

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

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MORTON A. and GRACE M. BENDER,)
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 Petitioners,)
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 v.)
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 DISTRICT OF COLUMBIA,)
)
 Respondent.)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

Tax Docket No. 7855-99

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This is an appeal of a Tax Year 1999 real property tax assessment ("the assessment") against Lot 832 in Square 2200, located at 2838 McGill Terrace, N.W., in the District of Columbia ("the subject property"). This matter came before the Court for a bench trial on January 22, 2001. Petitioners presented two witnesses, petitioner Morton Bender and appraiser Richard O. Haase, MAI, CRE in addition to three exhibits. The District of Columbia presented one witness, James R. Vinson, the Director of the District of Columbia Real Property Tax Administration. The District of Columbia moved into evidence one exhibit. Counsel for the parties stipulated to the qualifications of the Mr. Haase and of Mr. Vinson as experts and this Court so accepted them as experts in the field of real property appraisals. Upon consideration of the stipulations, testimony of the witnesses, the evidence adduced at trial, a review of the applicable law, and having resolved all questions of credibility, the Court makes the following:

FINDINGS OF FACT

1. The subject property is a single-family detached home located at 2838 McGill Terrace, N.W., known as Lot 832 in Square 2200, in the District of Columbia.

2. Petitioners own the subject property as tenants by the entirety and have used it as their principal residence since 1987. They are obligated to pay all real estate taxes assessed against the subject property and have paid all such taxes for Tax Year 1999 before the filing of the Petition in this case.

3. Respondent District of Columbia ("the District") is a municipal corporation created by the United States Congress and is capable of suing and being sued. See D.C. Code § 1-102 (1999 Repl.).

4. The District valued the subject property for real property tax purposes for Tax Year 1999 at \$2,912,000, with \$577,080 allocated to the land and \$2,334,920 allocated to the improvements See Petitioners' Exhibit 1: Notice of Proposed Assessment. The valuation date for Tax Year 1999 is January 1, 1998. See D.C. Code § 47-820(a)(3) (1999 Supp.).¹

5. Petitioners timely appealed their proposed Tax Year 1999 assessment to the Board of Real Property Assessments and Appeals which sustained the proposed assessment. This timely appeal of the assessment followed. The District now seeks to increase the assessment from \$2,912,000 to \$3,184,000.

6. The subject property is located in the Massachusetts Avenue Heights neighborhood, two blocks southwest of the Omni Shoreham Hotel near Rock Creek Park, a neighborhood of embassies and upper tier residential properties.

7. The subject site contains 20,284 square feet and is zoned R1A, permitting single-family detached homes with a minimum lot size of 7,500 square feet and a minimum street frontage of 75 feet.

¹ The subject property was assessed at \$1,850,000.00 for tax year 1998.

8. The improvement on the site is a two and one half story plus basement stone/stucco dwelling resembling a French chateaux which was built in 1931 and gut-renovated in the 1990's. The home has eight bedrooms, nine full baths, and three half baths. The above-grade floors contain 8,394 square feet of gross living area, and the basement contains 2,646 square feet of gross living area. The basement is fully finished, fully furnished, and completely carpeted. It has a separate exit to the rear of the premises where the patio and in-ground pool are located. The quality attributes of the subject improvement, that is, its material, design, and workmanship, are of the highest order.

9. Mr. Bender testified that the increase in assessed value of the subject property from \$1,850,000 for Tax Year 1998 to \$2,912,000 for Tax Year 1999 was unwarranted and that the Tax Year 1999 assessment was excessive. Mr. Bender conducted an informal survey of his neighbors in Square 2200 and concluded that the tax year 1999 assessment was sixty-two percent (62%) over the 1998 assessment. The essence of Mr. Bender's complaint was the extent of the increase in assessed valuation of the subject property from Tax Year 1998 to Tax Year 1999. However, Mr. Bender offered no other supporting data to substantiate his conclusions. Moreover, the District's expert testified that the Tax Year 1998 assessment was undervalued.

