224VA0103

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JUN 10 1980
RICHMOND, VIRGINIA

4

IN THE SUPREME COURT OF VIRGINIA

No. # 791836

CITY OF RICHMOND,
Appellants,

v.

PAUL GORDON ASSOCIATES, et als,
t/a RITTENHOUSE SQUARE ASSOCIATES,
Appellees

APPENDIX

to

APPELLANT'S BRIEF

Reginald M. Barley
Assistant City Attorney
C. Tabor Cronk
Assistant City Attorney
300 City Hall
Richmond, Virginia
Counsel for Appellants

TABLE OF CONTENTS

	Page
Petition for Relief from Erroneous Assessment Dated December 31, 1975	1-4
Letter Opinion of Judge Dated June 21, 1979	5-7
Findings of Fact, Conclusions of Law, and Final Judgment Order Dated September 25, 1979	8-17
Notice of Appeal Dated October 11, 1979	18,19
Notice of Filing of Transcript Dated November 14, 1979	20,21
Transcript of Trial Dated November 8, 1979	22
(Note: Since the Transcript is numbered pages 1-150, Appendix No. 22 has been assigned for the entire Transcript)	
Assignments of Error	23,24

Filed in Richmond Circuit Court, Division I
on December 31, 1975

PETITION FOR RELIEF FROM ERRONEOUS ASSESSMENT

The Petitioners, by counsel, as and for their Petition for Relief from Erroneous Assessment, respectfully represents as follows:

1. This Petition is submitted pursuant to the

provisions of Section 58-1145 of the Code of Virginia, 1950 as amended, and Chapter 261 of the 1936 Acts.

2. The partnership known as Rittenhouse Square Associates is formed and existing pursuant to the laws of the State of Virginia with its principal office in Richmond, Virginia, that the petitioners who are partners in said partnership are citizens of and domiciled in or organized and existing pursuant to the laws of the State of Virginia, except that petitioner Roland Glass is a citizen of and domiciled in the District of Columbia and petitioners Manny Chudwin and Caryl Chudwin are citizens of and domiciled in the State of Illinois, and that they are taxpayers of the City of Richmond, State of Virginia, and are the owners of a certain piece of real property, with improvements thereon, designed for residential purposes, which piece of real property is located at East Richmond Road and Briel Street, Richmond, Virginia (hereinafter referred to as "the Property").

3. The Petitioners are aggrieved by the assessment made by the City of Richmond concerning the Property for the tax year of 1977.

4. The Property was assessed by the City of Richmond for the tax year of 1977 as having a fair market value of $2,300,000.00.

5. The assessment for the tax year 1977 is in excess of the fair market value of the Property in the tax year of 1977.

6. In the alternative, the Petitioners further allege, upon information and belief, that the Property was not assessed for the tax year of 1977 in a manner that was uniform with similar property, and that said assessment and the method of assessment was not uniform in its application as required by law.

WHEREFORE, the Petitioners pray that this Court correct the erroneous assessment made by the City of Richmond on

the above described Property for the tax year of 1977 in such amount as may be warranted by the evidence and that the Commissioner of Revenue be directed to refund so much of the tax heretofore paid by the Petitioners that was erroneously charged by the City of Richmond and paid by the Petitioners, plus interest accruing from the date of payment, plus its costs incurred herein.

PAUL GORDON, et als., Petitioners

Filed in Richmond Circuit Court, Division I
on June 21, 1979

James F. Pascal, Esq.
Hirschler, Fleischer, Weinberg, Cox & Allen
P. O. Box 12085
Richmond, VA 23241

Mr. Albert J. FitzPatrick
Assistant City Attorney
300 City Hall
Richmond, VA 23219

Gentlemen:

Re: Case No. 9159
Paul Gordon, Daivd M. Lutoff, et al., etc.,
Manny Chudwin, et al., etc., known as
Rittenhouse Square Associates
v. City of Richmond, et al.

This matter concerns two petitions for relief from alleged erroneous real estate tax assessments filed on behalf of the petitioner, Rittenhouse Square Associates, a Virginia partnership, pursuant to Virginia Code § 58-1145, for the year 1974 and for the year 1975, respectively. Since the factual and legal issues involved in both petitions were essentially the same, counsel agreed to try both matters together.

The real estate in question is known as "Rittenhouse Square" and is a multi-family unit apartment project located in the east end of the City of Richmond. The project consists of nineteen separate buildings, and contains a total of 319 apartment units. During the years in question it was located across the street from a cemetary and adjacent to a city dump, and it developed a reputation and stigma for being a location for traffic in illegal norcotics.

The City of Richmond assessed the property as of January 1, 1974, at $ 2,760,800.00 and the assessed value as of January 1, 1975, was established at $2,300,000.00.

Because I desire to convey to you my decision as quickly as possible, and without further delay, I will be intentionally brief and will incorporate herein the statements of the facts involved here as presented by counsel in their memoranda of law filed herein.

A review of the entire record made here compels the conclusion that the relief requested in the petition filed must be granted. The evidence establishes that the petitioner's real estate involved herein was assessed at more than its market value for the years 1974 and 1975, and that the correct assessments for those years are $2,000,000.00 for the year 1974 and $2,100,000.00 for the year 1975, for the reasons and rationale as stated by the petitioner in its "Memorandum of Points and Authorities" filed herein.

While it is true in Virginia that there is a presumption in favor of a real estate assessment, it is a rebuttable presumption, and the taxpayer has the burden to prove that the assessment is erroneous. (American Viscose Corp. v. City of Roanoke, 205 VA. 192 (19540). Here the petitioner has clearly rebutted the presumption and has proven by competent evidence that the assessments for 1974 and 1975 were erroneous.

I am further of the opinion that evidence offered at trial by the petitioner concerning the petitioner's actual income and expense experience for periods during 1975 and 1976, subsequent to January 1 of each of those years when the defendants made the annual assessment, was relevant to the determination of the fair market value as of January 1 of the year being assessed, as merely factors to be taken into consideration by the trier of fact in determining whether the assessment made on January 1 of the year in question was accurate. American Viscose Corp. v. Roanoke, supra, at 195-6.

Lastly, this case is factually distinquishable from Fruit Growers & Alexandria, 216 Va. 602 (1976), and, therefore, the doctrine announced therein is not apposite here.

In Fruit Growers, supra, the land owner argued that its principal witness, Hodges, a professional appraiser, had testified at the trial that the valuation placed upon its unfinished property was within the low end of the range of prices recently paid for certain finished industrial tracts and that, therefore, the assessment was erroneous.

The Supreme Court, however, pointed out on the record that Hodges could not testify at the trial that the characteristics

of the landowner's property were substantially different from those of the finished tracks. Therefore, in Fruit Growers, supra, the Court held that the landowner failed to shoulder its burden of proof to establish that the assessment was erroneous.

The landowner in Fruit Growers, supra, further argued that the City of Alexandria should have been required to attempt to rebut its case by affirmatively showing that there were comparable sales supporting the City's valuation. The Supreme Court rejected this argument, however, stating, in pertinent part:

> 'The effect of this presumption [of the correctness of the tax assessment] is that even if the assessor is unable to come forward with evidence to prove the correctness of the assessment this does not impeach it since the taxpayer has the burden of proving the assessment erroneous. Shaia v. City of Richmond, 207 Va. 885, 893 (fn.7); 153 S.E.2d 257, 263 (1967).' N. and W. Ry. Co. v. Commonwealth, supra. Id. at 610.

In the instant case, as noted above, the petitioner has established more than a mere disagreement between expert appraisers. It has established that the City's assessments for the years in question were erroneous and that its project was assessed more than its fair market value for those years.

Counsel for the petitioner may present an order embodying the above decision and granting all of the relief prayed for in its petition.

Very truly yours,

James Edward Sheffield

sac

Filed in Richmond Circuit Court, Division
on September 25, 1979

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
FINAL JUDGMENT ORDER

On October 5, 1977, the evidence was heard on the Petitions for Relief from Erroneous Assessment, for tax years 1974 and 1975, filed by Paul Gordon Associates, et als, trading as Rittenhouse Square Associates, a Virginia partnership, pursuant to Virginia Code Section 58-1145. The two Petitions, one for each year in question, were consolidated for purposes of trial, by agreement of the parties. Based upon the evidence presented, the Court finds the following facts:

1. The apartment complex known as Rittenhouse Square is owned by the Complainants, consists of 13 acres upon which 19 separate residential apartment buildings are situated, containing a total of 319 residential apartment units, and is located in the City of Richmond, Virginia.

2. The City of Richmond (hereinafter referred to as "the City"), acting through the Office of the Assessor of Real Estate, determined that the fair market value of Rittenhouse Square (land and improvements) as of January 1, 1974, was $2,760,000.00, and that as of January 1, 1975, was $2,300,000.00. Based upon these determinations, the subject property was assessed accordingly.

3. The Complainants timely paid real estate taxes to the City of Richmond based upon the City's determination of the fair market value of Rittenhouse Square, and the assessment made pursuant thereto.

