

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

Opinion No.
1269

B AND W MANAGEMENT, et al. *
Petitioners, *
v. * Tax Docket Nos.
3859-86
3711-86
DISTRICT OF COLUMBIA *
Respondent. *

ORDER

This matter came before the Court for trial on Petitioners' appeal of its Tax Year 1986 and 1987 assessments for an alley lot located at 24th Street, Northwest, between N and M Streets, and legally described as Lot 880 in Square 24. After a District of Columbia alley closing, Petitioners came into possession of this alley lot through their ownership of the abutting Lot 112 (formally known as Lot 834). Simultaneously with the closing of several alleys surrounding the parent lot (834), the newly created alleys were rededicated for public use under a Restrictive Covenant and Easement Agreement and recorded by the D. C. Recorder of Deeds on or about October 5, 1984. This alley closing (Lot 880) completed the closing of Square 24's entire public alley system.

Lot 880 was originally assessed at a value of \$1,027,800 for Tax Year 1986. Petitioners made a timely appeal to the Board of Equalization and Review [hereinafter the Board] which, following a hearing, reduced the assessment to \$232,968. For Tax Year 1987, Lot 880 was originally assessed at a value of \$415,460. Petitioners likewise made a timely appeal to the Board which, following a hearing, reduced the assessment to \$232,968. Petitioners timely prepaid all taxes and brought this appeal.

Petitioners maintain that Lot 880 has no useable commercial and residential FAR square footage, thus rendering the property as having no market value. They urge the Court to assess the property at zero dollars for both Tax Years in question. Respondent, however, argues that notwithstanding the property's lack of useable commercial or residential FAR, the land rate attributable to Petitioners' abutting Lot 112 was the proper way to value the alley in question. Respondent therefore maintains that the assessed value for both Tax Years 1986 and 1987 should be \$1,027,800 (using the same land rate as the abutting Lot 112). Upon consideration of the evidence adduced at trial, pleadings and arguments of counsel, the Court makes the following:

FINDINGS OF FACT

1. The subject property is a 6,852 square foot lot, zoned CR (Commercial/Residential). The subject property borders one and a half (1½) sides and the rear of Lot 112. The property is a paved alley.

2. Petitioners did not purchase Lot 880, but acquired it as the owner of an abutting Lot 112 (formally known as Lot 834) from an alley closing by the District of Columbia in October, 1984.

3. All abutting property owners of the October, 1984 alley closing agreed to keep their alley lots open to vehicular traffic. Other property owners in Square 24 who acquired alley lots due to the closing of the entire public alley system had to agree to dedicate their alleys for pedestrian traffic.

4. Although Square 24's entire public alley system has been closed, the only alley lots that have not been

incorporated into the abutting lots are the ones from the October, 1984 alley closing. Alley lots were incorporated into abutting lots even though they were dedicated for public use to pedestrian and/or vehicular traffic. Such incorporation of lots is solely within the discretion of the owner of these respective lots. The responsible assessor, Phillip Appelbaum, testified that the same land rate was used for these alley lots even if they were dedicated to public use.

5. Approximately one month after Lot 880 was created, Petitioners sold the commercial FAR rights to the Bureau of National Affairs, another lot owner in Square 24, for \$800,000. Lot 880 still retained its residential FAR. This sale was based on a prior agreement and litigation between the Petitioners and the Bureau of National Affairs.

6. As owners of Lot 112, Petitioners entered into a 99 year ground lease agreement with the Kaempfer Company in November, 1983. Also leased in this agreement was all the rights and interest to any alley, excluding the sale of the FAR rights to the Bureau of National Affairs which had already been negotiated. The lease agreement was signed in October, 1984.

7. Lot 880 came into existence in October, 1984 just after the lease agreement was signed. The Assessor's Office, however, was not notified of its existence until March, 1985.

8. Petitioners, as owners of Lot 112 (834), applied for a Planned Unit Development (PUD) for that lot. The application stated that the PUD office/retail building would have substantial open spaces at the rear and north sides of the building. Part of the substantial open spaces

to which they refer are Lot 880 or the alley lot. The PUD application was approved in April, 1985 giving the Petitioners 4.5 commercial FAR for Lot 112 (834) rather than the previous 3.0 commercial FAR. This created a financial advantage to the Petitioners and the Kaempfer Company.

9. Prior to Tax Year 1986, Lot 880 was not known to exist to the Assessor's Office, thus there were no prior assessments. In March, 1985 when its existence became known, the responsible assessor, Phillip Appelbaum, valued the property for the 1986 Tax Year using January 1, 1985 as the valuation date.