10. Petitioners' expert, Mr. Haase, valued the subject property at \$2,200,000 for Tax Year 1999, with \$456,052 allocated to the land and \$1,743,948 allocated to the improvements. See Petitioners' Exhibit 3, Mr. Haase's appraisal report. Although Mr. Haase's appraisal report states that his "site value was extracted from real estate tax records," Petitioners' Exhibit 1, the Notice of Proposed Assessment, clearly demonstrates that the District's land allocation for the subject property for Tax Year 1999 was \$577,080. Of the three conventional approaches to the valuation of real property (the cost approach, the sales comparison approach, and the income approach), Mr. Haase used the sales comparison approach in valuing the subject property. He used only three

comparable sales in deriving his conclusion of value: 1) 2940 Benton Place, N.W., which sold on November 26, 1997, for \$301.66 per square foot of above-grade gross living area; 2) 2806 Chesterfield Place, N.W., located in the Forest Hills neighborhood, which sold on October 11, 1996, for \$342.29 per square foot of above-grade gross living area; and 3) 2900 Woodland Drive, N.W., which sold on December 31, 1996, for \$464.91 per square foot of above-grade gross living area.

11. With respect to the land value of the subject property, although the 2940 Benton Place site contains 7,957 square feet, as opposed to the subject property's 20,284 square feet, Mr. Haase adjusted the land value of this property upward by \$10,000 or only 81 cents per square foot. By contrast, Mr. Haase's land value of the subject property in his appraisal report is \$456,052, which equates to \$22.84 per square foot. Mr. Haase made no upward land adjustments to his valuation of his other two comparable properties, even though both sites had less square footage than the subject property.

With respect to the below-grade-level gross living area in the subject property, Mr. Haase failed to value the 3,303 square feet of fully-finished, fully-furnished, and fully-carpeted below-grade gross living area that the subject property enjoys together with a separate exit affording access to the rear of the property. Although the subject property contains 1,093 more below-grade square footage than 2940 Benton Place, 559 more such square footage than 2806 Chesterfield Place, and 1,758 more such square footage than 2900 Woodland Drive, Mr. Haase made no upward value adjustments in the value of the subject property to account for these differences.

12. With respect to the above-grade gross living area of the subject property and the number of bathrooms contained in that area, Mr. Haase's value conclusions are deficient in two respects. First, even though 2940 Benton Place sold for \$301.66 per square foot, 2806 Chesterfield Place sold for \$342.29 per square foot, and 2900 Woodland Drive sold for \$464.91 per square foot,

Mr. Haase made his upward adjustments for the additional square footage contained in the subject property at the unvarying rate of \$100 per square foot. Secondly, Mr. Haase adjusted the bathroom values in the subject property upward by \$2,200 per bathroom for 2806 Chesterfield Place and 2900 Woodland Drive and \$1,286 per bathroom for 2940 Benton Place. Mr. Vinson testified that the bathrooms in the subject property are worth much more than the values Mr. Haase attributed to them. Moreover, values of \$2,200 and \$1,286 for a bathroom runs contrary to common experience. In fact, Mr. Vinson testified that the bathrooms in the subject property were of the highest quality, even including some gold plated fixtures. None of the adjustments made by Mr. Haase were supported by market studies or analysis of market data.

13. James R. Vinson, the District's expert and the Director of its Real Property Tax Administration, used both the cost approach and the sales comparison approach in concluding an estimated market value of the subject property for Tax Year 1999 of \$3,184,000. He discussed both the principle of conformity and the principles of balance and contribution as they apply to the subject property. Briefly stated, the principle of conformity affirms that a real property's value is created and sustained when it is in conformity with surrounding properties. According to Mr. Vinson's testimony, the subject property is a multi-million dollar property surrounded by similar multi-million dollar properties. In contrast to the subject property, a high-quality 8,000 square foot mansion in a subdivision of 2,000 square foot prefabricated houses would not be worth the money required to construct it. The principle of contribution states that each dollar of cost will contribute at least one dollar of value when the land and building components are in proper balance and the improvements conform with the surrounding properties. In other words, a 20,000 square foot lot contributes proportionately to its size if the improvement it supports contains 8,000 square feet of

gross living area, a patio, and an in-ground swimming pool. Such a large lot would not be in balance with a small townhouse.

14. In applying his cost approach to value, Mr. Vinson estimated the subject property's land value as if vacant and available to be developed to its highest and best use. Since the property's highest and best use is as a residential site, Mr. Vinson utilized the land sale of a vacant property on Rock Creek Drive (formerly Lots 54-56, now combined into Lot 57, in Square 2140), in the same subdivision as the subject property. This unimproved site contains 33,405 square feet and was sold in December 1997, within one month of the January 1, 1998, valuation date for Tax Year 1999. The sales price of the Rock Creek Drive site was \$1,800,000 (\$53.88 per square foot). Mr. Vinson then determined the cost of replacing the existing improvement, deducted for depreciation, and added the land value as follows: $\$2,588,903$ (cost) - $\$233,001$ (depreciation) = $\$2,355,902$ + $\$128,414$ (site improvements) = $\$2,484,316$ + $\$700,000$ = $\$3,184,316$, rounded to $\$3,184,000$. Mr. Vinson meticulously detailed all of the unit costs in his appraisal report.