4. The subject property was being utilized at its highest and best use at all times material to these consolidated cases.

5. The City and the Complainants agree that there are potentially only three methods that are available to the City in determining the fair market value of properties such as Rittenhouse Square, these being (a) the replacement cost methods, (b) the comparable sales method, and (c) the income method. The parties also agree that in determining the fair market value of Rittenhouse Square, the most appropriate method and the one that should be accorded the greatest weight is the income method. The parties further agree that this is due to the fact that a potential purchaser of income producing property, such as Rittenhouse Square would be primarily, if not exclusively, interested in the past, present and future income producing capabilities of the subject property. The Court concurs in the agreements of the parties in this respect, and also finds them to be supported by the evidence of both parties.

6. In making its determination of the fair market value of Rittenhouse Square as of January 1, 1974, the City of Richmond actually performed its field and office appraisal work in April and May, 1973. At that time, the only income and expense statements pertaining to Rittenhouse Square that were available to it were those for the calendar year ended December 31, 1972.

7. In making its determination of the fair market value of

Rittenhouse Square as of January 1, 1975, the City of Richmond actually performed its field and office appraisal work in April

and May, 1974. At that time, the only income and expense statements pertaining to Rittenhouse Square that were available to it were those for the calendar year ended December 31, 1973.

8. The actual vacancy rate experienced at Rittenhouse Square was as follows for the indicated calendar years ending December 31:

Year	Vacancy Rate
1972	7.9%
1973	13.6%
1974	27.6%
1975	34.2%
1976	32.2%

9. The actual gross rental income derived by Rittenhouse Square was as follows for the calendar years indicated:

Year	Income
1972	$374,992.00
1973	376,032.00
1974	339,648.00
1975	329,261.00
1976	341,260.00

10. Actual operating expenses (exclusive of debt service and depreciation) for Rittenhouse Square were as follows for the calendar years indicated:

Year	Operating Expenses
1972	$168,413.00
1973	181,045.00
1974	190,376.00
1975	170,748.00
1976	163,214.00

11. The City's determination of the fair market value of Rittenhouse Square as of January 1 was as follows for the years indicated:

Year	Assessment
1972	$2,189,500.00
1973	2,189,500.00
1974	2,760,000.00
1975	2,300,000.00
1976	2,300,000.00

12. With respect to actual income and actual expense figures of Rittenhouse Square, the City takes the position that in determining the fair market value of Rittenhouse Square it may disregard, in whole or in part, these actual figures and establish for purposes of making the determination, a pro-forma income and expense statement containing what it believes the income and expense figures should have been. The Court finds from the City's evidence that the City did, in fact, disregard certain actual income and expense figures concerning Rittenhouse Square.

13. The Complainants take the position that unless the City can demonstrate that the individual property owner could have improved the financial operating results of the property with commercially reasonable and feasible measure, then the City cannot base its income approach determination of the fair market value of income producing property on income and expense assumptions that are contradicted by or inconsistent with actual operating experience. An example here concerns vacancies. Although the actual vacancies experienced at Rittenhouse Square were substantially higher in 1974 and 1975 than 15%, the City

maintained that using the income approach, and in preparing pro-forma income and expense statements, an assumed vacancy rate of 15% should be applied. Thus, in making its income and expense projections, the City assumed a vacancy rate of 15% for 1974 and 1975.

14. There is no evidence that the unusually high vacancy rates experienced at Rittenhouse Square were attributable to any act or omission of the owners of Rittenhouse Square, or to anything other than market factors or other factors beyond the control of the Complainants. The City of Richmond admits, and the Court finds, that rents charged by the Complainants were consistent with rents charged by similar properties.

15. The Court also finds from the evidence that the City had no clear and compelling reason for disregarding the actual income and actual expense figures for Rittenhouse Square for periods prior to the date of the fair market value determination.

16. It is the conclusion of this Court that although the City is entitled to a presumption as to the correctness its fair market value determinations of Rittenhouse Square as of January 1, 1974, and 1975, this presumption of correctness does not and cannot apply to the City's hypothetical income and expense figures in the absence of clear and compelling evidence by the City that there was good cause to disregard, in whole or in part, actual income and actual expense figures for periods of time prior to the effective date of the fair market value determination.

17. The Court concludes that the actual operating experience of Rittenhouse Square for the calendar year 1974 is relevant and material to the City's determination and to this Court's determination of the fair market value of Rittenhouse Square as of January 1, 1974.

18. The Court concludes that the actual operating experience of Rittenhouse Square for the calendar year 1974 1975 is relevant and material to the City's determination and to this Court's determination of the fair market value of Rittenhouse Square as of January 1, 1974

19. The Complainants take the position that with respect to the determination of the fair market value of Rittenhouse Square as of January 1, 1974, the actual operating experience of Rittenhouse Square for the year 1974 is material and relevant to this Court's finding as to whether the City's determination as of that date was correct or erroneous. The Court concludes that such subsequent events information is relevant and material to the extent that it is used to test or verify the validity, accuracy, or reasonableness, of any assumptions made by the City of Richmond in connection with its fair market value determination for that year. The weight to be given such subsequent events depends upon the facts of the particular case.

20. In this case, the Court finds that the subsequent events for the assessment year in issue concerning vacancy rates, gross and net income, and expenses, experienced at Rittenhouse Square are relevant and material to the reasonableness and accuracy of the fair market value determinations made by the City of Richmond as of January 1, 1974, and 1975. However, the Court notes that its conclusions regarding the erroneousness of these fair market value determinations would be the same even if such evidence had not been presented or considered.

21. There is a rebuttable presumption in favor of the correctness of the City's determination of the fair market value of Rittenhouse Square as of January 1, 1974, and 1975, and the burden is upon the Complainants to prove that such determinations are erroneous. The Court finds that the Complainants have clearly rebutted the presumption and have proven by competent evidence that said determinations by the City were erroneous.

22. The Court finds from the evidence that Rittenhouse Square was assessed at more than its fair market value as of January 1, 1974, and that such assessment is, therefore, erroneous.

23. The Court finds from the evidence that the fair market value of Rittenhouse Square as of January 1, 1974, was $2,000,000.00.

24. The Court finds from the evidence that Rittenhouse Square was assessed at more than its fair market value as of January 1, 1975, and that such assessment is, therefore, erroneous.

25. The Court finds from the evidence that the fair market value of Rittenhouse Square as of January 1, 1975, was $2,100,000.00.

Based upon the foregoing, which the Court finds and concludes from the evidence, the Court concludes that the Complainants are entitled to the relief sought, and it is accordingly ADJUDGED, ORDERED and DECREED, that the Petitions for Relief from Erroneous Assessments filed on behalf of Paul Gordon Associates, et als., trading as Rittenhouse Square Associates, for tax years 1974 and 1975, be and the same hereby are granted. IT IS FURTHER ORDERED, ADJUDGED and DECREED, that the City of Richmond refund to the Complainants all amounts paid by the Complainants to the City of Richmond attributable to that portion of the assessments inconsistent with this Order, plus interest at the judgment rate from the date hereof, plus the costs of filing and serving the above referenced Petitions for Relief from Erroneous Assessment.

It is further ORDERED that a copy of this Order be forwarded to counsel of record for the respective parties and the date of mailing noted hereon.

1. 6/79

A Copy, Teste: by Mary Eileen Hughes

Filed in Richmond Circuit Court, Division I
on October 11, 1979

NOTICE OF APPEAL

TO: Edward G. Kidd, Clerk
Circuit Court of the City
of Richmond, Division I
300 E. Marshall Street
Richmond, Virginia 23219

The defendant, City of Richmond, by counsel, hereby gives notice pursuant to the provisions of Rule 5:6 of the Rules of the Supreme Court of Virginia, of its appeal from the order entered in the above-styled matters on September 25, 1979.

A transcript or a written statement of the incidents of the case will be hereafter filed.

Respectfully submitted,

CITY OF RICHMOND

By _____
Counsel

J. Neale Lawler
Assistant City Attorney
Albert J. FitzPatrick
Assistant City Attorney
300 City Hall
Richmond, Virginia 23219

CERTIFICATE

I hereby hereby certify that a true copy of the foregoing Notice of Appeal was mailed in the U.S. mail, postage paid, this 17 day of October, 1979, to James F. Pascal, Esquire and Everette G. Allen, Jr., Esquire, Hirschler, Fleischer, Weinberg, Cox & Allen, P. O. Box 12085, Richmond, Virginia 23241.

J. Neale Lawler

Filed in Richmond Circuit Court, Division I
on November 14, 1979

NOTICE OF FILING OF TRANSCRIPT

The defendant, City of Richmond, Virginia, gives notice that the following transcript is now filed in the office of the Clerk of the Circuit Court of the City of Richmond, Division I:

1. Complete transcript of testimony and other incidents of the hearing held on October 5, 1977 before Honorable James Sheffield, Judge.

