

Opinion
No. 1243

FEB 20 1986

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

CUSTOMERS PARKING, INC., et al., :
: Petitioners, :
: v. : Tax Docket No. 3406-84
: DISTRICT OF COLUMBIA, :
: Respondent. :

O R D E R

This matter came before the Court for trial. Petitioners, Customers Parking, Inc., Downtown Parking Corporation, L. B. Doggett, Jr., and Gladys Doggett, together the owners of 22 lots in Square 375, challenged each lot's assessment for Tax Year 1984. Respondent, District of Columbia, valued the subject property for tax assessment purposes for Tax Year 1984 at \$10,086,906. Petitioners appealed to the Board of Equalization and Review, which sustained the assessment. Petitioners paid the tax of \$214,851.10 and timely filed this appeal. This Court has jurisdiction over this appeal pursuant to D.C. Code §§47-825 and 3303 (1981 edition).

FINDINGS OF FACT

1. This action was brought by Customer Parking, Inc., Downtown Parking, Inc., and L. B. and Gladys Doggett, owners of 22 lots in Square 375. Both James Edson, the District's assessor, and William Harps, the petitioner's expert witness, treated these contiguous lots as under a common ownership, because the Doggetts held controlling shares in the two corporations.

2. The subject property consists of the following lots in Square 375 in the District of Columbia: Lots 67, 70, 71, 89, 90, 91, 92, 809, and 810 with premises known as 919-941 C

Place, N.W., and the improvements thereon; Lots 805, 29, and 30 known as 906 H Street, N.W., and 742-744 9th Street, N.W., and the improvements thereon; Lots 88, 72, 106, 107, 116, 117, 804, 819, 820, and 821 with premises known as 719 10th Street, N.W., 929-931 G Place, N.W., and 914-920 H Street, N.W.

3. On or about March 1, 1983, petitioners received notices of assessment dated February 25, 1983, stating that the total assessment of the subject property for Tax Year 1984 was \$10,806,906.

4. Their appeal to the Board of Equalization and Review in Petition No. 84-1021 was timely filed on April 15, 1983. Oral hearing was held before the Board of Equalization and Review.

By decision dated May 31, 1983, the Board informed petitioner of its decision to sustain the assessment.

5. The taxes and assessment in controversy are real estate taxes and assessment for Tax Year 1984 in the following amounts:

Total Assessments:	\$10,086,906.00
Total Taxes:	\$ 214,851.10

6. The taxes in the amount of \$214,851.10 have been paid in full. First-half taxes in the amount of \$62,968.66 were timely paid on or before September 15, 1983. Second-half taxes in the amount of \$62,968.66 were timely paid on or before March 30, 1984.

7. The subject property contains 47,390 square feet of land which contains frontage on G Place, H Street, and 10th Street, N.W. The site is located in an area zoned C4, with a nominal "Floor Area Ratio" ("FAR") of 8.5. If Lot 88 is not considered in conjunction with the other lots otherwise

fronting only G Place, these other lots would only have an FAR of 4.8.

8. Lot 88 is improved with a two-story office building, originally built in 1913 and renovated in 1982. The building is owner-occupied and is used as the offices of the petitioners herein. The remaining lots are improved only with asphalt and are used in their entirety as parking lots.

9. Petitioners' expert, William Harps, M.A.I., offered expert testimony and a written report setting forth the market value of the subject property as of January 1, 1983, the valuation date for Tax Year 1984. He testified to and set forth in his written report an opinion of value of \$7,000,000 with an allocation of \$6,914,000 to the land and \$86,000 to the improvements. In his analysis of the subject property, Mr. Harps divided the property into six parcels, which he identified as Parcels I through VI. He described the location and other characteristics of each parcel in his written report.

Mr. Harps used an income approach to determining value of Lot 88, the only portion of the subject property improved with an office building used by various business enterprises owned by L. B. Doggett. Relying on the income history of the property and market rents in the area, he stabilized the rental income from the office building as of January 1, 1983. The capitalization rate he chose was a low rate of nine percent. Mr. Harps testified that the capitalization rate could be twelve to thirteen percent, but because the property value would increase over time and the property could be developed in seven and one-half years, he chose the lower capitalization rate to reflect this future income earning potential.

