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Record No. 4755

In the
Supreme Court of Appeals of Virginia
at Richmond

TUCKAHOE WOMAN'S CLUB

v.

CITY OF RICHMOND, ET AL., ETC.

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND.

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

NOTICE TO COUNSEL

This case probably will be called at the session of court to
be held. NOV 1957

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

Howard G. Turner, Clerk

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4755

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 14th day of June, 1957.

TUCKAHOE WOMAN'S CLUB, Plaintiff in Error,

against

CITY OF RICHMOND, ET AL., ETC., Defendants in Error.

From the Hustings Court of the City of Richmond.

Upon the petition of The Tuckahoe Woman's Club a writ of error is awarded it from an order entered by the Hustings Court of the City of Richmond on the 19th day of February, 1957, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and the City of Richmond and others were defendants; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said Hustings Court in the penalty of three hundred dollars, with condition as the law directs.

Supreme Court of Appeals of Virginia

RECORD

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: Thomas Miller, Clerk.

You are hereby notified that The Tuckahoe Woman's Club, the petitioner herein, will apply to the Supreme Court of Appeals of Virginia, or to one of the Justices thereof, for a Writ of Error from the final judgment rendered by the Hustings Court of the City of Richmond on the 19th day of February, 1957.

The Tuckahoe Woman's Club makes the following Assignments of Error:

1. The Court erred in holding that the City of Richmond has assessed the real estate and improvements of The Tuckahoe Woman's Club at their fair market value.

2. The Court erred in sustaining the principles of assessment used by the City of Richmond in determining what the City alleges is the fair market value of the real estate and improvements of The Tuckahoe Woman's Club.

3. The Court erred in not finding that the fair market value of the real estate and improvements of The Tuckahoe Woman's Club was \$85,000.00 or less.

page 2 } 4. The Court erred in disregarding the evidence of all witnesses that the real estate and improvements of The Tuckahoe Woman's Club, if sold, would sell for not more than \$85,000.00.

5. Other errors apparent on the face of the record.

THE TUCKAHOE WOMAN'S CLUB.

By E. BALLARD BAKER.

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page 5 }

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FRANK W. HEINDL,
a witness called by and on behalf of the Petitioner, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Baker:

Q. Please give us your name.

A. Frank W. Heindl.

Q. And you live in Richmond?

A. I live in Richmond, 4304 Sulgrave Road.

Q. What is your occupation?

A. I am with the firm of Elam and Funsten, Realtors.

Q. What is your principal function with the firm of Elam and Funsten?

A. I am President of the firm.

page 6 } Q. How long have you been in the real estate business in Richmond, Mr. Heindl?

A. For the past thirty years.

Q. And you have engaged in the business as a general realtor?

A. That's right.

Q. Buying and selling real estate?

A. Not too much buying; but trying to sell.

Q. Have you done any appraising of properties?

A. Quite a bit.

Q. What is your experience along that line?

A. Well, I have been appraising property possibly for the last twenty years. I have done appraising for the City of Richmond, the Federal government, the state, various counties, most of the local banks, four or five large insurance companies, lawyers, individuals and corporations.

Q. Are you familiar with the property known as Tuckahoe Woman's Club?

A. I am.

Q. Can you tell us where it is located?

A. At the corner of Dover Road and Avon Road, just west of the offices of Windsor Farms, in Windsor Farms
page 7 } in Richmond.

Q. Has your real estate experience included the appraising of real estate in Windsor Farms itself?

A. It has.

Q. Have you been through and inspected the Tuckahoe Woman's Club?

Frank W. Heindl.

A. I have.

Q. Did you do this during the year 1955?

A. Yes.

Q. Are you familiar with the general neighborhood surrounding the club?

A. Yes, I am.

Q. Tell us briefly what that is.

A. Well, the general neighborhood surrounding the club is mostly residential. However, the property to the east and adjoining the club is zoned G Local Business.

Q. You say you went through the building in 1955. Did you do this for any particular purpose?

A. The purpose of attempting to establish a fair market value of the property, what it would sell for.

Q. Are you aware of the cost of construction of that building?

page 8 } A. I am.

Q. Tell us what that was.

A. At the time we made our appraisal, I was informed that the building cost \$124,500.00 and the land cost \$10,000.00.

Q. Do you know for what use this building is adapted?

A. I think it is adapted primarily for the use for which it was constructed, a club building.

Q. Do you know of your own knowledge what the Tuckahoe Woman's Club is?

A. Well, my wife is a member. I know it is a club of women that get together and they do—I don't know just what they do.

Q. It is a woman's club, though?

A. They bring artists here and have programs for it all throughout the year,—a social club, I would say.

Q. Is it not a profit-making organization for the members?

A. I cannot answer that. I don't know. I don't think it is.

Q. On the basis of your investigation of this building, page 9 } ing, Mr. Heindl, and based upon your experience as an appraiser and real estate dealer, what price do you think this building would bring if it were sold to a willing purchaser by the Tuckahoe Woman's Club, at a free sale but they were not compelled to sell?