15. Mr. Vinson's sales comparison approach to value was based on the following six sales of comparable properties in the same Massachusetts Avenue Heights neighborhood as the subject property. All of these sales took place between June 1996 and January 1998:

Address	Date	Zoning	Price/SF	SF of Gross Building Area
1. 3201 Woodland Drive, NW	6/96	R1A	\$203.44	9,585
2. 2940 Benton Place, NW	1/98	R1A	\$301.65	6,630
3. 2435 California St., NW	8/97	R1B	\$257.02	6,517
4. 2900 Woodland Drive, NW	12/96	R1A	\$336.14	5,578
5. 3107 Woodland Drive, NW	4/97	R1A	\$220.19	6,585
6. 2416 Tracy Place, NW	1/98	R1A	\$325.43	8,527

Mr. Vinson gave the most weight to sales 2, 4, and 6, because sales 2 and 6 were closest in time to the valuation date for Tax Year 1999, and sale 4 was the property closest in proximity to the subject property. Mr. Vinson concluded a value of \$288 per square foot of gross living area (including that which is below grade level). He calculated the subject property's estimated market value for Tax Year 1999 as follows: $11,040 \text{ SF} \times \$288 = \$3,179,520$. Reconciling this value with the value he had determined under the cost approach to value, Mr. Vinson concluded a rounded value for the subject property for Tax Year 1999 of \$3,184,000.² Mr. Vinson provided detailed data and thoroughly explained the basis of his valuation of the real property at this higher figure. The Court credits Mr. Vinson's testimony and finds his appraisal most persuasive and complete.

CONCLUSIONS OF LAW

Petitioners have appealed their Tax Year 1999 real property tax assessment against their single-family detached home at 2838 McGill Terrace, N.W., known as Lot 832 in Square 2200 in the District of Columbia. The valuation date for Tax Year 1999 is January 1, 1998. D.C. Code §§ 47-802(8) and 820(a)(3) (1999 Supp.). The assessed value for real property tax purposes shall be the "estimated market value of such property . . . as determined by the Mayor." *Id.* D.C. Code § 47-802(4) (1997 Repl.) defines "estimated market value" as:

100 % of the most probable price at which a particular piece of 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.

² Mr. Vinson testified that he was of the opinion that the initial assessment for Tax Year 1999 was too low and explained to the Court's satisfaction his reasons.

Petitioners bear "the burden of proving the incorrectness of the government's assessment." Brisker v. District of Columbia, 510 A.2d 1037, 1039-1040 (D.C. 1986) (further citation omitted); See also Super. Ct. Tax R. 12(b). Further, petitioners have the burden of proving an assessment is "incorrect or illegal, not merely that alternative methods exist giving a different result." Safeway Stores, Inc. v. District of Columbia, 525 A.2d 207, 211 (D.C. 1987) (further citations omitted). Nor is this burden met because the expert witness called to testify regarding the market value on behalf of the District, Mr. James R. Vinson, has arrived at a value figure different from, and higher than, the assessment. Wolf v. District of Columbia, 597 A.2d 1303, 1312 (D.C. 1991). Thus, the issue before the Court is not whether petitioners' appraisal can also be viewed as accurate, it is whether petitioners have submitted sufficient evidence to overcome its burden that the District's formula is unlawful or its computation is inaccurate.

The Court conducted a *de novo* review of the evidence before it. The Court concludes that petitioners have not met their burden of proving that the challenged assessment in the amount of \$2,912,000 is incorrect or illegal. Petitioners have failed to challenge that assessment at trial by calling the assessor to testify in their case in chief as to how he arrived at that assessment. Petitioners have failed to provide any evidence regarding how the assessment was done. Nor did Mr. Haase testify with respect to the manner in which the assessment was made. The record is completely barren in that respect.

Petitioners contend that the cost approach, which was utilized by the District along with the sales comparison approach, is not the preferred appraisal method to obtain the market value of the subject property. Petitioners' assertion may be correct, and the Court makes no finding as to which methodology is the best. However, petitioners have not shown that the reason for utilizing the cost

approach is unfounded. Furthermore, in both the sales comparison and cost approach, the District's figures are the same.