Mr. Harps used a comparable sales approach to value the remaining land of the subject property; 21 of the total 22 lots were considered to be exclusively land as of the valuation date, although they had asphalt coatings and were used as parking lots. Mr. Harps chose sales of land in the District of Columbia in the vicinity of the subject property requiring the fewest number of adjustments. He made certain necessary adjustments to all of his comparable sales and calculated the market value of the subject property as of the valuation date based on these comparable sales. He testified that, using the comparable sales method, the value of the subject property as of January 1, 1983, was \$6,245,000.

Mr. Harps also analyzed the subject property as if it were ready to be developed on the valuation date, January 1, 1983. He testified that if the property could have been economically developed on January 1, 1983, instead of seven and one-half years later, its value as of the valuation date would have been \$8,809,000. He reconciled these two values to arrive at a final opinion of market value for the subject property as of January 1, 1983, valuation date of \$7,000,000.

11. Petitioners also called Mr. James Edson, the assessor charged with assessing the subject property for Tax Year 1984. Mr. Edson testified that he had assessed the subject property as if it were owned and controlled by a single entity. He confirmed his prior sworn testimony in deposition and answers to interrogatories, that he had used the comparable sales approach to assess the subject property, but stated, however, that he made no adjustments to the comparable sales for location, assemblage, FAR variations, or whether the properties had been improved on the date of sale.

12. Respondent's case consisted of the testimony of Mr. Edson. He stated that he arrived at the assessment values

by use of the comparable sales or market data approach. He testified that for Tax Year 1984 he was the assessor for all commercial property bounded by 12th Street and North Capitol and Massachusetts Avenue and Pennsylvania Avenue. In this assignment, he collected sales and recorded them on a spread sheet in order to follow market activity. He said that he kept about 250 sales going back four or five years. By this method, he could observe land sale patterns not simply for any one square but for his total assignment area. He testified that once a year, he reviewed this data with the staff of the Standards and Review Division of the Department, and with them worked out particular land rates which then were adjusted to reflect the peculiarities of the subject area. He tested these rates by use of comparable sales. In this case, the assessor used seven sales. Five sales (sales 1, 2, 5, 6, and 7) reflected sales in 1982. These ranged from \$261-\$600 per square feet, or using points FAR of 30.77 to 60.01. Three sales, (sales 4, 5, and 7) represented sales within the immediate area. These ranged from \$241 to \$515 or from 30 to 60 FAR. One of those sales, (sale 7), was a part of the same square. It sold in April, 1982, for \$261.56 or 30.77 per point of FAR. Although separately owned, Mr. Edson testified that it has been used by the Doggetts as a part of their parking operation.

ANALYSIS AND CONCLUSIONS

This Court has consistently recognized that there is no statutory or common-law mandate that respondent follow any one particular approach in valuing real property in this jurisdiction. D.C. Code §41-820 (1981 ed.) states:

In determining estimated market value for various kinds of real property the Mayor shall take into account any factor which might have a bearing

on the value of the real property, mortgage, or other financial considerations, reproduction cost, less accrued depreciation because of age, condition, and other factors, income earning potential (if any), zoning, and government imposed restrictions.

Superior Court review of a tax assessment is de novo necessitating competent evidence to prove the matters at issue. The burden of proof is on the petitioner to provide evidence sufficient to prove that assessments are arbitrary, excessive or otherwise erroneous and unlawful. Superior Court Tax Rule 11(d). See, e.g., Wyner v. District of Columbia, 411 A.2d 59, 60 (D.C. 1980). It is not sufficient that the taxpayer present an alternative measure of value. To provide a basis for invalidating an assessment, petitioner must show the assessed value to have been erroneously determined. The correct assessment of the subject property for Tax Year 1984 is the present market value -- the value of benefits associated with the ownership of the property -- determined as of January 1, 1983. The assessment here at issue is the Tax Year 1984 assessment, as sustained by the Board of Equalization and Review, in the amount of \$10,086,906.