A. Well, to begin with the building is what we term a special purpose building. It would not be an easy building to sell. I think it is a matter purely of judgment as to finding a purchaser who is able to use the building. In my judgment

Frank W. Heindl.

or opinion I don't believe you would get more than \$75,000.00 to maybe \$80,000.00 or \$85,000.00.

Q. Do you know whether this building is restricted in its use?

A. I understand it is restricted for club purposes only, that the land was purchased with that understanding, it could not be used for any other purpose.

page 10 } CROSS EXAMINATION.

By Mr. McGuire:

Q. Mr. Heindl, the value you have placed on this property, I gather, is what you think the property would probably bring if placed on the general market today. Is that right?

A. That's right.

Q. What do you think it would bring if some similar group wanted it for a club?

A. Well, we tried to explore that too. If some similar group wanted it for a club, I don't believe these ladies would give it up unless they were forced to, unless the cost of operating it was such they could not carry it on. If they could not, I don't know of any group that could operate it either.

Q. But if there were such a group, what do you think the building would bring?

A. From \$75,000.00 to \$80,000.00.

Q. Even for use as a club?

A. For use as a club.

Q. What do you think is the value to the Tuckahoe Woman's Club?

page 11 } A. I would hesitate to attempt to answer that:

Q. I will ask you to try, please.

A. I cannot think for the Tuckahoe Woman's Club. I cannot imagine. I imagine that could be answered by what they put in it. They knew what they were going into when they built it.

Q. Suppose it were necessary for the City of Richmond to acquire this property for public use and you were serving on the condemnation commission, what would you say would be the just compensation to the Woman's Club?

A. You are familiar with the Mosque. You know what it cost to build; you know what the city paid for it when they purchased it.

Q. That wasn't what I asked you.

Frank W. Heindl.

A. That is a similar situation. That is the best answer I could give. I don't know, as a commissioner, what I would give. I would think it would depend on what instructions we had as to determination of value.

Q. You have served on numerous condemnation commissions, have you not?

page 12 } A. Yes, sir.

Q. Don't you know that the rule is when property is taken for public use the owner must receive just compensation for it?

A. Yes, sir.

Q. What do you think would be just compensation for these ladies if the city acquired the property by condemnation?

A. Well, I don't look at the city in any different light than I do any other individual or purchaser. I think if the city would acquire it by condemnation they should be called on to pay \$75,000.00 to \$85,000.00, unless they took the position that the City Manager has taken in the jail situation, that they want replacement value and the court would so instruct us. Just compensation, I would say, is \$85,000.00.

Q. Even in the eminent domain proceeding, you don't think the property should be valued at more than \$75,000.00 to \$85,000.00. Is that right?

A. That's right.

Q. Mr. Heindl, did the fact that the deed by which these ladies acquired this property restricts its use to
page 13 } club purposes, did that affect your figures?

A. I think it would to some degree, yes, sir.

Q. It did?

A. Yes.

Q. It did enter into your decision as to its value?

A. Yes, sir.

Q. Could you estimate how much you think that reduced your valuation?

A. I think my letter to them of October 12, 1955 is the answer. From \$75,000.00 to \$85,000.00 is what I think the property is worth. How much it affected my value, I don't know. I said a minute ago it is purely a judgment factor.

Q. You think the property is worth no more than \$75,000.00 to \$85,000.00, even to somebody who wanted to buy it and use it as a club?

A. That's right.

Q. You think that is the value to the Tuckahoe Woman's Club?

George B. Snead.

A. I think that is the biggest value to the Tuckahoe Woman's Club?

page 14 } Q. Yes.

A. I cannot answer that. They built it, they knew what it was costing when they built it. What a property is worth to an individual I cannot say. Some people pay way above the market value for various reasons.

Q. What I am talking about is the value of this property for use as a club property. You don't think it is worth more than \$75,000.00 to \$85,000.00 for any purpose?

A. I do not.

Q. And if you were a condemnation commissioner you would award no more than that?

A. I have tried to answer that as best I could.

Q. I want to make sure what your final answer is.

A. My final answer is the same I gave at first.

Q. Would you mind repeating it?

A. I said I looked at the city as I did any other individual.

The city is taking property from these people.

page 15 } Q. That's right, and they don't want to sell, otherwise there would be no condemnation suit.

A. I think in that case sometimes you may get an instruction that would permit you to go above what it would sell for on the open market. If we got such an instruction it would be a higher value. If we did not, I would say the fair market value to the city or anybody else would be from \$75,000.00 to \$85,000.00.

Witness stood aside.

GEORGE B. SNEAD,

a witness called by and on behalf of the Petitioner, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Baker:

Q. Give us your name.

page 16 } A. George B. Snead.