CITY OF RICHMOND

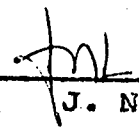
By _____
Of Counsel

J. Neale Lawler
Assistant City Attorney
Albert J. FitzPatrick
Assistant City Attorney
300 City Hall
Richmond, Virginia 23219

CERTIFICATE

I certify that a copy of the foregoing Notice was mailed this 13th day of November, 1979, postage prepaid, to each

of the following: James F. Pascal, Esquire, Hirschler, Fleischer, Weinberg, Cox & Allen, P. O. Box 12085, Richmond, Virginia 23241; and Everette G. Allen, Jr., Esquire, Hirschler, Fleischer, Weinberg, Cox & Allen, P. O. Box 12085, Richmond, Virginia 23241.



J. Neale Lawler

Filed in Richmond Circuit Court, Division I
on November 14, 1979

10
11 The complete TRANSCRIPT of the testimony
12 and other incidents of the above when heard on October 5,
13 1977, beginning at 2:00 o'clock p.m., before Honorable James
14 E. Sheffield, Judge.
15
16
17
18
19
20 APPEARANCES:
21 HIRSCHLER, FLEISCHER, WEINBERG, COX & ALLEN, Second Floor,
22 Massey Building, Richmond, Virginia; by:
James F. Pascal, Esquire and Everette G. Allen, Jr., Esquire,
23 counsel for the plaintiffs.
24 Albert Fitzpatrick, Assistant City Attorney for the City of
Richmond, Virginia, counsel for the defendants.
25

Assignments of Error

1. The Court erred in ruling that the City incorrectly used a pro forma income and expense statement in assessing Rittenhouse Square.

2. The Court erred in ruling that there was no evidence that the unusually high vacancy rates experienced at Rittenhouse Square were attributable to any act or omission of the owners of Rittenhouse Square.

3. The Court erred in ruling that the City had no clear and compelling reason for disregarding the actual income and actual expense figures for Rittenhouse Square for periods prior to the date of the fair market value determinations.

4. The Court erred in ruling that the actual operating

experience (i.e., income and expenses) of Rittenhouse Square for the calendar years 1974 and 1975 was relevant and material to the City's determinations of the fair market value of Rittenhouse Square as of January 1, 1974 and January 1, 1975.

5. The Court erred in finding that the complainants clearly rebutted the presumption of correctness of the City's determinations of the fair market value of Rittenhouse Square as of January 1, 1974 and January 1, 1975.

6. The Court erred in finding from the evidence that Rittenhouse Square was assessed at more than its fair market value as of January 1, 1974 and that the fair market value of Rittenhouse Square as of January 1, 1974 was $2,000,000.

7. The Court erred in finding from the evidence that Rittenhouse Square was assessed at more than its fair market value as of January 1, 1975 and that the fair market value of Rittenhouse Square as of January 1, 1975 was $2,100,000.

NOTE: At this point the Court Reporter is sworn by the Court, whereupon the Court states, viz:

THE COURT: All right. For the record, the cases before the Court are twofold: One, Paul Gordon and many others versus City of Richmond and many others, No. 9159 and 9160, pertaining to the same parties.

Are all counsel ready to proceed?

MR. PASCAL: Yes, sir.

MR. FITZPATRICK: Yes, Your Honor.

THE COURT: Are there any preliminary matters we should take up, gentlemen?

MR. PASCAL: I would like the witnesses excluded, Your Honor.

THE COURT: All those who are going to testify in the case other than one representative per side, please stand and be sworn.

NOTE: At this point all witnesses in the case are sworn by the Court, whereupon the Court states, viz:

THE COURT: A motion has been made that the witnesses be excluded, and the Court is going to grant that motion. That simply means that you are going to be asked to step outside the courtroom and not return to the courtroom until such time as you are called to testify. Once you do actually testify, the Court instructs you not to discuss your testimony with any other person during the course of this trial.

You may remain outside of the courtroom, or there are rooms that you may avail yourselves of, or you may even leave the floor as long as counsel know where you are when they are ready to call you to testify.

The Court instructs you now to leave the courtroom and please do not return until you are called to testify.

Any opening statements by the plaintiff?

MR. PASCAL: Yes, Your Honor, I think it would be helpful if I made some preliminary remarks.

As the Court knows, this involves determination of a fair market value of a parcel of property known as Rittenhouse Square.

Rittenhouse Square is an apartment project consisting of approximately 13 acres, 19 separate

1 buildings, 319 apartments. It is located in what
2 I believe is generally referred to as the East
3 End of the city.
4 The plaintiff contends that the City has
5 placed an assessment on the property in excess of
6 its fair market value. I think it will be helpful
7 for the Court to understand that we maintain this
8 is not the ordinary garden variety context of
9 assessment-type case, because this is not the
10 ordinary apartment paroject, it is unique, and I
11 mean that in the worst sense of the word; it is
12 adjacent to a cemetery; it is adjacent to a City
13 dump; it suffers from rat infestation; it has
14 experienced a vacancy level three or four times what's
15 ordinarily experienced in an apartment project.
16 These factors and others, as the Court
17 will hear during the development of the testimony,
18 we think, make the property unique, and it should
19 be treated that way and considered that way; there
20 is nothing truly comparable to it.
21 An apartment is an investor oriented
22 piece of property. Its value is determined in large
23 measure, aside from other traditional value we might
24 think of, by its income-producing potential; the
25 piece of property that is designed for producing

1 it if it is not worthless.

2 Bearing those two points in mind, I

3 think the Court has sufficient overview of the case

4 from my point, and that's all I will say.

5 THE COURT: Thank you, Mr. Pascal.

6 Mr. Fitzpatrick --

7 MR. FITZPATRICK: Yes, Your Honor. I

8 think, as in cases arising for petitions to correct

9 erroneous assessments, the applicable statute is

10 58-1145 of the Code of Virginia.

11 The Constitution of Virginia, Article 10,

12 Section 2, mandates that all assessments of real

13 estate shall be at their fair market value. Case

14 law has indicated that the assessment is presumed

15 correct, a very clear presumption, and that not-

16 withstanding that, the Court may hear testimony at

17 variance with the assessment by equally well-

18 qualified individuals.

19 The Courts are not permitted to substitute

20 their judgment for the assessment.

21 In other words, just mere disagreement

22 is not sufficient to overcome the presumption.

23 Our Supreme Court, in the City of

24 Richmond versus Chesterfield Apartments, 206

25 Virginia, at Page 22, recognized that there are three

generally accepted methods by which one asserts fair market value; they being the market data or comparable sales approach, the income or capitalization of net income, and reproduction costs less depreciation.

At this point the City of Richmond feels that it will show what the assessment is, will call the individual who in fact made the assessment and an independent appraiser on its behalf. I think that should cover it.

THE COURT: Which method did the City use as to this piece of property, Mr. Fitzpatrick?

MR. FITZPATRICK: Basically it will be shown from the experts that they used income or capitalization of net income as being the method.

THE COURT: I've read Mr. Call's deposition. What side of the case is he going to testify on?

MR. FITZPATRICK: Mr. Call will be a witness on behalf of the City of Richmond. I have reviewed that deposition, and I might add I have no objection to any of the comments or answers that are contained therein.

THE COURT: All right, sir, thank you very much.

You may call your first witness, Mr. Pascal.

MR. PASCAL: My first witness will be Mr. Drummond.

Your Honor, pardon me -- while Mr. Drummond is approaching the witness stand -- Mr. Fitzpatrick, if we could, the case would be shortened a little bit if I could dispense with preliminary matters such as the owner of the property, and we are prepared to put Mr. Gordon on to testify to that, but I think it will be better to agree that it is as set forth in the pleadings.

MR. FITZPATRICK: I will certainly be willing to stipulate the ownership is as has been pleaded in the pleadings.

THE COURT: Then, it is so stipulated.

BRENT DRUMMOND, a witness called by the plaintiff, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. PASCAL:

Q Would you tell us who you are and what

1 your occupation is, please.

2 A My name is Brent Drummond, and I am the

3 Vice President of Paul Gordon Associates.

4 Q Are you familiar with an apartment project

5 known as Rittenhouse Square?

6 A Yes, I am.

7 Q What relationship does Paul Gordon

8 Associates bear to Rittenhouse Square?

9 A Paul Gordon Associates is the managing

10 agency for the Rittenhouse Square Apartments.

11 Q As Vice President of Paul Gordon Asso-

12 ciates, do you have occasion to compile and come into posses-

13 sion of operating and income statements for Rittenhouse Square

14 Apartments?

15 A Yes, sir, I do.

16 Q Mr. Drummond, is what I have just given

17 you the statement of income and expense for the Rittenhouse

18 Square Apartment Project for years 1971 and '72?

19 A Yes, it is.

20 Q You are familiar with the figures on

21 that sheet?

22 A Yes, I am.

23 Q Is this sheet the one that is used in

24 connection with all Federal Income Tax, State Income Tax, and

25 any other reporting returns that Paul Gordon Associates or

the partners file?

A Yes, it is.

Q Okay.

MR. PASCAL: Your Honor, that will be Plaintiff's Exhibit Number 1, please.

THE COURT: Is there any objection, Mr. Fitzpatrick?

