SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

JOHN RUTKOWSKY,
Petitioner,
v. : Tax Docket Nos. 3257-83 & 3442-84
DISTRICT OF COLUMBIA,
Respondent.

ORDER AND OPINION

This matter came before the Court for trial on June 18, 1984. The parties submitted proposed findings and conclusions on July 16, 1984.

The petitions in these cases challenge assessments made for tax years 1983 and 1984 for Lot 47 of Square 131 known as 1930 18th Street, N.W., and 1806 and 1808 Florida Avenue, N.W. For tax year 1983, the subject property was assessed at $484,500.00 with $483,450.00 assigned to the land and $1,050.00 assigned to the improvements. For the tax year 1984, the subject property was assessed at $488,500.00 with $483,450.00 assigned to the land and $5,050.00 assigned to the improvements.

Petitioner's primary contentions are that the assessment for both years was performed arbitrarily and capriciously, the improvements value was inadequately considered and the assessment was inequitable in comparison to similar property in the area. Petitioner seeks a reduction to the tax year 1982 assessed value of $336,000.00.

The Court exercises jurisdiction over these consolidated cases by authority of D.C. Code Sections11-1201 and 47-3305 (1981).

Upon consideration of the trial and record of this case, the Court makes the following:

FINDINGS OF FACT

1. The petitioner is John Rutkowsky, owner of the subject property, consisting of real estate identified as Lot 47 of Square 131 known as 1930 18th Street, N.W., and 1806 and 1808 Florida Avenue, N.W.

2. The subject property is improved by an uninhabitable four story apartment house which fronts on 18th Street, N.W., and a small retail store which is located on Florida Avenue, N.W.

3. On or about March 1, 1982, petitioner received a notice of annual assessment for the subject property pursuant to D.C. Code Section 47-645 (1973), now 47-824, reflecting a valuation of $484,500.00 as of January 1, 1982. Petitioner challenged this value before the Board of Equalization and Review, which subsequently sustained the assessment. Petitioner prepaid the taxes due and filed a timely appeal in this Court. (T.D. No. 3257-83). The assessment record card indicated a proposed value of $483,450.00 assigned to the land, and a proposed value of $1,050.00 assigned to improvements for that tax year.

4. On or about March 1, 1983, petitioner received a notice of annual assessment for tax year 1984 reflecting a valuation of $488,500.00 as of January 1, 1983. Petitioner challenged this assessment before the Board of Equalization and Review which subsequently sustained the assessment. Petitioner prepaid the taxes due and filed a timely appeal in this Court. (T.D. No. 3442-84). The record indicates that a value of $483,450.00 was assigned to the land and a value of $5,050.00 was assigned to the improvements.

5. By order of this Court dated April 8, 1984, both cases were consolidated for trial.

ANALYSIS AND CONCLUSION

Petitioner asserts that the assessment conducted by respondent's assessors, for both tax years was done so in an arbitrary and capricious manner. Pursuant to Superior Court Tax Rule 11(d), petitioner bears the burden of proving that the government's assessment is incorrect. Wyner v. District of Columbia, 411 A.2d 59 (D.C. 1980).

Under applicable statutes and regulations, assessment of property in the District for taxation purposes is divided into two parts: a determination of the land value, and a determination of the value of the improvements on the land. The Court will therefore consider the component parts separately.

A. LAND

For purposes of computing the estimated market value of petitioner's land, respondent examined sales of comparable properties.

At trial, petitioner contended that the comparables used by respondent's assessors were in fact not comparable, and, further, that more suitable comparables were available for the assessor's use. Petitioner, through testimony, emphasized a recent sale of an adjacent property as illustrative of an alternative comparable. It was revealed, however, that this sale was beyond the fair market value date for either of the tax years at issue. Thus, the sale of the adjacent property clearly cannot be considered by the Court in evaluating the correctness of the assessor's valuation.

Petitioner further testified on cross-examination, that for tax year 1983, he, personnally appeared before the Board of Equalization and Review for purposes of challenging the respondent's assessment. In this earlier appeal, petitioner

represented to the Board that the value of the subject property was $500,000.00, an amount in excess of respondent's own assessment. Similarly, petitioner testified that for tax year 1984, that he authorized his agent, counsel for petitioner in both cases, to appear before the Board on his behalf. Thus, his agent placed a value of $480,000.00 on the subject property, an amount only $8,500.00 less than the value assigned by respondent's assessor's. The Board, charged with a duty to adhere to the statutory requirement of at least a 5% variance from the estimated market value in order to revise the assessment, sustained the assessment. See D.C. Code Section 47-825(f) (1981).

Petitioner proferred as an expert witness real estate broker Gary Israel. Upon objection by respondent, Mr. Israel was found by the Court not to be qualified to give any expert testimony as to value, but he was permitted to testify as to his own knowledge of the neighborhood surrounding the subject property.*/

Petitioner asserted that sales of comparable properties which better reflected the true value of the land were available for respondent's use, however, he has failed to produce such sales. Mr. Israel testified he was assessing some sales in a general sense. It was apparent from the testimony that petitioner had not abandoned the position he took before the Board where he himself asserted a total value nearly equal to or more than the assessment value computed by respondent. Based upon petitioner's evidence, it is clear that he has not sustained his burden of proving that respondent's assessment of the value of the land was incorrect.

