread the vacancy loss over three calendar years. Apparently, the concept underlying the directive to amortize this loss was linked to the notion that a new office building would take three years to become fully leased and stabilized. The propriety of such amortization is a specifically contested issue in this case, in and of itself. However, even if it was a correct analytical step, his application of the amortization was unclear and unreliable.

At trial, the assessor testified that it would take from 1990 to early 1993 for this building to be substantially leased up. However, in his pretrial deposition he had stated that the relevant lease-up time period was 1991 through the end of 1993. Thus, it is not clear exactly at which point he truly expected this property to be fully leased, for purposes of complying with the methodology that had been mandated by Standards and Review. This divergence of statements by this witness only demonstrates that he himself cannot entirely account for whether he correctly did what he was directed to do, even assuming that the three-year amortization was a proper step to take.

The second key feature of determining valuation through the income capitalization approach is that the NOI must be multiplied by a capitalization rate. Mr. Harvell used the rate of 9.5%

(alternatively stated herein as .095), even though this rate was **not** within the range rates provided to him in standard reference material from the Division of Standards and Review in the Department of Finance and Revenue. These reference materials containing the recommended rate ranges are memorialized in a collection of information known as the Permanent Data Book. It is compiled and maintained by Standards and Review.

Harvell testified that the list of capitalization rates that was provided to him by Standards and Review did not contain a single one at a level of .095. In addition, he admitted that the capitalization rate that he used was not high enough to cover the payment of real estate taxes, the payment of an annual mortgage obligation, or to provide a return on the cash investment of the taxpayer. In fact, a cash flow test showed that his capitalization rate would produce a negative return to the equity investment.

The assessor admitted in his testimony that he failed to properly make any adjustments to the value from "as stabilized" to "as is." The term "as is" refers to the building as it actually presents itself on the valuation date: uncompleted, unoccupied, mostly unleased, with no stabilized income stream. The term "as stabilized" refers to the property's status when it is completed, when it is occupied at about 95%, and when it is producing a stable income stream. His failure to make such adjustments shows that the assessor did not properly compute the **present** worth of the estimated future income stream. Harvell's calculation of the excess vacancy loss was not sufficient to complete this task.

Petitioner offered expert evidence to support an appraisal that petitioner asserts is the proper valuation and which is substantially lower than the original assessment.

Petitioner's expert witness was Mr. Anthony Reynolds, a highly qualified real estate appraiser. Mr. Reynolds testified that in conducting his appraisal he took into account the appellate definition of an appropriate capitalization rate, as expressed in the Court of Appeals' decision of Rock Creek Plaza-Woodner Ltd. v. District of Columbia, supra. Reynolds testified at length concerning his own appraisal of the property as well as his critique of the assessment itself. He included in his opinion testimony his analysis of the methodology that was employed by the assessor.

Mr. Reynolds arrived at a fair market value of $61,800,000 for this property. It is useful to recapitulate the steps that he took in performing his appraisal. Like the assessor, Reynolds relied on the "income" approach to value.

To determine stabilized net income as of the valuation date, Mr. Reynolds estimated the market value of the office space and retail space, based on the existing leases as well as rentable comparables for the vacant space. He estimated stabilized vacancy and credit loss at 6%. He then deducted stabilized expenses, to arrive at a stabilized NOI of $10,101,518. He then capitalized the income by a capitalization rate of .1232 to achieve a rounded value of $82,000,000 "as stabilized."

After calculating this rounded value, Reynolds applied several adjustments. The first series of adjustments reflected financial concessions that were given to tenants who had already signed leases for space in this office building. For example, Reynolds deducted $4,261,715 for the outstanding "free rent" as of January 1, 1992. He also deducted $8,428,657 for the cost of "above standard finish allowances." Following these deductions, he further rounded the value of this property to be $69,300,000.

The second series of deductions, totalling $7,500,000, reflected adjustment to indicate the "as is" value of the property. For example, Reynolds deducted $693,000 for unearned risk reward, $3,891,313 for "lag vacancy or lost rent," $1,681,035 for uncompleted tenant improvements, and $1,237,121 for leasing commissions that would have to be paid out in order to leased the unoccupied space

Reynolds testified that he developed his capitalization rate by using the financial band of investment technique. This is a traditional method of capitalization that is used when there is sufficient market data available. Reynolds considered typical loan-to-value ratios, debt service, and equity dividend rates. He did this by making a study of the commercial real estate market. This included an examination of comparable investments, surveys of rates conducted by the American Council of Life Insurance. The newsletter of the Council is the premier, nationwide list of investment grade mortgage terms. He also consulted the opinions of the Appraisal Institute.