Q. And where do you live?

A. 2708 Grove Avenue.

Q. What is your business?

A. Real estate.

Q. How long have you been in the real estate business?

A. Forty-seven years.

George B. Snead.

Q. What has been your experience? Tell us briefly what your experience has been.

A. It has been general real estate, sales, loans, rents—just general real estate business.

Q. Have you done any appraising?

A. Yes, sir.

Q. Are you familiar with values in the Windsor Farms area?

A. I think so.

Q. Are you familiar with the Tuckahoe Woman's Club building in Windsor Farms?

A. Yes, sir. I made an inspection of it about a year ago.

Q. You made an inspection of it in 1955?

page 17 } A. Yes.

Q. Will you tell us what was the purpose of that inspection?

A. It was to arrive at what I thought was a fair market value for it.

Q. At the time you made that inspection did you know what the cost price of the property was?

A. Yes, sir.

Q. Based on your inspection, what did you determine the fair market value to be?

A. Property of that kind built for a specialized use, it is impossible to pinpoint it as you can homes and other properties that more than one person would be a prospect for. Having in mind from experience that such properties when put on the market invariably have to be sold for less than anything based on a reproduction cost or what it would appear it should be worth, I thought that if it became for sale that the owners would do well to get from \$75,000.00 to \$85,000.00 for it.

Q. Were you aware of the fact that there was a restriction in the deed to this property limiting its use to woman's club purposes?

page 18 } A. Yes, sir.

Q. Are you familiar with the purposes of the Tuckahoe Woman's Club?

A. Yes, generally.

Q. Generally, what would you say their purposes are?

A. Well, social and welfare and general club purposes.

Q. Would you term them civic purposes?

A. Yes, sir.

George B. Snead.

CROSS EXAMINATION.

By Mr. McGuire:

Q. Mr. Snead, I am going to ask you the same questions I asked Mr. Heindl. If I understand you, you have valued this property at the figure you think it would bring if the Tuckahoe Woman's Club were to place it up for sale today or tomorrow. Is that correct?

A. Yes, sir.

page 19 } Q. What do you think it would bring if a similar group wanted it for club property, wanted it to use for the same purposes for which it is now being used?

A. That is hard to answer except from past experience. Similar specialized properties I have seen sold have invariably sold for much less than it would appear they should bring, such as the Mosque and the Branch Home on Monument Avenue. That was given away.

Q. Mr. Snead, there is no similarity to the circumstances of the sale of the Mosque.

A. It was built for a specialized purpose and when that purpose ceases to exist and it became for sale, it demonstrated that you could not get anything like what it cost.

Q. Do you know who sold it to the city?

A. Some insurance company. I don't know exactly.

Q. Do you know how the insurance company acquired it?

A. Under foreclosure.

Q. Do you know when that was done? Was it in the 1930's?

page 20 } A. I think it was, yes, sir. I believe so.

Q. Don't you know that real estate values were very depressed at that time?

A. Yes, but I still am sure no one on earth could get anywhere like what the Mosque cost to build right now when it should sell for twice as much as it cost to build in comparison to similar properties. The same thing is true of the Branch Home.

Q. Don't you know that the Branch Home hasn't been sold, that Mrs. Reynolds is now in the process of giving it to the Richmond Area Community Chest?

A. Yes, but it was offered for sale. We had it for sale.

Q. I still want you to tell me what you think would be the value of the Tuckahoe Woman's Club property if there were another club ready, able and willing to buy it and use it for the same purpose.

George B. Snead.

A. I think the present owners would be fortunate to get \$75,000.00 or \$85,000.00 for it under those circumstances.

Q. What do you think is the value to the present owners for the use to which they are putting it?
page 21 } A. I cannot answer that.

Q. What would you do if you were on the condemnation commission required to make an award of just compensation if the property was being taken by the city for public use?

A. I would do just what I am doing in this instance, taking into consideration my opinion of what it would sell for.

Q. I want you to give a valuation for that purpose.

A. I gave you a valuation, \$75,000.00 to \$85,000.00.

Q. And your answer is the same as to value in a condemnation proceeding, value to the Tuckahoe Woman's Club, value to another club of ladies who wished to use it for the same purpose,—all \$75,000.00?

A. Yes, sir. The only thing I can arrive at is what I think in my opinion is the fair market value.

Q. And you think in all those situations the value would be no more than \$75,000.00?

A. In all of them except the Woman's Club. I cannot say what it is worth to them. There are many people
page 22 } who have homes that would not sell them at twice what you would expect from anybody else.

