

Opinion
No. 1169

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JOSEPH M. BURTON
CLERK OF THE
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

DISTRICT OF COLUMBIA REDEVELOPMENT
LAND AGENCY and TRILON PLAZA CO.,

Petitioners

v.

DISTRICT OF COLUMBIA,

Respondent

DISTRICT OF COLUMBIA REDEVELOPMENT
LAND AGENCY and TRILON PLAZA CO.,

Petitioners

v.

DISTRICT OF COLUMBIA,

Respondent

MAR 12 1979

FILED

Docket No. 2311

Docket No. 2374

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER

Petitioners appeal from real property tax assessments for Fiscal Year 1975 in Docket No. 2311 and Fiscal Year 1976 in Docket No. 2374 on Lot 60 in Square 499. Based upon the stipulations entered into by the parties and the evidence offered at trial, the trials in both cases being held simultaneously pursuant to this Court's Order of December 10, 1976, incorporated by reference and made a part hereof, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The subject property is Lot 60 in Square 499, in the District of Columbia, known as 401 M Street, S.W., Washington, D.C.

2. The petitioner, District of Columbia Redevelopment Land Agency, is an independent government corporation ^{1/}, incorporated and operating within the District of Columbia for the purpose of replanning and rebuilding slum, blighted and other areas pursuant to an Act of Congress, the District of Columbia Redevelopment Act of 1945, approved August 2, 1946, as amended (hereinafter referred to as RLA). RLA is the owner of the subject real estate. RLA's principal office is 1325 G Street, N.W., Washington, D. C.

3. The petitioner, Trilon Plaza Company (hereinafter referred to as Trilon) is a limited partnership organized and existing under the laws of the District of Columbia. The principal office of Trilon is 401 M Street, S.W., Washington, D. C.

4. Trilon is presently obligated under an amended lease dated March 15, 1974, to pay all real estate taxes assessed against Lot 60 in Square 499 in the District of Columbia known as 401 M Street, S.W., Washington, D. C. The term of said lease will expire June 30, 2058. Under that same lease, RLA agreed to join as a petitioner in any proceeding to contest the amount or validity of any such real estate taxes if such joinder is required for the prosecution of such proceeding. RLA is a necessary party to this Petition and accordingly is joined herein solely for such purpose.

5. The Fiscal Year 1975 taxes and assessment (Docket No. 2311) in controversy are real estate taxes and assessment in the following amounts:

^{1/} As of July 1, 1974, RLA has become an instrumentality of the D.C. Government.

Total Assessment (at 55% of market value): \$8,880,665.00

Total taxes: 294,837.74

6. Petitioners received a notice of assessment dated February 9, 1974, stating that the assessment on the subject property for Fiscal Year 1975 was \$8,880,655.00 (at 55% of market value).

7. The Fiscal Year 1975 taxes in the amount of \$294,837.74 were paid in full. The first half Fiscal Year 1975 taxes of \$147,418.87 were paid on January 6, 1975, and second half Fiscal Year 1975 taxes of \$147,418.87 were paid on April 30, 1975.

8. The Fiscal Year 1975 appeal to the Board of Equalization and Review was timely filed on March 28, 1974. The Board of Equalization and Review sustained the assessment. Petition to this court was timely filed.

9. The valuation date for Fiscal Year 1975 is July 1, 1974.

10. The Fiscal Year 1976 taxes and assessment (Docket No. 2374) in controversy are real estate taxes and assessment in the following amounts.

Total Assessment (at 100% of market value): \$16,146,647.00

Total taxes: 295,483.64

11. Petitioners received a notice of assessment dated February 1975 stating that the assessment on the subject property for Fiscal Year 1976 was \$16,146,647.00 (at 100% of market value).

12. The Fiscal Year 1976 taxes in the amount of \$295,473.64 were paid in full. The first half fiscal year 1976 taxes of \$147,741.82 were paid on September 19, 1975 and second half fiscal year 1976 taxes of \$147,483.64 were paid on March 29, 1976.

13. The Fiscal Year 1976 appeal to the Board of Equalization and Review was timely filed in March 1975. The Board of Equalization and Review sustained the assessment. Petition to this court was timely filed.

14. The valuation date for Fiscal Year 1976 is July 1, 1974.^{2/}

15. Lot 60 in Square 499 contains 353,633 square feet of land zoned UR. The land is owned by RLA and leased to Trilon for a term of 99 years, commencing on July 1, 1959 and ending on June 30, 2058, and is subject to an option to purchase until January 21, 1981.

16. On the land are two buildings: The Office Tower Building and the Shopping Center Building.

17. The actual use of the subject property is its highest and best use.

^{2/} Normally January 1, 1975, however, since this is Group A property as defined in Kelly v. District of Columbia, 102 Wash. L. Rptr. 2001 (D.C. Super. Ct. 1974) (Kelly I) the assessment for Fiscal Year 1976 remains the same as that for Fiscal Year 1975. That decision was never appealed. See also, Kelly v. District of Columbia, 105 Wash. L. Rptr. 577 (D.C. Super. Ct. 1977).

18. The only convincing evidence as to value was that evidence offered by petitioners.

19. The Fiscal Year 1975 fair market value of the subject property (Lot 60 in Square 499) as of July 1, 1974 was \$11,100,000.

20. The Fiscal Year 1976 market value of the subject property (Lot 60 in Square 499) as of July 1, 1974 was \$11,100,000.^{3/}

21. The Court accepts the testimony and written report on the value of the subject property.^{3a/}

22. The Office Tower West is a 12-story and basement structure containing 153,301 square feet of net rentable office space. The building, including office space, parking and storage, is leased in its entirety for a term of 20 years to the United States Government and utilized as headquarters building for the Environmental Protection Agency.