Additionally, petitioners challenge the District's appraisal as it was not conducted on the Freddie Mac/Fannie Mae "Uniform Residential Appraisal Report" form ("form"). The Court finds no merit to this argument. The Court finds that the information contained in the District's appraisal captures the same, if not additional, information that the form calls for. The Court concludes that the petitioners have failed to meet their burden of proof.

Consequently, the only question left for the Court to resolve is whether the District has met its burden of establishing that the assessed valuation of the subject property for Tax Year 1999 should be increased from \$2,912,000 to \$3,814,000. The Court must make an independent valuation of the property on the basis of the evidence presented at trial. See Dist. of Columbia v. New York Life Ins., 650 A.2d 671, 672 (D.C. 1994). Thus, the District is not precluded from introducing a different assessment than originally provided to the petitioners.

"The taxpayer's failure to show defects in an assessment . . . cannot logically have adverse consequences for *the District*, which is the taxpayer's adversary." See New York Life Ins., 650 A.2d at 672 (parentheses omitted). The District can therefore attempt to establish that the value of the property is in excess of the assessed value even if the taxpayer has failed to show defects in the assessment. See Id. at 673. "The Court may affirm, cancel, reduce, or increase the assessment." D.C. Code § 47-3303. This provision is made applicable to real property tax assessment appeals by D.C. Code § 47-825.1(j-1) (1999 Supp.).

To resolve the factual issue of whether the evidence adduced in this case supports an increase in the assessed valuation, the Court now examines the testimony of the experts, Mr. Haase and Mr. Vinson. The Court concludes that the most striking differences between the experts is the

failure Mr. Haase to illustrate his comparable sales approach to value with any meaningful adjustments supported by market data and analyses. Moreover, Petitioners' appraisal provides a conclusive value without indicating how that figure was derived.

Additionally, the Court concludes that Mr. Haase's appraisal is flawed in the following particular respects: 1) it used only three comparable properties, and the Court notes that the Chesterfield Place property is not located in the same Massachusetts Avenue Heights neighborhood in which the subject property is located; 2) it made no independent valuation of the value of the subject site and little or no adjustment for the larger lot size of the subject property (with no market data to support this failure); 3) it failed to value the 3,300 square feet of below-grade gross living area in the subject property, even though this area was fully-finished, fully furnished, and contained a separate exit to the rear of the property; 4) it adjusted the above-grade gross living area value of the subject property at only \$100 per square foot for each comparable property in the face of substantially higher sales prices for each comparable property, without any market analyses or support; and 5) it adjusted the number of additional bathrooms in the subject property upward at an average of only \$1,243 per bathroom, which is both contrary to common experience and totally unsupported by market data and analyses.

As a result of the above-recited flaws, the Court concludes that Mr. Haase's final value conclusion cannot be, and is not, credible. The Court finds that because this value conclusion is not credible, it can not preclude an increase in the assessed value for the subject property for Tax Year 1999.

The Court further holds that the District has met its burden that the assessed valuation of the subject property for Tax Year 1999 should be increased from \$2,912,000 to \$3,184,000.00. The Court finds that the methodologies and calculations used by Mr. Vinson, and the conclusions

reached by him at trial are both credible and convincing. Mr. Vinson used his discretion in relying on both the comparable sales approach and the cost approach in deriving the property's estimate market value. In his cost approach to value, he analyzed in detail the costs of the improvement and then depreciated them appropriately. In his sales approach to value, Mr. Vinson analyzed the sales of six comparable properties in the same Massachusetts Avenue Heights neighborhood as the subject property. He accorded three of these sales the most weight either because of the sale's closeness in time to the valuation date or the property's closeness in proximity to the subject property. Mr. Vinson's final reconciliation considered both the sales comparison approach and the cost approach to value and resulted in a rounded valuation of \$3,184,000. The substance of Mr. Vinson's testimony was not successfully challenged on cross-examination. Petitioners did not cite any flaws with Mr. Vinson's appraisal. Petitioners merely assert that the valuation obtained by their appraiser is more accurate than respondent's expert. The Court, therefore, finds that the District has met its burden of demonstrating that the Tax Year 1999 real property tax assessment against the subject property should be increased from \$2,912,000, to \$3,184,000 and that this latter value, as calculated by Mr. Vinson, is correct.

WHEREFORE, it is on this 11th day of June, 2001 hereby

ORDERED, that the annual real property tax assessment for Lot 832 in Square 2200, known as 2838 McGill Terrace, N.W., in the District of Columbia, be, and it is hereby, increased from \$2,921,000 to \$3,184,000, with \$700,000 allocated to the land and \$2,484,000 allocated to the improvements.


JUDGE KAYE K. CHRISTIAN

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