MR. FITZPATRICK: None whatsoever.

THE COURT: That document just identified will be Plaintiff's Exhibit Number 1.

Q (Continuing) I am showing you another one that appears to be for '72 and '73, and the same questions apply: Are these figures accurate; do you have occasion to deal with them?

A Yes.

Q Let's do it again for '73 and '74.

MR. PASCAL: Before I do that, I would like to move that the one I've just presented be admitted as Plaintiff's Exhibit Number 2, please.

THE COURT: All right, sir. How many other statements are there?

MR. PASCAL: Two more, Your Honor. They are all the same.

THE COURT: All right, let's have them all, then, and I will just mark them all.

MR. FITZPATRICK: I have no objection to Plaintiff's Number 2, Your Honor.

THE COURT: All right. Is that all of them?

MR. PASCAL: The last one is coming, Your Honor. We should have one for '71-72, '72-73, '73-74; the last one being '75-76.

MR. FITZPATRICK: Your Honor, I would object to the introduction of the last operating statement, in that tax assessments are now in fact made as of January 1 of a particular year. This petition for erroneous assessment relates to the years 1974 and 1975.

THE COURT: Do you object to the '76 data on this last one?

MR. FITZPATRICK: I object to the '75-76 data.

THE COURT: All right.

Mr. Pascal, what is your position on that?

MR. PASCAL: These figures represent actual experience. As Mr. Fitzpatrick will acknowledge, any appraisal by any appraiser is based upon a set of assumptions. Those sets of assumptions have to, for determination of their

validity, be measured in some respect against the actual experience.

THE COURT: I'll tell you what -- I'll allow it subject to you being able to show the relevancy of the '75-76 data, Mr. Pascal.

MR. PASCAL: That's fine with me, Y our Honor.

MR. FITZPATRICK: I would still object.

THE COURT: All right. If he is not able to establish it, all right.

For the record, then, the statement for '71-72 is Plaintiff's Exhibit Number 1, '72-73 is Plaintiff's Exhibit Number 2, '73-74 is Plaintiff's Exhibit Number 3, and '74-75 is Plaintiff's Exhibit Number 4, and '75-76 is Plaintiff's Exhibit Number 5; noting Mr. Fitzpatrick's objection to 4 and 5.

Your next question, Mr. Pascal.

Q (Continuing) Mr. Drummond, how long have you been employed by Paul Gordon Associates?

A Seven years this past February.

Q And how many apartment projects does that put you in touch with?

A Managed by Paul Gordon Associates?

Q Yes, sir.

1 A It's approximately around 17, 20 --
2 20 complexes, roughly.
3 Q And are they distributed throughout the
4 Richmond metropolitan area?
5 A Yes, they are.
6 Q In your experience, based only upon the
7 data you have seen, not your opinion, just the data you have
8 seen, does Rittenhouse experience a higher or lower vacancy
9 than other projects?
10 A A higher vacany than any other project.
11 Q Is it, in fact, the highest of the other
12 20?
13 A Yes, it is.
14 Q Now, for the record, I would just like to
15 clear up the 5 exhibits we have just introduced in evidence.
16 To the best of your knowledge, those are true and correct
17 statements in every respect?
18 A Yes, they are.
19 Q Thank you.
20 MR. PASCAL: That will be all from Mr.
21 Drummond, Your Honor.
22 THE COURT: Cross-examination.
23 MR. FITZPATRICK: I have no questions.
24 THE COURT: All right, sir, you may step
25 down.

1 May Mr. Drummond be excused, Mr. Pascal,
2 or do you want to keep him here?
3 MR. PASCAL: Yes, sir, he can leave.
4 THE COURT: You are free to leave if you
5 like, or you may remain in the courtroom if you
6 like.
7
8 - - - - - - - - - - - - - -
9 WITNESS STOOD ASIDE.
10
11 MR. PASCAL: My next witness will be
12 Mrs. Gregory.
13
14
15
16
17
18 WILLIE MAE GREGORY, a witness called by
19 the plaintiff, having been first duly sworn, testifies as
20 follows:
21 DIRECT EXAMINATION
22 BY MR. PASCAL:
23 Q Will you state your full name, please.
24 A Willie Mae Gregory.
25 Q Mrs. Gregory, what is your address?

1 A 214 West 34th STreet.
2 Q And what is your occupation?
3 A Assistant Property Manager for Paul
4 Gordon Associates.
5 Q For how long have you been employed by
6 Paul Gordon Associates?
7 A Twelve years.
8 Q For how long have you been an Assistant
9 Property Manager?
10 A Two years.
11 Q Would you describe, briefly, for me your
12 duties as an Assistant Property Manager.
13 A I'm over most all the Resident Managers.
14 I go from project to project checking on the Managers making
15 sure they are doing the work, you know.
16 Anything that's wrong with the complex,
17 project, I will come back and report to Mr. Gordon so he can
18 take care of it. I train the Resident Managers, and if we
19 lose one and get another one, I train them, and I will see
20 that they are doing the job.
21 Q How many apartment projects do you come
22 in contact with in your job?
23 A All of them.
24 Q Approximately how many?
25 You don't have to count them on your fingers, just an approxi-

1 mation.
2 A 13.
3 Q Thank you. Are you familiar with the
4 project known as Rittenhouse Square?
5 A Yes.
6 Q Are you assigned to that project now?
7 A Yes.
8 Q I'm going to ask you some questions
9 about Rittenhouse to help us paint a mental image of the
10 project in the Court's mind.
11 A Okay.
12 Q The first thing I would like to ask you
13 about is whether or not there is a dump next to the project.
14 A Yes, there is.
15 Q Okay. Now, we are primarily concerned
16 here with tax years 1974 and 1975, so at this time I will ask
17 you to restrict your answers to my questions to those years.
18 A Okay.
19 Q I would like you to tell us about the
20 dump and its effect on the project as you witnessed it during
21 those years. Just describe it in general for us.
22 MR. FITZPATRICK: Your Honor, I would
23 like that question divided into two parts when we
24 talk about 1974, but I would object to any discus-
25 sions about 1975 after January 1 for the reasons I

1 have enunciated previously.

2 THE COURT: All right, sir. Mr. Pascal --

3 MR. PASCAL: We will divide it into two

4 parts.

5 Q (Continuing) Would you tell us about

6 the dump. Let's start in 1973 and '74. Let's take it like

7 that. Just describe it to us.

8 A Okay. The biggest problem has been the

9 dump; the cemetery too, but the dump has been the biggest

10 problem. The smell, the trash -- on the side of the dump --

11 this is where -- well, when we first built the place it was

12 new, so tenants moved in and we had a full house, but then

13 after tenants moved out into the project, the smell was so

14 bad, the trash was so bad, that, say, if it was a windy day

15 the trash was blown over into the project, so the more you

16 cleaned, it didn't do any good, and the smell -- you couldn't

17 open your doors, you couldn't open your windows, because the

18 smell was so bad. Plus, you could just look over and see it,

19 and we kept trying to work with the City trying to get them

20 to do something about it, to straighten it out, because it

21 was so bad that the people were -- the tenants had started

22 moving out because they couldn't stand it, the smell was so

23 bad. Not only that, the rats -- you could just look at the

24 big rats walk over from the dump; it was just that bad.

25 Q Would you describe for us how close the

1 dump is to the project.
2 THE COURT: Are we talking about '73
3 now?
4 MR. PASCAL: Yes, sir.
5 Q (Continuing) Is it right next to it,
6 is it three blocks away, how far?
7 A Oh, no, it's right next door. You can
8 walk right out of your door, if there wasn't a fence there,
9 right into it.
10 Q And could people from their project see
11 the dump?
12 A Right. You could just drive through in
13 your car and smell it.
14 Q If the Court were to go to the project
15 today and look at the dump, does it appear now as it did then?
16 A No, it's much better now.
17 Q And what has happened insofar as being
18 able to see --
19 A Okay. Now, they really have improved it;
20 the smell is not there now. We don't have that problem any
21 more because they have got out there and they have worked,
22 and the dump is further back now, they have taken the trash
23 further back now, and it's more dirt like; they have filled
24 it in with dirt.
25 Q And when did the corrections occur?