Q. Don't you know in arriving at fair market value, the consideration is the value to the owner?

A. No, sir, that is not my idea of fair market value.

Q. You didn't give that any consideration in arriving at your figures in this case?

A. No, sir.

Q. Did you give any consideration to the fact that the deed restricts the use of the property for use as a woman's club?

A. Yes, I did.

Q. Did that affect your valuation?

A. Yes, sir, to some extent.

Q. To a material extent?

A. Not too much so because I cannot exactly figure any other use that it might be used for.

Q. But that did have some effect on your appraisal?

A. Some effect, yes.

Witness stood aside.

page 23 } J. LEONARD MOORE,
a witness called by and on behalf of the Petitioner,
after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Baker:

Q. Please state your name.

J. Leonard Moore.

Q. And your occupation?

A. General contractor.

Q. Your residence, Mr. Moore?

A. 4514 Newport Avenue.

Q. How long have you lived in Richmond, Mr. Moore?

A. All my life.

Q. How long have you been in the general contracting business?

A. Thirty years.

Q. Did you build the building known as Tuckahoe Woman's Club?

A. Yes, sir.

page 24 } Q. Tell us what the cost of construction was.

A. In the neighborhood of \$112,000.00. A little bit over, I think.

Q. When was this building erected?

A. Two years ago, I think. It was finished in December, two years ago.

Q. December, 1954, that would be?

A. I think that is correct.

Q. Can you tell us very briefly the nature of the building, what is in it?

A. Well, it is more or less a hull of a building, built for a special purpose, for a woman's club. It has a stage and a small balcony, reception hall and auditorium. It also has a small caterers' kitchen. It isn't equipped for preparing a full course meal.

Q. Are you familiar with fair market values of properties?

Mr. McGuire: I think Mr. Moore is entitled to testify about the cost of the building and describe it but I do not think he can make a valuation.

page 25 } Mr. Baker: I was just beginning to see if he could qualify.

The Court: I think his reply can be accepted on the basis of his knowledge of it.

J. Leonard Moore.

Mr. McGuire: He hasn't been qualified as having any experience or knowledge of the real estate business or valuation of properties.

The Court: I understand that but I think his experience as a contractor; his evidence as to the value of the property can be accepted for what it is worth.

Mr. McGuire: We except to the ruling of the court, for the reasons stated.

By Mr. Baker:

Q. Are you familiar with fair market values of properties in Richmond, Virginia?

A. Reasonably so, yes, sir.

Q. Do you ever do any appraising yourself of properties for sale purposes?

A. I do for myself but not professionally; for friends and some concerns but not on a paid basis.

Q. How much experience have you had in appraising properties in the manner in which you do?

A. Well, I would say several a year in the past twenty years.

Q. Based on your experience, Mr. Moore, what would you say the fair market value of the Tuckahoe Woman's Club is?

A. Well, knowing that it is restricted for club use only, if it were for sale, even if there were a group available that had the money to buy it, I think they would use the restriction for hammering down the cost. Therefore, I don't think the building would possibly sell for more than \$75,000.00.

CROSS EXAMINATION.

By Mr. McGuire:

Q. Do you know the dimensions of this building?

A. Well, it is in such a shape it is hard to give you that. I will say it is about fifty-one hundred square feet.

Q. Do you know the dimensions of the lot?

A. No, sir.

page 27 } Q. Is there any construction being done on that building now?

A. Yes, sir.

Q. What is the nature of that?

A. A coat room and toilet facilities and small reception room.

J. Guthrie Smith.

Q. Can you estimate what that addition will give the area of the building in square feet? What is the size of the addition?

A. I think that is about forty by forty-three, I will say. I am trying to remember. That isn't exact.

Q. Mr. Moore, you think \$75,000.00 is the value of this property to the present owners?

A. That is a hard question for me to answer.

Q. Do you think \$75,000.00 would justly compensate the present owners if the city were acquiring this property in condemnation proceedings?

A. I do, sir.

Q. Did the restriction on the use of the property provided in the deed by which these ladies acquired it, did that materially affect your valuation?

page 28 } A. Somewhat, yes, sir.

Witness stood aside.

J. GUTHRIE SMITH,

a witness called by and on behalf of the Petitioner, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Baker:

Q. Please state your name.

A. J. Guthrie Smith.

Q. And your residence?

A. 4306 Sulgrave Road, Richmond.

Q. Your occupation?

A. Real estate broker.

Q. How long have you been a real estate broker in Richmond?

A. Thirty-six years.

page 29 } Q. Briefly, what is the nature of the business of a real estate broker?

A. All phases of real estate business, building, making loans, appraising properties, selling, renting, and so forth.

Q. Are you familiar with property in Windsor Farms particularly?

A. Yes, sir.

J. Guthrie Smith.

Q. Do you have any particular relationship to Windsor Farms?

A. Not at the present time. I was sales manager and president of the company for twenty-one years.

Q. What years?

A. From 1934 to 1954.

Q. Did you sell a piece of land in Windsor Farms to the Tuckahoe Woman's Club sometime in 1947?

A. I did.

Q. Tell us where that tract of land was located.

A. Located at the corner of Dover Road and Avon Street.

Q. Is that in Windsor Farms?

page 30 } A. Yes, sir.