10. Mr. Appelbaum valued the property for Tax Year 1986 using the same land rate as the abutting lot; he considered Lot 880 to be part of the total site including Lot 112 as the parent lot. The assessor used the land rates that had been determined through land sales in the area plus adjustment factors. For Tax Year 1986, Mr. Appelbaum's assessment was \$1,027,800 or \$150 per square foot. Although he testified he did not know of the sale of the commercial FAR to the Bureau of National Affairs, that would not affect his assessment. In addition, he was unaware of the lease agreement or the PUD application for Lot 112 (834).

11. Lot 880 provides the ingress and egress to Lot 112's parking spaces and underground parking garage; it provides for a rear entrance to Lot 112; it allows Lot 112 to have all of its office space in the front of the building rather than allotting that space for the entrance to a parking garage.

12. Mr. Appelbaum testified that, in general, land rates did not change from Tax Years 1986 to 1987.

Affairs has rendered the alley lot useless and thereby having a zero dollar value.

Respondent maintains that the assessor was correct to treat Lot 880 as part of a total site which included Lot 112 (834) and Lot 880. Respondent argues that because of the PUD and the lease agreement with the Kaempfer Company, the assessor was justified in his treatment of the property as one site. They argue that the alley lot provides considerable benefits to the abutting lot. Moreover, Respondent maintains that as a result of the closing of the alleys, the building on the parent Lot 112 (834) (as well as the other buildings adjacent to these alleys) received certain amenities, such as light and air and the like.

This case is one of first impression in this jurisdiction. There exists two factors that the assessor must consider. (1) Lot 880 has no commercial FAR to be transferred; (2) Lot 880 as a public alley has certain easement restrictions which may affect market value.

D.C. Code 1981, Section 47-820 states:

In determining estimated market value for various kinds of real property, the Mayor [through the Assessor] shall take into account any factor which might have a bearing on the market value of the real property including, but not limited to, sales information on similar types of 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.
Emphasis Added.

The fact that Lot 880 has no commercial FAR is a factor that impacts on the Lot's market value. The consideration of this fact, especially as it applies to a prime commercial area of this city, is consistent with § 47-820 of D.C. Code, i.e., as factors to take into account in

determining market value. Thus, this Court agrees with Petitioners that the assessor should have considered this factor in arriving at the Lot's market value.

The market value in question is Lot 880 and not Lot 112 (834). There is no dispute that Lot 880, with all its amenities to the building on Lot 112 (834) thereby increases the market value of Lot 112. Such an increase in market value would undoubtedly be reflected in the assessed value of this "parent lot." Lot 880, like the other alley lots in Square 24 was dedicated for public use for pedestrian and/or vehicular traffic. Mr. Appelbaum testified that he used the same land rate for this alley lot notwithstanding its dedication to public use and the Restrictive Covenant and Easement Agreement.

In addressing a similar assessment issue, the New Jersey Court in Borough of Englewood Cliffs v. Estate of Allison, 69 N.J. Super. 514, 174 A.2d 631 (App. Denied 1961) held that the value of the easement (i.e., for a public park) should be deducted from the fair market value of the land. This holding was limited to cases where the public enjoys free access to the property (as with Lot 880) and not where the taxpayer retains exclusive access. A price of property which is burdened by an easement for the benefit of an adjoining piece of property (Lot 112 (834)) should not be assessed as though the easement had no existence. The burden of the easement is an element of value to be subtracted when making an assessment. Id. at 638. See also Village of Ridgewood v. Bolger Foundation, 104 N.J. 337, 517 A.2d 135 (1986).

All these factors considered, the Court determines that Mr. Appelbaum's assessed value of \$1,027,800 and \$719,460 was in error. Lot 880 must stand on its own for purposes of its tax assessment. The Court further

determines that Lot 880 has some market value and thus rejects Petitioners' claim of zero dollar value. The Board's reduction of the value to \$232,968 is reasonable in light of all these factors. Petitioners have not met their burden of challenging the Board's assessed value as being unreasonable, arbitrary or capricious or not according to law.

WHEREFORE it is this 24th day of March, 1988,

ORDERED that the assessed value of Lot 880 for Tax Year 1986 is \$232,968, and the assessed value of Lot 880 for Tax Year 1987 is \$232,968.

SO ORDERED.


JUDGE IRALINE G. BARNES

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