1 A I would say in the last year and a half.
2 Q Okay. I would like you to tell us about
3 the effect that the cemetery, if any, any effect at all, has
4 had on the project?
5 A Well, that have had some effect, too.
6 Well, like, say, you are working in another project, and some-
7 body will ask for an apartment; you will try to sell right,
8 you will say, well, I have one, two and three-bedroom apart-
9 ments vacant in Rittenhouse Square, would you be interested,
10 and they will say, no, I don't want to live with the dump,
11 I don't want to live with the cemetery, and not only that,
12 we have had a drug problem.
13 Q Tell us about the drug problem.
14 A It was real bad, and then the Vice Squad
15 started working over there and they started clearing it out,
16 and --
17 Q When were these dopeproblems occurring?
18 A This is three years ago -- three, four--
19 between three and four years.
20 Q Did the project develop a name for being
21 some kind of a dope center?
22 A Yes, it was called Rottenhouse Square.
23 Q It was called Rottenhouse?
24 A Uh huh.
25 Q Now, with regard to the vacancies that

1 occur in any project -- with regard to Rittenhouse, did they
2 occur in the nature of a constant turnover of all tenants or
3 people who stay there for a long time and leave and there is
4 nobody to replace them, or describe the type to me.
5 A Okay. Well, some people that have stayed
6 for a long time that was over on this side where it was not
7 too bad -- they are further away from the dump -- those people
8 stayed, but on the side right at the dump, that's always
9 vacant because they are right -- they are facing -- every time
10 they look out the door they are facing the dump, so that's
11 always been -- if we put somebody down there, they will stay
12 a little while and then they leave.
13 Q Have you personally tried to control the
14 quality of tenants moving into Rittenhouse?
15 A Yes.
16 Q Would you describe to the Court what we
17 are talking about and its importance when we talk about the
18 quality of the tenants. What impact does that have on the
19 apartment project?
20 A Okay. A lot of tenants that can't get
21 an apartment anywhere else will come to Rittenhouse. That
22 means they have been turned down everywhere else, and
23 finally they will come to us when they have nowhere else to go.
24 Q Have you ever tried to make management
25 changes at Rittenhouse?

1 A Yes.
2 Q Would you describe them for us.
3 A We've gotten security guards, we've gotten
4 maintenance crews, we also have ground men to take, you know,
5 care of the grounds.
6 Right now we only have a Manager to help,
7 but we used to have a full-time Manager and Assistant Manager.
8 We are advertising now trying to get a better quality of
9 people. We are advertising in Afro and also in the newspapers
10 trying to get, you know, people, but, like I say, the name
11 is so bad now that when you try to sell it, you can't.
12 I mean, you just don't get the people,
13 especially the ones you want to, the good people that you
14 want.
15 Q Would you describe the quality of tenants
16 that were there in '73 and '74 as being excellent, good,
17 poor, awful --
18 A No, we had some good tenants, then --
19 Q Did you have a number of poor ones also?
20 A Of course; you will always have those.
21 Q Okay. Would you compare this project for
22 me with others that you are familiar with in terms of the
23 vacancy problem?
24 A This is the only one -- well, during the
25 crisis all of them -- we had problems with all of them --

1 but this has been the biggest problem; Rittenhouse Square
2 has.
3 THE COURT: Excuse me, Mr. Pascal, are
4 we still talking about '73?
5 MR. PASCAL: Yes, sir.
6 THE COURT: Please confine your answers
7 to that year.
8 What was the vacancy situation in '73?
9 A (Continuing) It was bad also. It was
10 bad then. It wasn't quite as bad as it is now, but it was
11 bad.
12 Q Okay. I have just asked you to explain
13 sort of a list, including the dump and the cemetery and the
14 dope problem, and we have been confining your answers to
15 1973.
16 Would the same answers that you have
17 just been giving me apply to 1974 also?
18 A Yes.
19 Q And would they apply to 1975 also?
20 A Yes.
21 Q My last question is going to be to ask
22 you to describe the general reputation of the project among
23 tenants that you were trying to write to in 1973 and in
24 1974. Did it have a good reputation or a bad reputation?
25 A A bad reputation.

1 MR. PASCAL: I don't have any further
2 questions of Mrs. Gregory, Your Honor.
3 THE COURT: All right, thank you, Mr.
4 Pascal. Mr. Fitzpatrick --
5
6
7 CROSS-EXAMINATION
8 BY MR. FITZPATRICK:
9 Q Mrs. Gregory, I wonder if you would
10 refresh my memory, please -- how long have you been employed
11 by Mr. Gordon?
12 A 12 years.
13 Q 12 years. You are, I gather, familiar
14 with Rittenhouse Square.
15 A Yes.
16 Q How long have you been familiar with
17 Rittenhouse Square?
18 A Ever since it was first constructed.
19 Q When was Rittenhouse Square constructed?
20 A '68.
21 Q Can you recall from your own observation
22 whether or not the sanitary landfill was in operation at that
23 time?
24 A Yes, it was.
25 Q Thank you. You have made some mention of

1 a cemetery. Was the cemetery there at that time?
2 A Yes, it was.
3 Q Thank you. Do you know the percentage of
4 vacancies that occurred in 1970?
5 A 1970 -- we just about had a full house,
6 almost.
7 Q How about 1973?
8 A '73 -- no.
9 Q You do not recall?
10 A No, I didn't say I didn't recall, we
11 did not have a full house, we had quite a few vacancies --
12 we had a whole lot of vacancies then; that's when it started.
13 Q From Plaintiff's Exhibit Number 2, if
14 I have the numbers correctly -- would you take a look at that
15 and let me know what the vacancy rate was in '73.
16 THE COURT: Would that be the sheet for
17 '73 and '72?
18 MR. FITZPATRICK: Yes, sir, Your Honor.
19 THE COURT: All right. That is Plaintiff's
20 Exhibit Number 2. Hand it to the witness, please.
21 Q (Continuing) I think if you might focus
22 your attention to the upper left-hand corner, second line --
23 MR. PASCAL: Your Honor, if it would
24 help Mr. Fitzpatrick, I would be glad to let Mr.
25 Drummond come back to the stand. This is not really

1 Mrs. Gregory's area of expertise, and --
2 MR. FITZPATRICK: Well, I presume Mrs.
3 Gregory can certainly read the second line of your
4 exhibit.
5 THE COURT: Can you read that line out?
6 A (Continuing) Rent income vacancies,
7 1973, 13.6 percent.
8 Q Thank you. Right next to it does it have
9 a '72?
10 A '72 -- 7.9 percent.
11 Q All right. Thank you. Let's move to
12 Plaintiff's Exhibit Number 3. This will be located in the
13 same place, Mrs. Gregory.
14
15 THE COURT: Well, Mr. Fitzpatrick, the
16 documents speak for themselves.
17 MR. FITZPATRICK: That is correct. I just
18 wanted it in the record.
19 MR. PASCAL: We will stipulate the
20 vacancy rates are as represented on the sheet.
21 THE COURT: Apparently he wants it drawn
22 out through this witness, and I will afford him
23 that.
24 MR. FITZPATRICK: All right, if the
25 Court will take notice of the vacancy rate I will
end that line of questioning.

1 THE COURT: And you may argue that point
2 in your closing statement.
3 Q (Continuing) It won't be necessary to
4 answer that last question, Mrs. Gregory.
5 A Okay.
6 Q Can you describe what you did in your
7 capacity as an Assistant Property Manager for the two years
8 that you, I believe, indicated you have been focusing your
9 attention at Rittenhouse.
10 A Well, we transferred one Resident Manager
11 to another project; that was the Resident Manager.
12 Q Why did you do that?
13 A Because we had a vacancy, and we had
14 somebody to go up.
15 Q Was he performing --
16 A It was a large project, and what we do
17 is the persons that already is on a large complex --
18 we would let the Resident Manager be transferred and then let
19 the Assistant Manager take her place, and they would hire
20 another Assistant Resident Manager.
21 Q Well, were you training a Resident
22 Manager, or were you training an Assistant Resident Manager,
23 or were you occupying one of those positions yourself?
24 A I was occupying -- no, we had an
25 Assistant Manager, but we had to let her go because she was not

doing her job, so that is when I went over to help the Resident Manager that is there now.

Q All right. Thank you.

MR. FITZPATRICK: I have no other questions.

THE COURT: All right, thank you. Any questions on Recross-Examination, Mr. Pascal?

MR. PASCAL: No, sir, none.

THE COURT: May this witness be excused?

MR. PASCAL: Yes, sir.

THE COURT: You are free to remain if you like, or you may leave the courtroom if you like.

- - - - - - - - - - - - -

WITNESS STOOD ASIDE.

THE COURT: Your next witness, please, Mr. Pascal.

MR. PASCAL: Mr. Simmons, please.

1

2 CECIL W. SIMMONS, a witness called by
3 the plaintiff, having first duly affirmed, testifies as
4 follows:
5 DIRECT EXAMINATION
6 BY MR. PASCAL:
7 Q Would you state your name for us, please.
8 A Cecil W. Simmons.
9 Q Mr. Simmons, what is your occupation?
10 A I'm a real estate broker and appraiser.
11 Q Would you summarize for us your technical
12 training as an appraiser.
13 A Okay. I have completed all of the
14 requirements for the MAI designation, which is a member of the
15 American Institute of Real Estate Appraisers. I hold the
16 SAI; Society of Real Estate Appraisers.
17 Q And for how many years have you been
18 engaged in this occupation?
19 A Since 1966.
20 Q Do you hold any Virginia state licenses?
21 A There are no licenses for appraisers.
22 I do hold a real estate broker's license.
23 Q Would you tell us what degree you have.
24 A I attended Virginia Commonwealth
25 University.