Q. Do you know the size of that particular piece of land?

A. It is an irregular corner lot. The frontage was one hundred feet.

Q. What was the purchase price?

A. \$10,000.00.

Q. Was there any restriction in the deed as to the use to which the property could be put?

A. Well, there was a great deal of pressure brought on the company by these ladies to sell them a site. We didn't want to break up that block but it was all zoned for business and they prevailed on some of the officers to sell that property and they put the price at \$100.00 a front foot and restricted it strictly to the usual functions of a woman's club, and it so stated in the deed.

Q. You say they bought into a block which is zoned for business?

A. That's right. As a matter of fact, it was the only place we could sell them in Windsor Farms to come within the restrictions.

Q. Have you sold any lots on that same block
page 31 } in this business zone?

A. The remaining frontage the company still owned has been sold to a trust.

Q. You say the remaining frontage has been sold?

A. It was transferred from Windsor Farms Corporation to a foundation which owns all the stock formerly in Windsor Farms.

Q. But this remaining footage has not been sold to anyone for business uses?

J. Guthrie Smith.

A. No.

Q. Are you attempting to sell it?

A. Oh, yes.

Q. Would you like to sell it if you could find a buyer?

A. Oh, yes. We would like to clean up the affairs of the company.

Q. You just haven't found a buyer and that is why it hasn't been sold for business purposes. Is that right?

A. That's right.

Q. Do you feel qualified to express an opinion page 32 } as to the fair market value of a piece of real estate?

A. I think so.

Q. I am referring now particularly to the Tuckahoe Woman's Club. Would you feel qualified to express an opinion as to its value?

A. I haven't been in the building. I was in it shortly after it was built, but I pass it two or three times a week and I don't suppose there has been any change except they are building an addition.

Q. You have never been in it with the idea of inspecting it for appraisal or valuation?

A. Yes. I think I either stated or testified somewhere as to its value some several years ago.

Q. Will you tell us what you think its value is for re-sale purposes?

A. I would like to clarify my answer. My experience in appraising leads me to believe there is no fair market value for clubs or lodges or churches or things of that nature. They do not enjoy a market like other types of property. When you ask for fair market value of them, you more or less pull it out of the air. If you could find someone, after acquainting them with the cost and other things, maybe if you page 33 } do a good selling job or showing them they were getting a bargain and if they could use it at all, they might buy it.

Q. Do you have any idea as to what a fair selling price of this property would be?

A. Well, I say what I said sometime ago. I said \$75,000.00 and I more or less pulled it out of the air, because it would be attempting to show someone, if you could find a buyer, that he was getting a bargain. That would be the inducement to buy.

J. Guthrie Smith.

CROSS EXAMINATION.

By Mr. McGuire:

Q. You think he would be getting a bargain?

A. If he could use it, if you could find a man that would buy it. A great many people will buy what they consider bargains. If you could find a buyer, as I said before. Club properties and the like do not enjoy a market like other types of real estate.

Q. Not so wide a market?

page 34 } A. There are not so many of them and unquestionably they do not enjoy the same market.

Q. Your figure, as I understand you to say, you pulled out of the air?

A. I don't know any other way you can do it.

Q. You haven't based that figure on any particular consideration?

A. My judgment of thirty-six years in the business dealing with all types of real estate. It is just one of those things that is a matter of judgment.

Q. Can you give any reason why you arrived at that figure rather than \$100,000.00?

A. \$100,000.00 for that piece of property would be entirely out. I wouldn't give them \$50,000.00 for it; I wouldn't give them \$25,000.00. I cannot use it; I do not want it. You know what club life is. It prospers with the economic conditions of the country. Right now it is pretty good but I have seen it poor.

Q. What I am driving at is you haven't considered the value of this property to the Tuckahoe Woman's Club itself?

page 35 } A. Use value is another one of those things you pull out of the air, valuing the use to somebody else. In the early days of learning the real estate business from textbooks, if you consider use value your damage figure to the individual would be priceless. A guy's false teeth might be worth a lot to him but they wouldn't mean anything to me.

Q. Then you didn't consider that?

A. No, sir.

Q. What would you think would be the fair compensation for this property if you were on the condemnation commission and required to value it?

J. Guthrie Smith.

A. I wouldn't give them a nickel more than what I thought it was worth.

Q. Would you say what you think it is worth for that purpose?

A. Not over \$75,000.00.

Q. You think that would be just compensation?

A. I certainly do. I don't know about the fellow condemning it, unless he had a special use, what he would do with it.

Q. Did you consider the restrictive covenants on the land?

page 36 } A. Oh, yes, the property is zoned for G Local Business but we eliminated that because we saw one depression and the club was hard up and wanted to sell it back to us and we had an attorney look into it to see if we could eliminate those restrictions and Mr. John Guy told us we could not.