Both Mr. Harps and Mr. Edson, in evaluating these properties, implemented the comparable sales approach. However, unlike Mr. Edson, Mr. Harps used the income approach for Lot 88 in his calculations. Petitioners contend that respondent's assessment was arbitrary and excessive in violation of D.C. Code §47-801, et. seq. (1981 ed.). The Court finds that petitioners provided credible evidence that the value of the subject property as determined by applying the comparable sales approach is \$7,000,000 for Tax Year 1984 and have thus met their burden in challenging the assessment. Upon review

of the testimony and documentation presented, the Court concludes that the income and comparable sales approaches were properly utilized by petitioners' expert, using undisputed sales data, thereby producing an accurate estimate of market value.

Real property in the District of Columbia must be assessed at its "estimated market value." D.C. Code §47-820(a) (1981 ed.); 9 D.C.M.R. §306.1. Estimated market value is defined as the price a willing buyer would pay a willing seller, neither being in a position to take advantage of the exigencies of the other. D.C. Code §47-802(4) (1981 ed.).

Respondent's assessor, Mr. Edson, stated in his answers to interrogatories and under oath in his deposition that he had used the comparable sales approach. A list of "comparable" sales on which the assessor relied was provided by the assessor. These sales, which were presented by respondent as "comparable", were in fact not comparable at all. Petitioners' expert, Mr. Harps, examined each "comparable" used by Mr. Edson and testified that none were in fact comparable. Even allowing for the noncomparability of these sales, the Court finds that the assessor failed to take into consideration irregularly shaped sites, varying commercial potential, varying FAR's, varying frontages, values of improvements, and the fact that some of the sales allegedly used by the assessor were to complete assemblages of larger sites.

In addition, the assessor's use of the comparable sales method did not comply with the regulations governing the use of that method. Under these regulations, the assessor was required to use sales of "reasonably comparable properties" and to compare them "by property type." 9 D.C.M.R. §307.3. The assessor did not use "reasonably comparable properties" as shown by petitioners' expert's testimony. Nor did the

assessor distinguish between property types; Mr. Edson used improved as well as unimproved properties and made no adjustments for the sale price of improvements included in the total sales prices.

The Court is persuaded that the District offered very little evidence that the method used by the assessor could yield the assessed market value of the property. Evidence presented by petitioners through Mr. Harps demonstrated that the assessor's method did not yield the true market value of the property. Mr. Harps' report provides a clear, thorough and persuasive analysis of the property's value. He properly applied the comparable sales method to the subject property and made appropriate adjustments for location and other aforementioned factors which would detract from the property's value. The Court cautions the District that while certain conscientious steps were taken by the assessor in arriving at a property value, mere assignment of a value within a previously determined range without adequate documentation or equalization for the specific property being assessed is no substitute. The target range policy implemented by the Department of Finance and Revenue does not relieve each assessor of making appropriate adjustments where required.

The Court finds that the assessment was arbitrary, capricious, and improper. Therefore the assessment of the subject property for Tax Year 1984 was invalid and the fair market value of the subject property as of January 1, 1983, should be reduced to \$7,000,000 of which \$6,914,000 is allocated to the land and \$86,000 is allocated to the improvements.

Wherefore, it is this 20th day of February, 1986,

ORDERED that the respondent shall modify the assessment record card to reflect the value of \$7,000,000 for Tax Year 1984, of which \$6,914,000 shall be allocated to the land and \$86,000 shall be allocated to the improvements, and for all subsequent tax years until a lawful reassessment has been performed and shall refund to petitioners, with interest, the excess taxes which have been unlawfully collected for Tax Year 1984 and subsequent tax years; and it is

FURTHER ORDERED that the petitioners present a proposed order for refund, with interest, no later than ten days from the date this Order is signed.


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