1 Q And professional memberships?
2 A National Real Estate Local Board, MLS --
3 MR. PASCAL: Your Honor, I would like
4 to have Mr. Simmons qualified as an expert for the
5 purposes of his testimony, please.
6 THE COURT: Is there any objection, Mr.
7 Fitzpatrick?
8 MR. FITZPATRICK: None whatsoever.
9 THE COURT: The Court rules he is so
10 qualified, Mr. Pascal.
11 MR. PASCAL: Thank you.
12 Q (Continuing) Mr. Simmons, are you
13 familiar with the real property known as Rittenhouse Square?
14 A Yes, I am.
15 Q And did I ask you to make a retrospective
16 appraisal for tax years 1974 and 1975?
17 A Yes, you did.
18 Q Before we get into the details of your
19 conclusions, I would like you to educate us very briefly on the
20 three basic methods of appraisal that one could use to appraise
21 an apartment project.
22 A Okay. The three recognized approaches
23 to estimating the market value are the cost approach, which
24 holds as its basis the reproduction cost of improvements less
25 depreciation and vacant land value; the second approach would

1 be the income approach which is utilizing an economic approach
2 which basically looks at the project and its ability to produce
3 money for its investors; and of course, the market approach
4 where you would compare the project with other projects that
5 have sold.
6 Q Which, in your opinion, would be most
7 indicative of the fair market value of Rittenhouse?
8 A Probably the income approach.
9 Q Am I correct in saying that the cost
10 approach would be the least reliable?
11 A Yes.
12 Q Now, have you visited Rittenhouse person-
13 ally and taken a tour of it?
14 A Yes, I have.
15 Q When did you do that?
16 A A couple of weeks ago -- I forget the
17 exact date.
18 Q Would you give us your conclusions and
19 all of the reasons with regard to the fair market value of
20 Rittenhouse as of January 1, 1974.
21 A Okay. I've got several charts that I
22 worked up showing background information, and it might be
23 helpful if you could pass them out or have someone pass them
24 out.
25 Q That's fine. Do we have a copy for the

1 Court to look at while you do this?
2 A Yes, there are five copies.
3 THE COURT: All right, let Mr. Fitzpatrick
4 look at it first before I look at it. He may not
5 want me to see it, Mr. Pascal.
6 MR. PASCAL: Your Honor, these are
7 intended to be really demonstrative aids to help
8 walk us through what is a fairly complex area.
9 THE COURT: Excuse me, Mr. Fitzpatrick--
10 will you need some time to look at those?
11 Let's take about a ten-minute recess and give him
12 an opportunity to look at those.
13
14 NOTE: At this point a recess is had,
15 whereupon the case is resumed, viz:
16
17 THE COURT: We are ready to proceed with
18 this witness. Mr. Fitzpatrick, are you ready?
19 MR. FITZPATRICK: Yes, sir, Your Honor.
20 THE COURT: All right.
21 MR. FITZPATRICK: I have no objection to
22 the introduction of these documents.
23 THE COURT: I think he is just going to
24 use them to testify. Is that right, Mr. Pascal?
25 MR. PASCAL: Right now he is going to

1 use them to testify, and then, after he has done
2 so, if there is no objection, we will move them
3 into evidence.
4 THE COURT: All right.
5 Q (Continuing) Okay. If you would, just
6 proceed, and the last question was will you walk us through what
7 your conclusions were and your reasons for it using these aids
8 as you see fit.
9 A Right. Okay. To give you a little
10 background, Your Honor, making the appraisal in retrospect
11 the inspection was really not a great help because the physical
12 condition of the building right now -- I had no way of knowing
13 exactly how it was in '74 and '75, the only thing I can assume
14 is the condition was about the same, maybe better, maybe
15 worse, but basically the same as it is now.
16 On the examination there was quite a
17 bit of vandalism.
18 THE COURT: Excuse me -- when was your
19 inspection actually made at the property?
20 THE WITNESS: About two weeks ago.
21 THE COURT: All right. Please proceed.
22 A (Continuing) Okay. And in inquiring of
23 the management people who were there at the time they indicated
24 the condition of the project was probably a little better than
25 it is now; that maintenance was a little better. As far

1 as vandalism was concerned, it was evident at that time;in
2 '74 and '75.
3 As we always do, I looked at the owner's
4 operating statement which was furnished, and he had a
5 projected income, and what he actually obtained in the market--
6 and the difference, of course, being his vacancy and his
7 loss of income through poor credit, non payment, that type
8 of thing -- so for '74 he showed a vacancy which was about
9 28 percent under what he had anticipated that he should
10 receive if all the units were fully occupied, everybody paid
11 their rent, there were no bad debts and what have you.
12 In '75 his operating statement showed
13 that he lost about 34 percent.
14 Well, the first thing this keyed me in--
15 either there is something wrong with the project or there
16 is something wrong with the management. In either case,
17 something needs to be adjusted because examination of most
18 projects city-wide during the first part of the recession --
19 the vacancies did rise, but they didn't rise more than about
20 1 percent, they picked up about 6 percent of unfurnished
21 units.
22 In Richmond, if you will remember, we
23 bragged an awful lot about the low unemployment, and, so,
24 it was a long time before Richmond felt the recession except
25 with very low income groups since they are the first to

1 receive the brunt of any recession.

2 I surmised that since there was a very

3 high vacancy for whatever reason -- whether there were too

4 many two-bedroom units, which is the case often since there

5 is a high demand for three-bedroom units on the East End, or

6 whether the reason was the location of the City Dump and the

7 proximity of the cemetery -- in any case, I felt that in

8 economic terms that to fill up the units and get within a

9 reasonable vacancy, which I proposed at 12 percent, that

10 his rents should be lowered, and I examined the market and

11 found that there were an awful lot of subsidized in the

12 immediate area, Jefferson Townhouses, Fairhills Apartments,

13 Glenwood Townhouses and others that had rents under what

14 Rittenhouse was asking at the time.

15 In '74 the rents for Rittenhouse --

16 they were asking $115.00 for a one-bedroom, $125.00 for a

17 two-bedroom and $135.00 for a three-bedroom. There were

18 almost no vacancies in the three-bedroom units, but, of course,

19 there were very few three-bedroom units.

20 There were 25 three-bedroom, 255 two-

21 bedroom and 39 one-bedroom units. The vacancies were mainly

22 in the two-bedroom and one-bedroom units showing there was

23 a high need for large family units, but either a low need

24 or the people that would live in these units chose not to

25 live in Rittenhouse.

1 So, that gives you a little background.
2 Also, I was a little concerned about
3 using data since there was such a low yield on the project.
4 I was concerned about what kind of data I could use to reflect
5 its value from this. As we know, apartments -- when they
6 usually are sold you present your operating statement to the
7 prospective buyer. He then, in his mind, thinks about what
8 he possibly could raise the rent to, because we were living
9 in a value inflationary period at that time and still are,
10 and usually use a very potential growth that may be higher
11 than what you are actually receiving.
12 This is due to a delay in payment of
13 rents; the fact that you are leasing for a year means that
14 you may have a unit rented for $115.00 that should really be
15 at $125.00 but it's two more months before you are going to
16 do this.
17 So, there is some difference in the way
18 that a potential buyer would look at the actual income versus
19 what he thought he could produce.
20 And to keep myself very honest I did this
21 chart that starts off with Hampshire, price/date, actual
22 income, OAR and what have you, and at the bottom it has the
23 indication.
24 Also, to give you some example of the
25 background on how I came up with these figures, I have the

1 sheet here which says "sales", and it has Hampshire Place at
2 the top of it. Okay. Now, this sheet -- I did with every
3 one of the sales I had used on the chart, and what I did
4 there -- the basic principle in real estate is, as far as
5 the investor is concerned, how much he can make on his money.
6 Now, there are many elements that make
7 up a return. The first one coming to mind is what kind of
8 risk am I getting myself involved in when I put my money down
9 to buy a multi-family project in the East End? Two others,
10 of course, would be how can I leverage out, how can I
11 mortgage the property, and of course, all the others that go
12 with the management problems versus other investments such as
13 bonds, stocks and other real estate, such as a very nice
14 project located in an area where you have very little vacancies
15 and very little vandalism.
16 The Hampshire Place is a good example
17 of a place that sold. Hampshire sales price is under 3 million
18 dollars. It sold in July of 1974. It was contracted to sell
19 in late 1973.
20 What I did, I took the actual income --
21 the first column you see there is actual net income -- that
22 they were receiving. The potential investor would look at
23 it and know without too much problem that he would receive
24 this kind of income, and he would look and say, okay, if I
25 receive this actual net income I'm going to have about a

9.14 percent return on my money, and the sale actually indicates that that's what their objectives were; a 9.14 percent on actual income.

Okay. We will go to the bottom of the page -- I've got the actual gross plugged in also, and you can see that the gross which was projected at that time was about $520,000.00. They had a relatively high vacancy on these projects, I think it was about 17 percent or something like that -- so if we used a gross income and divided it by the sales price, then we would come up with a cruder figure, a figure we can relate to, and this, you see, is 17.6 percent.

Well, basically what comes out of that is all the expenses and all the vacancies, so a person doesn't make 17.6 percent, he would actually make 9.4.