Q. When do those restrictions expire?

A. I don't know. I imagine they run with the land.

Q. Don't you know the deed contains a clause which states when the restrictions will expire?

A. I think that is about 1970.

Q. Do you know what provision there is in the deed for waiver of restrictions?

A. Yes, but that is a questionable thing too.

Q. What is that provision?

A. I don't recall. I have a copy of the deed.

* * * * *

page 37 }

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Mr. Baker: Petitioner does not desire to present any further testimony. If Mr. McGuire wants these in the record, suppose we just mark them and let the reporter copy them.

Mr. McGuire: I would rather they be read to the court.

Mr. Baker: All right.

Mr. McGuire: (Reading)

“1. There shall not be erected on the land hereby
page 38 } conveyed more than one building, and such prem-

J. Edward Rountrey.

ises shall be used for a woman's club and the normal functions of such a club only, by white persons only.

"9. Any of the restrictions and conditions hereinbefore contained may be waived, assigned or released by the grantor, insofar as it or they may affect any property within such plan owned by the grantor and with the consent of the owner thereof, insofar as it or they may effect any property within such plan theretofore sold by the grantor.

"10. Each and every restriction and condition herein contained shall terminate and be of no further effect after fifty years from the first day of January, 1927."

Mr. McGuire: Those are the only portions of the deed I care about having in the record. Does Your Honor page 39 } desire me to procure a copy of the deed?

The Court: I think it would be the best evidence. That can be introduced by stipulation. Counsel can agree to introduce the deed.

Mr. McGuire: I will procure a copy of the deed and place it in evidence.

Mr. Baker: That is perfectly satisfactory.

J. EDWARD ROUNTREY,

a witness called by and on behalf of the Respondent, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. McGuire:

Q. What is your name?

A. J. Edward Rountrey.

Q. You are employed by the City of Richmond. Is that right?

A. That's right.

page 40 } Q. What is your position?

A. Assessor of real estate.

Q. How long have you been assessor of real estate?

A. Since 1954.

Q. What was your previous experience in the valuation of real estate?

A. I had previous experience as a professional fee appraiser and also in the assessment field with the state.

Q. For how long?

J. Edward Rountrey.

A. A total of some twelve years to date.

Q. Are you a member of any organization of assessing officers?

A. Yes, sir, of the National Association of Assessing Officers and the Virginia Association of Assessing Officers.

Q. Are you familiar with this property of the Tuckahoe Woman's Club?

A. Very familiar with it.

Q. Would you describe it, give the dimensions of the lot and briefly describe it?

page 41 } A. I will refer to our office record. The lot is one hundred by one hundred and eighty-six feet; the building is of good brick construction and is primarily a large auditorium. It has been termed a club house and I assume that the additions now underway will make it more appropriate to that description, but as it presently stands it is primarily a large auditorium. According to our record it contains 8,616 square feet of space, with a height of twenty-two feet.

Q. What is the building built of?

A. Brick construction with a slate roof, I believe. It is fire-proof, has parquet floors. It is a very fine building, elaborately decorated.

Q. Do you have any pictures of that building?

A. Yes, sir, I have three photographs.

Q. When were these photographs taken?

A. Within the last thirty days. They are recent photographs.

Mr. McGuire: I am going to ask that these three photographs be introduced in evidence as City Exhibits Numbers, One, Two and Three.

page 42 } (So marked and filed.)

By Mr. McGuire:

Q. I believe that at least one of the photographs shows an addition in the process of construction which was not on the property in 1955. Is that correct?

A. That's right.

Q. Can you indicate that in some way to the court?

A. The original building is pictured here. You can see that side (indicating on photograph). This wing, which is to in-

J. Edward Rountrey.

clude among other things a kitchen and some storage rooms, and so forth, is being added now. It is in the process of construction. In considering the photograph there should be a line right there (indicating on photograph).

The Court: The court will mark that photograph Exhibit Number Three for the purpose of identification.

Mr. Rountrey: I will draw a line through there.

By Mr. McGuire:

Q. Mr. Rountrey, it appears from the petition of Tuckahoe Woman's Club which was filed in this case that in page 43 { 1955 the original assessment was for \$155,000.00.

Did you personally make that appraisal?

A. No, sir, that was made by two members of my appraisal staff.

Q. The petition further states that after a protest by the taxpayer the assessment was reduced by you to \$105,000.00. Is that correct?

A. That is correct, sir.

Q. Did you yourself make that valuation?

A. Yes, sir.

Q. Will you state to the court why you think that was a proper value to place upon the property?

A. The original assessment of value was based purely on the present value of the land and the estimated cost of reproduction of the building by a cost assessor. No consideration was given to the unusual features of the property or any inherent functional obsolescence that might have been built into it and those sort of things that would tend to bring the market value down. After considering all those factors and hearing evidence given by two of the same witnesses that were here today, I reduced it to \$105,000.00 and wrote a letter to the Club's counsel explaining how and why I page 44 { had arrived at that figure.