Reynolds applied these factors, based upon a presumption that an investor would obtain a 70% mortgage at an interest rate of 10% for 30 years, for a constant of .105. Further, he estimated the equity dividend rate at 7.5%. Reynolds also added a risk premium of .0057, to reflect the additional risk attending the above-market portion of the rent. His conclusion was that the capitalization rate should be .1232 and that this included the real estate tax rate.

At trial, Mr. Reynolds also testified about the quality of the District's assessment. He concluded that Mr. Harvell accurately had estimated the property's income "as completed." However, Reynolds also observed that the assessor failed to account for the difference between the value in "as is" condition and the value "as stabilized." Reynolds criticized the assessor's adjustment for the excess vacancy, stating that the tactic of amortizing was inappropriate and that the loss for excess vacancy should have been treated as a one time event. Finally, Reynolds concluded that the assessor's capitalization rate did not provide a fair return on the owner's equity, after payment of the mortgage and real estate taxes.

III. CONCLUSIONS OF LAW

This Court concludes as a matter of law that the District's assessment was flawed in several respects and that the fair market value of this property as of January 1, 1993 was $61,800,000. This Court has reached this conclusion by scrutinizing all of the testimony and by independently considering the concepts that underlie both the assessment and the competing valuation that was offered by the petitioner's expert. It was not necessary for the Court to require any independent appraisal.

The flaws in the District's assessment that directly caused the overvaluation fall into three categories: (1) the assessor's failure to make all appropriate deductions from the NOI; (2) the assessor's improper amortization of the loss for excess vacancy; and (3) the assessor's failure to use a capitalization rate that complies with all of the requirements of Rock Creek Plaza-Woodner Ltd. A discussion of these categories of errors follows herein.[6]

---

[6]To be clear, there was a fourth flaw in the assessment process that should be acknowledged even though it is difficult to say with fair assurance that it had a direct causal relationship to the overvaluation of this property. This particular flaw consisted of the assessor's failure to rely, at least in part, on the actual income and expense experience of this property in developing the NOI. See Wolf v. District of Columbia, supra, 597 A.2d at 1309.

The assessor's basic figures regarding the rental income of the property were not very different from the figures that were generated by Mr. Reynolds. They are close. As Mr. Reynolds testified, Harvell accurately estimated the property's income "as completed." However, Reynolds also observed that the similarity in his figures and those of the assessor were the result of pure happenstance. In other words, it was a pure coincidence. Consequently, the assessor's reliance on nothing but market rental data hypothetically could have resulted in a wildly different figure.

Usually, when this error is discovered it is commonly found that the error was very much responsible for an overvaluation itself. The fact that the assessor committed the error of ignoring the actual experience of the building should not be rewarded. These are the kinds of errors that are commonly found to be a basis for rejecting assessments in other cases. However, since there is not a solid causal link between this error and the overvaluation of the subject property in the instant case, this Court will not rely on this error as a basis for rejecting the assessment herein.

A. Missing Adjustments or Deductions from the NOI.

Clearly, the accuracy of the assessor's value was compromised by his failure to deduct certain basic and important costs and expenses from the net operating income. Such deductions were indeed made by Reynolds in his own appraisal.

There is no rational explanation for the assessor's failure, for example, to deduct the costs of paying leasing commissions to rent out the vacant space. Similarly, the record reflects no explanation for the failure to deduct such obvious expenses such as tenant concessions in the form of "above standard finish." These are expenses that even laymen can recognize as an impingement upon the earning potential and the stream of income of an office building.

Reynolds properly isolated the critical necessity of deducting all of the losses due to vacancy, "free rent," and other tenant concessions. All of these items are a serious drain on the profitability of the property.

B. The Amortization of the Deduction for Excess Vacancy Loss.

A flagrant error by the assessor is seen in the form of his decision (as dictated by Standards and Review) to amortize the deduction for the losses associated with excess vacancies. The Court characterizes this error as flagrant because it manifestly ignores the keystone of the statutory scheme of tax valuation. That keystone is the concept that the fair market value of the property must reflect a present worth of a future income stream. That "present" worth must be calculated as of a date certain, i.e.

the date of the tax valuation itself, January 1, 1992.