Now, when we turn from what is actually being received and we look at the potential of the project-- in other words, the investor says, I think I'm a better manager than the former owner -- then you look and see a little different return. This doesn't mean the property is worth more or less, it just means you get a different indication, a different overall rate, because you are talking about potential, which, if we think about it in another sense, is maybe a little riskier than what is being actually obtained.

You can see if we use gross figures on

1 projections or net figures on projections we will come up
2 10.8 and 20.7. I have done this with all the sales I
3 knew about that took place in the proximity of the project;
4 sales I thought that either have certain characteristics that
5 were similar to the project or that were characteristic of
6 the type of project that we have here.
7 I will say if you could keep that in
8 mind as you look at the others -- there is an awful lot of
9 figures on the other sheets which start off with Hampshire,
10 and it even confuses me -- but basically if you will go over
11 to the last column you will see what I have done.
12 I have looked at each one of the
13 sales -- Chimborazo, Chateau Village, Central Gardens --
14 and I divided the actual gross income -- I have divided the
15 actual net income -- by the sales price, and I have also
16 taken the potential and treated one as oranges and one as
17 apples, so when we divide into the prospective potential of
18 the subject or its actual, we should come up to the same
19 indication, we are just dealing with different figures, that
20 is all, they are somewhat meaningless, really, except they
21 are an indication of what the market is doing with these
22 projects.
23 You can see in the right-hand column I
24 have come up with -- and the first column would be my
25 actual, the 18 percent, or what I feel would be an indication

1 from these sales -- the Hampshire Place was 17.6 percent on
2 the actual growth -- so the Rittenhouse Square is not as good
3 a project, it's not as good a location, I think, there is
4 no more risk involved, and basically with investments a higher
5 risk indicates a higher net return or higher gross return.
6 And, so, I think that this sale would
7 indicate that the subject property, Rittenhouse Square, should
8 be indicated by 18 percent on its actual gross.
9 By the same token, on Central Gardens --
10 that project was a relatively low sale. There are some factors
11 entered into it that indicate it's a low sale, and, so, its
12 20 percent overall return on the actual gross income, I
13 think, should indicate the subject should sell for a little
14 more overall, so, also I come up with 18 percent by that indi-
15 cation.
16 On the Chateau Village, I wasn't able to
17 get all the information as of the date of sale, but I did have
18 some figures on the growth potential, and that one is a project
19 that is an awful lot like the subject in that it's a very
20 nice quality, fairly modern project that's surrounded by
21 properties that are inconsistent with it, they are inferior
22 to it, and if you think about it, Rittenhouse Square is a
23 whole lot like that; it's a very nice project, if it were
24 located in any area except next to the City landfill area
25 and the cemetery, it should have more appeal.

And, so, I think Chimborazo has that same type of relationship. Since it is a garden-type project, though, it does have more expenses than a townhouse project.

Rittenhouse is a townhouse and terrace unit, so the overall expenses are not as high in that kind of project.

So, I think the 24.8 percent overall return there on actual gross would be high for the project, and, so, I feel like maybe 20 percent -- that would indicate about 20 percent for the subject.

Well, to make an awful long story short on this, basically what I am saying is if we took the actual gross income of the project, which is at the bottom with $352,992.00 and capped it by 18 percent -- in other words divided the 18 percent into that -- in other words, we are seeking a gross return of 18 percent -- would yield its approximate value, and I come up with $1,961,066.00.

The gross figure that I have projected is based on the lower rents that I figure should be more acceptable in the market and should fill Rittenhouse up and have less vacancies and more reasonable vacancies than the 27 percent it is experiencing.

So, if we take this project's rent, which means we are going to get more money in, and cap that at the

1 indications from the sales -- I used 21 percent, and you can
2 see most of the indicators in the right-hand column up there
3 are 21 or 22 as compared with properties that have sold,
4 properties that are better than the subject property -- that
5 gave me an indication on the projected gross of about
6 $2,109,000.00.
7 Now, to be quite honest with you, look-
8 ing at the project and seeing what actually is being obtained
9 there, and recognizing that it is in the hands of profession-
10 al management, it's not a one owner deal where the man may
11 be a poor manager but is in the hands of fairly competent
12 management, I have to search long and hard in my mind to
13 project a gross which was greatly different from this.
14 So, in my mind, I think the indication
15 of the actual gross would be a more acceptable indication
16 of the value, and, of course, I would probably round this to
17 around $2,000,000.00, because we appraisers aren't that
18 accurate.
19 If you will go down to the last line
20 there for '75 -- the actual income in '75 went down, and there
21 are several reasons for it. At one time the tenant selection
22 in Rittenhouse was not as select as the management would have
23 liked for it to have been, and so they had a lot of problems;
24 there were a lot of vandalism problems; they had problems
25 with the Vice Squad and what have you, so indirectly they

1 spend a lot of money for expenses that they probably would not
2 have spent had they had a better quality of tenants.
3 Also, the Redevelopment Authority had
4 a contract for years previous, and that terminated in '74 for
5 about forty to fifty public housing tenants; that their rents
6 would be paid by the Redevelopment Authority, and the
7 Redevelopment Authority would be responsible for the rent,
8 and the tenants, of course, were placed there; they had no
9 choice, if they accepted public housing units they were placed
10 where the Redevelopment Authority wanted them or could put
11 them -- not want to put them,but where they could put them --
12 and it was for this reason that there were about 50 units
13 in there that people were not necessarily in by choice.
14 So, you can see in '75 the brunt of the
15 recession probably hurt the project and hit it somewhat harder.
16 So, to capitalize the gross for '75 by
17 the 18 percent, we come up with around $1,900,000.00.
18 Now, the asking prices for rents in '75
19 went up roughly $10.00 per month, and, so, my projection for
20 the gross for '75 -- like I say, it's somewhat artificial in
21 that I project a hypothetical, if you will, occupancy that
22 does not exist, and I came up with $467,000.00, and I pro-
23 jected 21 percent and came up with around $2,002,000.00.
24 Now, that's overall rates and what have
25 you that come out of the market place. Now, I have used

1 apologize for giving you a rough worksheet, but time didn't
2 permit typing -- what I have done on here -- I have got the
3 actual income and expenses on the left-hand side of the
4 column or on the sheet, and I've got my projection on the
5 right-hand side.
6 Now, all the categories here are the same
7 standard categories used by professional management people, and
8 they publish information about typical operating rents, and
9 this is a very professional business; it's pretty well accepted
10 that apartment projects in the City of Richmond in good
11 locations where you don't have a lot of vandalism and what
12 have you probably have expenses that are in the area of 42
13 percent of the gross potential. This is reported in the
14 national publication about Richmond in particular. And also
15 this fits in pretty good with the national averages for expenses.
16 Now, of course, these are averages, but
17 what happens is as we get into appraising properties, we try
18 to ignore peculiarities of a certain manager. I may manage
19 some properties and I do all the painting, all the repairing,
20 because I like to do that sort of thing, therefore, my
21 expense statement would not indicate this and it would show
22 up very low.
23 Now, the subject expenses as you can see
24 for 1974 -- and what I have done in this particular case is
25 taken the taxes out -- since this is a contest which is about

1 taxes, to me the taxes, the actual taxes that were charged
2 the project into it, I think, warped our indication,
3 especially if we are talking about net return, because obvious-
4 ly the taxes have to be taken out before we get anywhere near
5 the net return; it's a basic required expense.
6 So, what I have done is taken the taxes
7 out and taxes relate to a percentage of value. The rate for
8 1974 was $1.93 or roughly 1.92 percent. You shouldn't have
9 had to pay more than 2 percent of the value of your property
10 for taxes, and, of course, in the income approach as we
11 capitalize the net income we are talking about a relationship
12 of net income to the value, and, so, taxes and net income,
13 taxes and net return, are somewhat comparable in that respect.
14 So, what I have done on this projection,
15 of course, is use the actual expenses, and then I have tem-
16 pered it, and, of course, I have put in what I projected the
17 income to be; $100.00 a month for the one-bedrooms, $115.00
18 for the two-bedrooms, and I left the three-bedrooms at $135.00
19 because there is very little vacancy and quite a demand for
20 that type of unit, and those people don't have that much
21 choice. If they had a choice, they may not be there, but by
22 and large the units are pretty well occupied.
23 All these numbers are just one way I
24 cross-checked to make sure I was on the beam as far as expenses
25 was concerned.