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*/ Because he lived in the neighborhood for many years and sold property there as a real estate broker, he had knowledge of the area.

The respondent presented as its sole witness Mr. Troy Davis, the assessor. Mr. Davis testified that for each of the tax years at issue he considered the primary value of the subject property to be in the land.

The following sales of land were utilized in the land sales study relied upon by respondent:

(a) Square 2549 Lots 628-630 identified as 1817-1821 Columbia Road. This sale reflects when adjusted for a FAR of $17.50 a fair market value of $61.25 per square foot of land.

(b) Square 2560 Lot 82 identified as 2477 18th Street, N.W. This sale reflects, when adjusted for a FAR value of $16.22, a fair market value of $56.76 per square foot of land.

(c) Square 2560 Lots 105-106 identified as 2413-2415 18th Street, N.W. This sale reflects, when adjusted for a FAR value of $18.14, a fair market value of $63.48 per square foot of land.

Subject property, when adjusted for a FAR value of $22.05 was found to have a fair market value of $55.02 per square foot of land.

Mr. Davis testified that in comparison with the three land sales utilized in the study, he considered the subject property, located a few blocks from the Washington Hilton and Connecticut Avenue, to be in the superior location. In addition, he noted that the neighborhood in which the subject property is located is transitional in nature, as well as subject to recent condominium development and commercial activity. These combined considerations led Mr. Davis to assign a slightly higher value to the subject property than that which was assigned to the land sales used in the study. Mr. Davis further testified that the same land sales were utilized for both tax years 1983 and 1984 assessments.

Mr. Davis testified that the land sales method was correlated with the sale of operating apartment dwellings in the same neighborhood where the subject property is located. For tax year 1983, he examined three sales of apartment dwellings. Here, he considered as his unit of comparison the price per apartment unit and the price per gross finished area. In summary, the comparisons were as follows:

Apartment Sale	Sale Per Unit	Price Per Gross Finished Area
1736 Willard Street, N.W.	18,571	$29.10
1826 Riggs Place, N.W.	16,133	$39.44
1726 17th Street, N.W.	19,279	$24.76
1930 18th Street, N.W.	16,005	$17.85

For tax year 1984, Mr. Davis testified that he again utilized the sale market as a basis for comparison but, after doing so, determined that the utilization of the land sales method produced results which better reflected the true value of the subject property.

Based on the evidence submitted by respondent, it is clear that the District's use of the land sales method to estimate the market value of the land of the subject property was valid for both tax years at issue. The comparables utilized in the land sales study were in fact comparable to the subject property in terms of location, zoning, and other like factors, and accordingly, were properly used as a basis for comparison for valuation purposes. The Court is further persuaded that the respondent's assessment was valid in that the assessment value assigned to the land by respondent for each tax year did not differ substantially from the land assessments ~~amounts~~ petitioner himself previously asserted before the Board as the true value.

Thus, the Court has determined that the District's assessment of the estimated market value of the land of the subject property for tax years 1982 and 1983 was valid. The petitioner has failed to prove by competent evidence that the final assessments of the land of the subject property were reached through arbitrary and capricious means.

B. IMPROVEMENTS.

The subject property, as stated in the facts, is improved by an uninhabitable four story apartment house which fronts 18th Street and a small retail store which is located on Florida Avenue. Respondent's assessor testified at trial that he considered the improvements to have only shell value and he therefore assigned only a nominal value.

For tax year 1983, a value of $1,050.00 was assigned to the improvements. For tax year 1984, a value of $5,050.00 was assigned. When questioned as to why the value of the improvements was increased for the second tax year, Mr. Davis testified that it was his view that his earlier estimates had been too low. Respondent has presented no documentary evidence to justify the assessment increase for tax year 1984 or the under-estimated assessment for 1983.

While petitioner has failed to sustain its burden of proof, this Court, pursuant to D.C. Code Section 47-3303 has the power to reduce an assessment notwithstanding an absence of a showing that the assessment is arbitrary or capricious or so at variance with true value as to be actually or constructively fraudulent. Watrous v. District of Columbia, 135 F.2d 654 (D.C. Cir. 1943).

It is apparent to this Court that the improvements were assigned an increased value merely to increase the amount of the assessment. Thus, petitioner has carried its burden in proving that the assessment assigned to the improvements in

This Court, having made its findings of fact and conclusions of law, this 7th day of September, 1984,

ORDERS, that the tax year 1983 assessment for the subject property made under authority of D.C. Code, be and hereby is, affirmed. And it is

FURTHER ORDERED, that the full market value for the land and improvements of the subject property, designated as Lot 47 of Square 131, for purposes of District of Columbia real property taxation for the tax year 1984 is as follows:

Land	$483,450
Improvements	$1,050
Total	$484,500

And it is.

FURTHER ORDERED, that Petitioner, John Rutkowsky, is entitled to a refund of the taxes paid, with interest, for tax year 1984 to the extent that it was improperly over-assessed by the District, and that petitioner shall present an order for refund within 10 days of filing of this Order.

JUDGE IRALINE G. BARNES

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