As Mr. Reynolds observed, the practice of amortizing this deduction or expense merely serves to extend the loss into the future -- **well past the valuation date itself** and, thus, past the date on which the assessor (and now the Court) must ascertain the fair market value of this property to a hypothetical potential buyer.

Mr. Reynolds convincingly explained the rationale for making a one-time only deduction, rather than spreading the loss over a period of years. He stressed that deducting this loss as a single event for one particular tax year is necessary in order to comply with the legal standard that the assessed value should reflect the present fair market value of the property on the valuation date -- a discrete point in time. The recognition of this specific deduction from income would have concrete meaning to a buyer and a seller at a specific point in time, i.e. the valuation date of January 1, 1992. This is a specific date on which the realistic drawbacks to buying or selling the building would be of immediate importance to all participants if the property were exposed for sale in the open market.

Parenthetically, it is useful to keep in mind that no other expenses or losses are amortized over time. There is nothing to distinguish excess vacancy loss as a particular loss or expense that deserves such radically different treatment from any other type of expense of running an office building.

It is unfortunate that the Department of Finance and Revenue chose the arbitrary path of amortization, because the Department had at least finally realized that something had to be done to reconcile tax assessments with the genuine vagaries of excess vacancy that can afflict new office buildings. To its credit, the Department was trying to address a problem. However, it is now clear that the Department adopted the wrong solution. It was a solution that collided with a very fundamental tenet of tax valuation.

C. The Insufficient Capitalization Rate.

The capitalization rate used by the assessor, by his own admission, is too low to account for the three factors that are embraced by the definition of a capitalization rate, as recognized by the District of Columbia Court of Appeals in Rock Creek Plaza-Woodner, Ltd, supra. There is no question about the fact that the rate selected by the assessor would result in a negative cash flow for this property and, by definition, would not therefore allow sufficient income to account for the annual payment of a mortgage, payment of taxes, and a fair return on the investment.

In a very practical sense, a capitalization rate that results in a negative cash flow is strong evidence that whatever value is calculated by that rate is clearly higher than the genuine, fair market value of this property.

By contrast, the rate developed by Mr. Reynolds is reliable. It meets all of the criteria set forth in Rock Creek Plaza-Woodner, Ltd, supra. Even if the Court of Appeals had not paused to define what constitutes a capitalization rate for tax assessment purposes, this Court would still conclude that such a rate must be high enough to cover the same three factors described in this appellate opinion.

This viewpoint is compelled by two considerations. First, the language of the statute that defines fair market value teaches that such a value must reflect what a willing buyer would pay in the open market on the valuation date. To the extent that the statute also presumes that the hypothetical buyer would seek to maximize gains when buying an office building, it is logical to require that the subject property must be valued as if it will produce a positive cash flow above and beyond the basics of simply keeping the building in operation. Surely, if an investor merely seeks to break even, having no motive to make a profit, this can be accomplished by not purchasing a property at all -- in which case the valuation is meaningless anyway.

Second, the Court recognizes that the language in Rock Creek Plaza-Woodner Ltd. speaks of a rate that is sufficient to cover "what the taxpayer must recover **annually** [emphasis supplied]" for taxes, mortgage payments, and a fair return on equity. The term "annually" is plain English. It refers to what is happening each year, with regularity. Payment of taxes is certainly an annual event. Thus, it is logical to conclude that a capitalization rate that results in a negative cash flow for the tax year in question is not a sufficient rate for purposes of fixing taxation for that same period.[7]

To develop a capitalization rate that conforms to the law, Reynolds, as a professional appraiser, applied his own professional judgment in studying emerging market research. He was able to discern that the most pertinent and telling index of capitalization rates for commercial properties such as 1001 G Street N.W. is the body of data collected by the American Council on Life Insurance. He credited their figures, as does this Court, because their information portrays a distinct economic climate in the open market as to properties that are of similar quality to the subject property. That climate was one of significant risk.[8]

The ACLI data covers the entire United States, as well as areas such as the south Atlantic region (within which the District of Columbia is located). This is impressive, because the pool of investors for office buildings (pension funds, insurance companies, partnerships) is certainly not confined to entities that are located solely within the same city as the properties themselves. The kinds of investment grade properties that are sought by such entities are properties that compete with real property in divergent parts of the country.

