

BEFORE THE
LOUISIANA TAX COMMISSION

CLUB NEW ORLEANS, INC.
V. BOARD OF REVIEW

DOCKET NUMBER 04-22172-001 and 04-22172-002

In re: Appeal of Orleans Parish (2nd M.D.) Board of Review Determination.

(Ruling Issued on the 6th day of July, 2005)

I. OVERVIEW

This matter came to be heard on the 2nd day of March, 2005. Petitioner, Club New Orleans, Inc. is challenging the decision of the Orleans Parish Board of Review. The Petitioner is appealing the correctness of the assessment on land and improvements located at 515 Toulouse Street, New Orleans, Louisiana 70130 and 516 Wilkinson Street, New Orleans, Louisiana 70130, collectively the subject of Assessment No. 2-07-1-009-09.

II. JURISDICTIONAL STATEMENT

The Louisiana Tax Commission exercises jurisdiction in this matter pursuant to the 1974 Louisiana Constitution, Article VII Section 18(E) which provides in pertinent part:

(E) Review. The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.

III. APPLICABLE LAW

Pursuant to constitutional authority found at La. Const. art. VII, §18, each assessor is charged with the responsibility of determining the fair market value of all property subject to taxation within his parish or district, at intervals of not more than four years. In addition, the Louisiana Constitution requires that the fair market value be determined in accordance with criteria established by law and applied uniformly throughout the state. La. Const. art. VII, §18.

La. R.S. 47:2321 defines fair market value as follows:

Fair market value is the price for property which would be agreed upon between a willing and informed buyer and a willing and informed seller under usual and ordinary circumstances; it shall be the highest price estimated in terms of money which property will bring if exposed for sale on the open market with reasonable time allowed to find a purchaser who is buying with knowledge of all the uses and purposes to which the property is best adapted and for which it can be legally used.

La. R.S. 47:2323C provides as follows:

The fair market value of real and personal property shall be determined by the following generally recognized appraisal procedures: the market approach, the cost approach, and/or the income approach.

- (1) In utilizing the market approach, the assessor shall use an appraisal technique in which the market value estimate is predicated upon prices paid in actual market transactions and current listings.
- (2) In utilizing the cost approach, the assessor shall use a method in which the value of a property is derived by estimating the replacement or reproduction cost of the improvements; deducting therefrom the estimated depreciation; and then adding the market value of the land, if any.
- (3) In utilizing the income approach, the assessor shall use an appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income.

IV. PROCEDURAL BACKGROUND

In accordance with La. R.S. 47:1992, the Orleans Parish Assessor for the 2nd Municipal District caused to be prepared lists showing the assessment of immovable and movable property in and for the district. The lists were made available daily for public inspection for fifteen (15) days. Thereafter, the Orleans Board of Review considered the complaints of persons desiring to be heard provided that they had timely filed the requisite appeal forms. The Board of Review held a duly noticed public hearing wherein it upheld the Fair Market Valuation of the subject property.

Pursuant to La. R.S. 47:1989 and 47:1992, Club New Orleans, LLC ("Taxpayer") timely filed appeals to the Louisiana Tax Commission seeking administrative review of the Orleans Parish Board of Review's determination of the assessment on the properties located at 515 Toulouse Street, New Orleans, Louisiana 70130 and 516 Wilkinson Street, New Orleans, Louisiana 70130, collectively the subject of Assessment No. 2-07-1-009-09.

V. EVIDENCE PRESENTED BY THE PARTIES

A. TAXPAYER

In support of the petition, the Taxpayer prefiled two (2) LTC Appeal Forms 3103.A, with accompanying LTC Forms 3103.B, Appointment of Taxpayer Agent. The Taxpayer also prefiled exhibits which were admitted into the record at the LTC hearing.

The subject property is located in the French Quarter of New Orleans, Louisiana having a municipal address of 515 Toulouse St. The building has been used for purposes of a health club operating as Club New Orleans.

The Taxpayer offered testimony through its General Manager, Gene Adams that in June 2003, the Taxpayer purchased the property it had been renting since it first started business in 1971. The purchase price for the property in June 2003 was \$1,200,000. Adams testified that there have been no renovations or additions to the building since its purchase in 2003.