Q. Can you state to the court how and why you arrived at that figure?

A. In the first place the estimate of reproduction of \$155,000.00 was excessive and included things that were not actually in the building. That was a simple error. The actual cost of replacing the building today, I believe, is essentially the same as has been stated here. It would cost some \$125,000.00 plus the cost of the land. The other deductions are made sim-

J. Edward Rountrey.

ply because an equally functional building could be constructed for in the neighborhood of \$100,000.00. A building serving the same purpose and being equally as efficient would not cost, we believe, more than \$100,000.00.

These people have some things in it, while they are desirable, are not absolutely necessary to its function. I could compare it to the woman who wants an exceptionally expensive wallpaper in her dining room. It pleases her but it is not necessary for the functional operation of the house. There are similar things throughout this building, including such things as parquet floors and expensive wooden casings and things of that sort that do not add to the functional value of the property.

Q. Mr. Rountrey, what do you mean by fair market value?

A. Fair market value has been defined dozens of ways by the courts, but if you permit me I should like to read it from my published manual. Would that be permissible?

Q. Yes, sir.

Mr. Baker: I would like to make this statement. Fair market value is a legal concept and we are not going to consider ourselves bound by what Mr. Rountrey might read. The Court of Appeals has defined it and the definition of the Court of Appeals is the one that should be applied.

A. (Continuing) To us, the most acceptable definition for assessment purposes is as follows:

"The amount of money or money's worth for which real estate may be exchanged in a reasonable period of time under conditions in which both parties to the exchange are able, willing and reasonably well informed."

By the Court:

Q. Mr. Rountrey, will you identify that particular volume?

A. Statement of Principles and Procedures from the office of the assessor of real estate, City of Richmond, published in 1955.

Q. What page?

A. Quoting the definition on page nine under the heading "fair market value." Does that answer your question?

J. Edward Rountrey.

Mr. McGuire: Yes.

By Mr. McGuire:

Q. Have you anything to add to your reasons for thinking \$105,000.00 is a fair valuation of this property?

A. I would like to preface an explanation of that by stating it is our opinion in my office that our sole purpose is to equalize the tax burden and we believe it is the intent of the law in stating that property shall be assessed at fair
page 47 } market value to result in equitable distribution of the tax burden and that is our primary motive in determining what fair market value is, to arrive at equitable taxation.

In making appraisals, as a previous witness has brought out, there are many properties for which there is no market except the present owner. If they were not in use by the present owner you could not conceive of a market for them. I would like to give as a prime example a grain elevator, not that this club resembles a grain elevator, but it is a similar situation. A grain elevator costs a lot of money and it has a very real value to the people who own it. If for any person they no longer need it and there is not another person who needs a grain elevator, it will bring practically nothing on the market, and the appraiser who is employed to estimate what the property will bring on the market under those conditions comes up with an entirely different figure than the fair market value to the owner or to a prospective buyer who has use for it.

One is fair market value as defined by the courts and the other is what we term a knock-down price because the property is no longer useable for that purpose. In estimating what a property will bring under certain conditions, I agree with
page 48 } one of the witnesses who said that you would have to pull that figure out of the air. To my knowledge, no club in the City of Richmond has ever been sold under those conditions. If it had, they would be a guide to our valuation.

The principle involved here assumes that the only market for that property is the present owner and in trying to determine a willing seller and buyer, you always go back to the owner because there is no other club in the City of Richmond that can afford this property or would want this property. If these people abandoned it, our approach to the assessment

J. Edward Rountrey.

would be entirely different. But so long as they use it we try to arrive at use to the present owners just like anything of a very special purpose nature.

We cannot conceive of a market for this property and in estimating market value it has to be substantiated, at least in this instance before the court it has to be substantiated. There are only three ways of substantiating market value, comparative sales, by the income it will produce, or by the cost of acquiring it or producing it. In this instance, it is producing it. It can never be rented for any purpose and I cannot conceive of it ever being sold in our lifetime because there is no other club that would want it so our only guide
page 49 } which is acceptable is a depreciated reproduction cost. I have depreciated it as far as I can justify and that is the way we have arrived at \$105,000.00. That is the way we have arrived at the valuation of all special purpose properties located in the city. The Country Club of Virginia was increased a quarter of a million dollars by that same principle and that has been accepted. It also applies to the Commonwealth Club or similar buildings in the city. They have all been treated exactly that way.

CROSS EXAMINATION.

By Mr. Baker :

Q. You say you base this appraisal on the depreciated reproduction cost?

A. Right.

Q. Now this first valuation of \$155,000.00, that was not your personal valuation?

A. No, sir. That was an estimate of reproduction costs made in the office from plans and specifications. During that
page 50 } period our office was trying to make sixty thousand appraisals in one year. It was in error and we admitted it was in error.