It would be quite myopic and misleading to suggest or conclude that a major, first class office building in one city competes

---

[7]Undoubtedly, this is why a cash flow analysis is often presented by many petitioners as part of their trial court presentation in satisfying their burden of proof.

[8]He concentrated his attention on the data corresponding to the fourth quarter of 1991 because this would have been relevant to a valuation date of January 1, 1992.

solely with office building properties in that same city or metropolitan area. This Court fully accepts the principle that the market for investment-quality office buildings is national in scope. The re-sale market within which the subject property exists is certainly not limited to the District of Columbia itself.

It is especially impressive that Reynolds declined to strictly use the capitalization rates that were reflected in the ACLI data. He observed that they would have dictated a valuation that is even lower than the appraised value that he personally developed. His better judgment led him to understand that the law of the District of Columbia prescribes that the capitalization rate must reflect only a "fair" rate of return, not a rate of return that necessarily mirrors the highest market rate of return. In the vernacular, Reynolds did not go overboard. His conservative and shrewd application of judgment, coupled with his scrupulous adherence to local law, decidedly enhances the worth of his testimony.[9]

---

[9]The District of Columbia, for reasons unknown to the Court, did not offer any expert testimony at trial. Rather, the District relied upon cross-examination in an effort to debunk the conclusions of the petitioner's expert. In closing argument, the District contended that the Court should reject Mr. Reynolds as an "unethical" expert. The District argued that the standards of the Real Estate Institute prescribe that an appraiser of commercial property must perform a valuation of the land as well as the improvements in order to compose an overall appraisal. Mr. Reynolds stated that he did not perform a so-called independent appraisal of the land specifically because he had no professional quarrel with the land value that was derived by the assessor. Finding a common ground of agreement with an assessor can hardly be deemed "unethical." Mr. Reynolds, instead, was being intellectually honest in stating that he could not discard the assessor's work in its entirety. Quite properly, Reynolds disputed only those discrete aspects of the assessment that he sincerely believed to be flawed. Ironically, it would have been unethical for him to charge the client (taxpayer or its counsel) for doing

The expert appraisal offered by petitioner is meritorious and will be adopted by the Court as the fair market value of the property. In view of the fact that the Government failed to call any expert witness to refute the accuracy or logic of the opinions of Reynolds, his expert opinion is unanswered and uncontroverted in substance. The Court accepts his opinion because it is well-grounded and because it is sensible in its compliance with applicable law -- not because of the mere lack of any opposing expert.

It is noteworthy that the assessor's capitalization rate was not the result of any independent critical analysis of his own. It is not supported by any credible, underlying data.

On the whole, each of the three reasons cited herein above is a separate basis upon which this Court would reject the assessment as the correct valuation of this property. In combination, these three groups of errors plainly demonstrate that the petitioner is entitled to the relief that is demanded. The petitioner herein has fully met the burden of identifying flaws in the Government's assessment and has articulated exactly how those flawed resulted in a valuation that was too high and which caused the payment of taxes for which petitioner has substantially less liability.

WHEREFORE, it is by the Court this 18th day of July, 1995

---

unnecessary calculations and research as to land value. To be clear, there is absolutely nothing "unethical" about a petitioner's expert who adopts the District's land value whenever there is no substantive basis for rejecting it. In retrospect, this ad hominem attack on the expert was emblematic of the District's weak response to his testimony. This was not helpful to the Government's cause.

ORDERED that judgment shall be entered in favor of the petitioner, with interest thereon; and it is

FURTHER ORDERED that correct valuation on which tax must be calculated for the subject property for Tax Year 1993 is $61,800,000, with $41,528,550 allocated to the value of the land and $20,271,450 allocated to the value of the improvements; and it is

FURTHER ORDERED that the entry of judgment shall be withheld, under Rule 15 of the Superior Court Tax Rules, pending the filing of a proposed judgment that includes the refund figure that is consistent with the Court's findings of fact and conclusions of law herein. Such proposed judgment shall be submitted to the Court within 30 days of the date of the instant memorandum opinion and order.

Cheryl M. Long
Judge

Copies mailed to:

Gilbert Hahn, Esq.
Tanja Castro, Esq.
Amram & Hahn
815 Connecticut Avenue, N.W.
Suite 601
Washington, D.C. 20006

Joseph Ferguson, Esq.
Assistant Corporation Counsel
441 Fourth Street, N.W.
6th Floor
Washington, D.C. 20001