The Taxpayer contends that the 2nd M.D. Assessor, Claude Maubertret has selectively reassessed this property in a different manner than other similarly situated properties in the

2nd M.D. and more specifically, in the general vicinity of the subject property. The Taxpayer offered evidence that the assessed values of similar properties had increased 15% in 2005 but that the assessed value of the subject property had increased 852% from the previous year. Adams testified that the assessed value of the subject property for tax year 2004 Orleans was \$18,660 but that the assessed value for tax year 2005 Orleans was \$177,660.

Adams offered testimony of the following values obtained from the Orleans Parish tax rolls:

Property Location	2004 Assessed Value	2005 Assessed Value	Dollar Value Increase of Assessment	Percentage Increase of Assessment
600 Chartres St.	16,400	18,870	2,470	15%
610 Chartres St.	25,580	29,420	3,840	15%
616 Chartres St.	7,310	8,410	1,100	15%
517 Toulouse St.	445,930	445,930	-0-	-0-
533 Toulouse St.	35,480	40,810	5,330	15%
537 Toulouse St.	18,020	20,730	2,710	15%
501 Decatur St.	74,690	85,840	11,150	15%
535 Decatur St.	200,000	230,000	30,000	15%
515 Toulouse St.	18,660	177,660	159,000	852%

The Taxpayer contends that the assessed value of the subject property is based upon the sales price paid in June 2003. The taxpayer contends that the law requires that the assessment process be fair and equitable and that until all similar properties are fairly valued, an increase in the assessed value of the subject property beyond the 2004 assessed valuation is unlawful.

B. ASSESSOR

The Orleans Assessor, Claude Mauberret did not submit any exhibits. Assessor Mauberret did testify on his behalf at the LTC hearing.

Assessor Mauberret testified that the assessed value of the subject property was based upon the sale price paid for the property. Assessor Mauberret also testified that for purposes of determining the assessed value for 2005 of other parcels in the same geographical area he simply increased the value of the land and improvements by 15%. No testimony was offered by Mauberret to dispute the evidence offered by the Taxpayer that the assessed values of similarly situated properties were increased by 15% while the assessed value of the subject property increased 852% from 2004 to 2005.

VI. FAIR MARKET VALUE PRESENTATION

As previously noted, pursuant to the Louisiana Constitution, Article VII, Section 18[A], property subject to ad valorem taxation is listed on the assessment rolls, at its assessed valuation, which is a percentage of its Fair Market Value.

Prior to the subject ad valorem tax appeal, the Louisiana Tax Commission directed its staff appraiser, David M. Soublet, to independently appraise the subject properties. The LTC staff appraisal was available to all parties ten (10) days prior to the hearing and Mr. Soublet was in attendance to present his appraisal and to answer any questions. Mr. Soublet's appraisal, January 1, 2003 effective date, resulted in a Cost Approach Value of

\$1,090,800, a Market (Sales Comparison) Approach Value of \$1,951,000 and an Income Approach of \$538,000. Mr. Soublet did not review the assessed values of any other properties.

The following Fair Market Values were presented to the Commission for consideration:

	<u>LAND</u>	<u>IMPROVEMENTS</u>	<u>TOTAL</u>
Assessor			
04-22172-001	\$ 54,900	\$1,147,800	\$1,202,700
04-22172-002	\$ 47,300		\$ 47,300
Total	\$102,200	\$1,147,800	\$1,250,000
Taxpayer			
04-22172-001	\$47,700	\$ 92,600	\$ 140,300
04-22172-002	\$41,100		\$ 41,100
Total	\$88,800	\$ 92,600	\$ 181,400
Board of Review			
04-22172-001	\$ 54,900	\$1,147,800	\$1,202,700
04-22172-002	\$ 47,300		\$ 47,300
Total	\$102,200	\$1,147,800	\$1,250,000
LTC Appraisal			
04-22172-001	\$210,700	\$1,560,800	\$1,771,500
04-22172-002	\$179,500		\$ 179,500
Total	\$390,200	\$1,560,800	\$1,951,000

VII. DISCUSSION

Article VII Section 18(E) of the Louisiana Constitution provides, among other things, that correctness of assessments by the assessor shall be subject to review first by the parish governing authority and then by the Louisiana Tax Commission or its successor. A correctness of assessment challenge is a term of art referring to the right of the taxpayer to seek adjustments to the valuation of taxable property. See *Westminster Management Corp. v. Mitchell*, 525 So.2d 1171,1173 (La.App. 4th Cir.).