Q. But the second appraisal was by you personally?

A. By me personally.

Q. After proper thought and consideration?

A. Yes.

Q. And it is based on what you say is the depreciated reproduction costs?

A. Right.

J. Edward Rountrey.

Q. You spoke of functional value and value of use to the present occupant. Do you mean by that the same thing as depreciated reproduction costs?

A. Depreciation can take the form of functional obsolescence and it might be built into the original plans. That type of thing occurs when someone builds a very big home to satisfy his own taste and it is not marketable and we term that functional depreciation. That functional depreciation exists to some extent in this building, in my opinion.

Q. You say you base your figure on depreciated reproduction value. Are you including in there any element of value to the present owner?

A. The value to the present owner is the only page 51 } value I have to go by. It has no market value elsewhere that could be compared or justified.

Q. Did you come up with this \$105,000.00 by the depreciated reproduction method?

A. Right.

Q. Would you come up with that same figure if the building were vacant?

A. No, sir, because you would then have to apply economic depreciation and that would bring the figure down lower than these people have termed it here. Once I have applied that sort of depreciation I would come up with a figure lower than what they have, but to do that, it would have to be no longer useable as a club.

Q. You base this on depreciated replacement costs along with the present use to the owners?

A. Yes. They have to be tied in together. Of the three types of depreciation, we can only apply functional obsolescence to the building. Physical depreciation hasn't had time to take place in this building.

Q. In 1955, there was some correspondence between you and Mr. Wicker relating to this property.
page 52 }

A. Yes, I think there was.

Q. I hand you this letter dated October 24, 1955 and ask you if you will let us know if this is the letter you sent Mr. Wicker.

A. It is my signature.

Q. Is it your letter?

A. Yes, sir. I personally dictated the letter, I am sure, or I would not have signed it that way.

J. Edward Rountrey.

Q. In the letter you are referring to the enclosed opinion of value rendered by Messrs. Heindl, Snead and Bates. The letter states: "I also wish to agree with their contention that the property probably could not be sold for more than \$75,000.00 to \$85,000.00." Is that correct?

A. That's right. I have just clarified that under the assumptions they made in making their appraisal I would probably have come up with less but that is not a proper assumption for my appraisal.

Q. Will you agree with that statement, that if the property was sold it would bring no more than \$85,000.00?

A. If these ladies are desirous of selling this property, I cannot conceive of it bringing any more than that page 53 } amount of money.

Mr. Baker: I should like to introduce the letter of October 24, 1955 from Mr. Rountrey to Mr. Wicker. Would a copy of it be all right?

Mr. McGuire: A copy is all right with me. Are you going to introduce both letters?

Mr. Baker: I don't have that other one, but I will introduce whatever correspondence you want.

Mr. McGuire: That's all right. You have one letter addressed to Mr. Wicker dated October 24, 1955?

Mr. Baker: That's right. Suppose I introduce a copy.

(Marked Petitioner's Exhibit Number One and filed.)

By Mr. Baker:

Q. Mr. Rountrey, when you started your testimony, you gave certain figures as the dimensions of the building.

page 54 } A. I don't believe I gave the dimensions. I gave the square footage.

Q. Do you know where those figures would have been obtained?

A. From the plans and specifications submitted by the builder.

Q. They were not obtained by you personally?

A. No, sir.

Q. Were they obtained by someone in your office?

A. Yes, sir. They were compiled by someone working in the office.

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page 93 }

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Richmond, Va., February 12, 1957.

E. Ballard Baker, Esq.
Mutual Building
Richmond, Virginia

John P. McGuire, Esq.
Assistant City Attorney
City Hall
Richmond, Virginia

Re: Tuckahoe Woman's Club
v.
City of Richmond
4215 PTB40 100x186.21
SE Dover & Avon Road W22-224

Gentlemen:

The Court is of the opinion that the City of Richmond has assessed the above described real estate and the improvements thereon at their "fair market value" that is to say:

Land	\$ 5,000.00
Improvements	\$100,000.00
	<hr/>
	\$105,000.00

Very truly yours,

W. MOSCOE HUNTLEY.

page 94 }

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ORDER.

This case having been heretofore heard *ore tenus* and upon exhibits filed, the City Attorney defending the application and the Assessor of Real Estate making the assessment having been examined as a witness touching the application, and argument having been heard and taken under advisement, came again this day for determination. And the court being of opinion that the assessment alleged by the applicant to be erroneous is not erroneous but is correct, and that the applicant is not entitled to the relief prayed for, doth adjudge and order that the application be and it is hereby dismissed.

To which action of the court the applicant, the Tuckahoe Woman's Club, by counsel, objects and excepts.

Enter 2/19/57.

W. M. H.

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A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Notice of Appeal and Assignments of Error	2
Witnesses:	
Frank W. Heindl	3
George B. Snead	7
J. Leonard Moore	11
J. Guthrie Smith	13
J. Edward Rountrey	18
Opinion, letter	26
Order—Entered February 19, 1957	27