23. The Commercial Mall Building is a three story and basement building. The first floor consists of a retail commercial mall containing 75,004 square feet of net rentable area. The second floor contains 79,252 square feet of net rentable office space. The third floor contains a total net rentable area of 100,668 square feet which is leased in its entirety to the United States Government. The Commercial Mall Building has a total net rental area of 256,004 square

^{3/} Same as Fiscal Year 1975. See footnote 2.

^{3a/} Offered by petitioners.

feet. Parking for both buildings is provided for 800 cars.

24. The income or economic approach to value is the proper approach to value.

25. The stabilized net income before real estate taxes for 1974 was \$1,133,522 (after actual real estate taxes \$1,054,539).

26. The capitalization rate for use in the income or economic approach to value is 9.5% of income before real estate taxes and 11.4% of income after real estate taxes. The capitalization rate is computed as follows:

75% 1st Mtg. x 9.47% constant = .071

25% equity x 10% cash flow = .025

Rounded to 9-1/2% overall .095

1st mortgage at 75% of value x 9.47% constant = .071

Equity at 25% of value x 10% cash flow = .025

Tax position at 100% of value x 1.83 tax rate = .018

Weighted average = .114

27. Capitalizing net income at 9-1/2% indicates market value of \$11,100,000: net income after actual real estate taxes \$1,054,539 ÷ .095 = \$11,100,000.

28. The respondent's expert testimony based upon the so-called "discounted cash flow analysis" method based on computer printouts done by M. B. Hodges is received but given little weight since it appears to be too speculative since it is in part based upon speculation as to net operating income for 14-15 years beyond the valuation date and based

value as of the valuation date on that speculation as to net operating income 14-15 years hence. It also included speculation as to resale values for the property 14 and 15 years beyond the valuation date and based market value at the valuation date on that speculation, and in addition:

- (a) interest rate 14-15 years hence;
- (b) mortgage market conditions 14-15 years hence;
- (c) required rate of repayment of principal 14-15 years hence;
- (d) income tax laws 14-15 years hence;
- (e) expenses and inflation rates, including energy costs 14-15 years hence;
- (f) the assumption of the ready sale of the property exactly 14-15 years hence; and
- (g) tax brackets for the taxable income of 20 taxpayers in the 50% tax bracket, 14-15 years hence.

29. Respondent's expert ^{4/} gave an opinion as to land value of \$3,960,000 based on allegedly comparable land sales. The alleged comparable properties used by respondent's expert are entitled to little, if any, weight. The subject property is located in southwest Washington and its UR zoning subjects it to restrictions not present for the properties used by

^{4/} Respondent's expert served as a member of the Land Advisory Committee, and it appears that he was present at the meeting of that Committee which set assessment value for the subject property for Fiscal Year 1975.

respondent's expert which are located outside the southwest area, are zoned C-3-B or C-4, and which were permitted and were in fact more intensively developed and generated a higher income.

CONCLUSIONS OF LAW

1. The Court has jurisdiction pursuant to D. C. Code 1973, §§11-1201, 47-2403, 47-2405. The Court's Memorandum Order of November 30, 1976 is incorporated by reference and made a part hereof.

2. The only convincing evidence as to value was presented by petitioner's expert that the fair market value of the subject property (Lot 60 in Square 499) for Fiscal Years 1975 and 1976 was \$11,100,000.

3. The assessment for the subject property for Fiscal Year 1975 is \$6,105,000 (55% of fair market value).

4. The evidence of respondent's expert as to value is received but given little or no weight because it was too speculative in nature. Gr. Virginia Fruit Growers Exchange v. City of Alexandria, 216 Va. 602, 221 S.E. 2d 157 (1976).

5. The respondent's expert's evidence as to land value based on sales is entitled to little weight because it was based on sales of land that were not truly comparable.

6. Petitioners are entitled to a reduction in assessment to \$6,105,000 (55% of the fair market value) for Fiscal Year 1975 and to a refund of excess taxes paid with interest at 4% per annum from the date of payment of the taxes.

7. Pursuant to this Court's Opinion and Order in Kelly v. District of Columbia, 102 Wash. L. Rptr. 2081, (D.C. Super. Ct., 1974), the subject property (Lot 60 in Square 499) being a Group A property can be revalued for Fiscal Years 1975 and 1977 but not 1976.

8. Pursuant to Kelly, supra, the subject property for Fiscal Year 1976 has the same market value for assessment purposes (at 100% of market) as the subject property for Fiscal Year 1975 and the same valuation date of July 1, 1974. (Pursuant to this Court's Opinion and Order of December 10, 1976 in Tax Docket Nos. 2369, 2375, 2370 and 2374, District of Columbia Redevelopment Land Agency v. District of Columbia.)

9. The market value and the assessed value of the subject property for Fiscal Year 1976 (at 100% of market) is \$11,100,000.

10. Petitioners are entitled to a reduction in assessment to \$11,100,000 for Fiscal Year 1976 (at 100% of fair market value) and to a refund of excess taxes paid with interest at 4% per annum from the date of payment of the taxes.

ORDER

It is hereby

ORDERED, that the petitioners shall submit a separate proposed order for each case in five days consistent with

these findings of fact and conclusions of law. Petitioners shall submit the orders to counsel for the respondent who will have an additional five days in which to submit any objections to the form of the orders. If the respondent does not file objections thereto within five days, the orders will be signed as presented by the petitioner.

Dated: March 12, 1979


JOHN GARRETT PENN
Judge

Gilbert Hahn, Jr., Esq.
Attorney for Petitioners

- Picked up in chambers

Melvin Washington, Esq.
Attorney for Respondent

Copies mailed to parties on
to parties on 3/12, 1979.

*and to Kenneth Lach
Finance Officer, DC.*

3/12/79

H. Starfield