In the instant case, the Petitioner is challenging the correctness of the land valuation, as well as the assessment of the improvements. As stated in *Westminster Management Corp.*, "correctness" includes both the standard of true value and the uniformity and equality required by law. The achievement of both is the goal, the absence of either creates incorrectness. That uniformity and equality are given higher priority than true value does not make an attack on the former rather than the latter something other than a challenge for "correctness." *Id.*, at 1173.

In support of its claim the taxpayer has alleged that the increase in the assessed value of the subject property by 852% while the assessed value of similar properties were increased by only 15% is in violation of the taxpayers rite to equal protection, citing *Allegheny Pittsburg Coal Co. v. County Commission*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed. 2nd 688 (1989), which held that the "intentional systematic undervaluation by state officials" of comparable property can rise to the level of a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. However, the LTC finds that it is not necessary to determine whether the disparity in valuation alleged by the Taxpayer rises to the level of intentional, systematic undervaluation as this matter can be resolved on non-constitutional grounds.

The LTC finds that the assessed value of the subject property as determined by the Assessor was based upon the sales price for the subject property. LTC Rules and Regulations §303(B)(2) provide that an Assessor may reappraise property based on transfers more often than every four years, if transfers indicate that property in all or a part of the parish/district was appraised inaccurately or was not uniformly appraised during the prior reappraisal. However, the reappraisal shall not be applied on a parcel by parcel basis. Based upon the evidence presented, the LTC finds that the subject property was reappraised based on its sales price in violation of LTC Rules & Regulations §303.

The LTC hereby orders that for 2005 the assessed value of the property located at 515 Toulouse Street and 516 Wilkinson Street, New Orleans, Louisiana 70130, Orleans Parish Assessment No. 2-07-1-009-09 including land and improvements is to be a 15% increase of the assessed value of the property from 2004.

	<u>LAND</u>	<u>IMPROVEMENTS</u>	<u>TOTAL</u>
516 Wilkinson	\$41,100 (X 15%) \$47,265	\$0.00	\$41,100 (X 15%) \$47,265
515 Toulouse	\$47,700 (X 15%) \$54,855	\$92,600 (X 15%) \$106,490	\$140,300 (X 15%) \$161,345

The Commission would specifically note the magnitude of disparity revealed by the difference between sales-price based assessed valuation of the subject property and assessed value assigned to other properties seems to indicate that the Assessor is not reaching fair market value on a consistent basis. Accordingly, the Assessor is also directed to reappraise all similarly situated taxpayers for 2006.

VIII. COMMISSION DECISION

The Commission considered the matter at its July 6, 2005 Open Meeting after having placed the matter under advisement. On motion of Commissioner Brupbacher and seconded by Commissioner Naquin, the Commission by unanimous vote, held that the Fair Market Value determination for the property subject of Orleans Parish Assessment No. Orleans Parish Assessment No. 2-07-1-009-09 and located at 515 Toulouse Street, New Orleans, Louisiana 70130 is in the amount of \$161,345 and 516 Wilkinson Street, New Orleans, Louisiana 70130, including land and improvements, is in the amount of \$47,265.

IT IS THEREFORE ORDERED THAT:

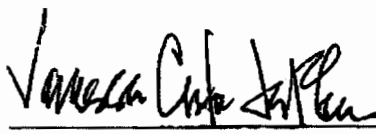
1. The total fair market value, including land and improvements, for property that is the subject of Orleans Parish Assessment No. 2-07-1-009-09 is \$208,610.
2. The Assessor for the 2nd Municipal District shall reappraise all similarly situated property for purposes of determining fair market value for Tax Year 2007, with an effective date of January 1, 2007.
3. This Order shall be effective upon the date of issuance.

**BY ORDER OF THE
LOUISIANA TAX COMMISSION
July 6, 2005**

/s/ Elizabeth L. Guglielmo
Chairman Elizabeth L. Guglielmo
District II

/s/ Kenneth P. Naquin, Jr.
Commissioner Kenneth P. Naquin, Jr.
District III

/s/ Scott Brupbacher
Commissioner Scott Brupbacher
District II



Vanessa Caston LaFleur, Esq.
General Counsel

Absent
Commissioner Jill A. Giberga
District I

Absent
Commissioner Richard Young
District IV