1 Now, you can see that the actual net
2 operating income including taxes -- and remember, we are keep-
3 ing taxes in this for '74 -- is about $222,000.00 whereas my
4 projection is $256,000.00.
5 Like I say, I find it very hard to
6 differ too much with actuals because we have a company there
7 that's in there working on the project; I'm coming in with
8 just a little bit of work and projecting this into it. It's
9 some theoretical.
10 So, to take these figures and put them
11 down there to the bottom line -- if I go back to the first
12 chart I worked on -- you see under Hampshire Place its
13 net return was 9.4 percent; the one that sold in July of
14 1974. Hampshire Place, I think, is probably a better project
15 than Rittenhouse; there is no doubt about it, it has more
16 potential and less problems. But it did have problems, and
17 it's a large project, so it is pretty comparable.
18 So, the 9.4 percent return which was
19 an actual return -- if I applied that 9.4, and I've used 9.3
20
21 here, along with the taxes, which should be 1.9, we should
22 cap that at 11.2, and if we did we would allow for the taxes,
23 taxes would be included and would come out, naturally.
24 So, if we cap at 200 by the 11.2 we come
25 up with $1,900,000.00. Or, like I say, I would definitely
round that to probably $2,000,000.00.

1 Now, if we go to the other side of the
2 chart and we use my projection which is theoretical, rents
3 which are lower and theoretical expenses which are based on
4 norms for projects that are probably better than Rittenhouse,
5 that probably has less vacancies and less expenses, because
6 by and large most of the projects in the City would probably
7 be under 5 percent of vacancy for those years, and if we
8 tax those at a figure which is slightly higher, because if
9 you are on Hampshire Place we have 10.8 percent -- in other
10 words, the projected net income would be higher, and so your
11 figure is higher.
12 Still talking about the same sales price,
13 still talking about the same indication of value, if I use
14 that and also throw in something here that's real close to
15 the heart of a lot of investors, the mortgage equity technique,
16 which is basically nothing more than looking at what mortgage
17 rates are available in the market, and what I want to get on
18 my return and what all the tax advantages are of owning real
19 estate such as tax shelter and what have you, then I would
20 have to look at what the interest rates were for that year.
21 Now, in the beginning of the recession
22 prime bounced around 12 percent several times, mortgage money
23 was almost unobtainable during 1974, and then finally in
24 1973 it subsided and we were getting rates for a project like
25 this around 10.10, maybe 10-1/2. All rates high enough to

preclude the construction of any apartment, there were very few apartments constructed during this era. In fact, up until recently there have been very few constructed because the economics were not there, the risks weren't high enough, and the mortgage rates were too high, and this was the beginning of that era. But if we did project a mortgage rate of, say, around 10 percent and we figured the person's equity return, then an investor would be looking at a requirement or about an 11 percent return. This ties in pretty close with the 10.8 return on the actual sale of Hampshire Place.

Here I have used .111 which is slightly lower than 1 percent because that is the indication, and added in with the taxes we come up with 13 percent, and you can see we are talking about a difference there of 1.8 percent difference between net and projected, and with our projected net income we would come up with a figure which I would round to a million.

So, almost all of the indications that I had for '74 using all the techniques that were available to me, both through the market and through the income -- and I am tying almost all of this into income because I think the exceptionally high vacancy and peculiar problems of Rittenhouse doesn't blend in very well for comparing one unit with another in an area that's very hard to make an adjustment for the City dump or for the other factors here -- but almost

all the indicators I have here involve an indication of value that's around $2,000,000.00.

Also, '75 -- my projections would be a little higher, and I would probably go with around $100,000.00 more for that year, but if we use the actual income the value should remain about the same, $1,900,000.00, $2,000,000.00 because the vacancies -- if we look at it this way: Probably the vacancy in '74 was artificially low because of the public housing units, 50 units or so, -- they weren't all occupied in '74, but some of them were -- this would have an effect on the 319, and that alone would be 1-1/2 percent vacancy in itself.

There is an awful lot of information here, and there's an awful lot of background data that I have pulled together on this, and I would be glad to answer any questions about the value indications.

Q Excuse me -- I have a couple of questions. I would like you to go to your chart entitled "Comparison of Taxes".

A Right. Okay.

Q And when you get through with that I will have some more questions, but would you just explain that to the Court.

A Mr. Pascal asked me to look at the comparison of taxes or the comparison of assessments for

1 equalization, and, again, we had this problem of a project that
2 is very hard to make comparisons of.
3 I think the simplest way to make a
4 comparison, though, is to get right down to the core of the
5 matter, that of tax burden, and I related the tax burden along
6 with the income for the years '71 through '74 leading up to
7 '75.
8 You can see that the tax burden was
9 around 12, 12.3, 12.7, 12.6, and then jumps to a 15 percentage
10 in 1974. This is due to the fact that the income was low
11 and the taxes remained relatively stable and were raised in
12 1973 to 1974.
13 If we look at other properties, and
14 based on their tax burden, or either their assessment times
15 the tax rate as compared with what we received in actual
16 income, and these relate to actual income, then Chimborazo,
17 of course, is relatively low at 7.6 percent, Chateau Village
18 at 10.9 percent, and Central Gardens at 11.6 percent and
19 Hampshire Court at 11.4 percent, and no property gets any-
20 where near the subject property on tax burden.
21 This is the core of the matter; that
22 tax burdens for Rittenhouse are disproportionately high.
23 There are lots of other ways to compare it; it would involve
24 an awful lot of mathematics and would be very hard to under-
25 stand.

Q Mr. Simmons, I want to make sure we are clear on what your opinion of fair market value of Rittenhouse was on January 1, 1974, and January 1, 1975. I would like you just to tell me what those numbers are.

A Okay. It's my opinion that the value of Rittenhouse Square on January 1, 1974 is $2,000,000.00, and January 1st of '75, $2,100,000.00.

Q I believe in connection with your work you had occasion to come across what the actual assessment was for '74 and '75. Am I correct?

A Yes.

Q Would you tell us, please,what the actual was.

A Okay. The actual assessment was $2,743,000.00.

Q And what was it for 1975?

A $2,300,000.00. Prior to that the assessment had been for the previous three years $2,189,500.00.

Q Now, Mr. Simmons, we know from Plaintiff's Exhibits 1 through 5 that Rittenhouse experienced some vacancy problems, and in 1974 the actual vacancy was 27.6 percent.

Do you find that to be extraordinarily high or low in comparison with the average on the Richmond apartment market?

A That is extremely high.

Q You investigated the property and you are familiar with its management?

A Yes, as familiar as I could be in a short period of time.

Q You don't have any reason to believe that it's the management's fault as far as being inefficient or negligent or anything like that, do you?

A It certainly doesn't appear to be inefficiency.

Q So, am I correct now in saying you would attribute that to market factors?

A I think so, and the reason I am convinced of it is because the vacancy got worse in 1975 and jumped very rapidly in 1973, and I think that what happened was as our unemployment in the City of Richmond stayed pretty high our low income people were the first to receive the brunt of this, so people in projects where the rents were a little higher then, you know, would be in pretty good shape, but the person who had the choice of $20.00 -- if $20.00 meant an awful lot to him he had to drop back to a cheaper unit, and, so, with the Rittenhouse Square, with their rent continuing to escalate, you know, to keep pace and all -- they were actually priced out of the market, and I also think that Rittenhouse is a little too good for the area of construction and what

have you; it's identical with other projects in superior locations.

Q You have used Hampshire as an apartment project that you think is generally comparable or as comparable as one can be. I don't think we have really identified for the Court yet, the actual size of Hampshire. If I am incorrect, just correct me, please.

A I think Hampshire has 340 units.

Q Is that correct? I'll give you a chance to find your notes.

A Yes, Hampshire Court has 340 and the subject has 319.

Q And Rittenhouse is constructed on approximately 13 acres of land?

A Yes, I believe so.

Q And I believe Hampshire is constructed on approximately 11 acres of land. Is that right?

A Something like that.

Q Okay. Thank you.

A Other than that, the location of Hampshire is better. I think the great similiarity between the project is the size of the project, because it's very difficult to compare a project of, say, 40 units to a project -- this is a pretty mammouth size project for the city -- and also the fact that it had a high vacancy -- that's a good comparison,

1 too.
2 Q Excuse me a moment, please -- do you
3 think the comparison between Hampshire and Rittenhouse is
4 enhanced or reinforced by the fact that prior to this sale of
5 Rittenhouse Hampshire was also managed by Paul Gordon
6 Associates?
7 A That would seem to indicate similar
8 management.
9 Q That would strengthen the comparison,
10 then, wouldn't it?
11 A Yes.
12 Q Now, I think in our haste to get into all
13 the details we may have overlooked really stating exactly
14 what the fair market value means, and I guess definitions can
15 vary a little bit, but I would like you to give the Court what
16 you believe to be a fair definition of the term "fair market
17 value".
18 A Okay. I never memorized it because I
19 figured memorizing anything is a waste of time -- I'm not
20 that disciplined -- but basically fair market value, under our
21 concept, which goes back to the days of the railroaders
22 when they condemned across the farm lands, is what a willing
23 buyer and a willing seller, neither under abnormal pressure,
24 reach as an agreeable price. Also tied in with that is the
25 fact that something -- they don't say, but basically we look

at typical financing, because this day and age we don't deal with cash money, everything is financing, but basically a willing buyer, willing seller, property placed on the market for a reasonable length of time so as not to cause a forced sale, and also both the buyer and seller being knowledgeable people, having all the knowledge that I would have about the real estate market; sort of an artificial situation.

Q Thank you.

MR. PASCAL: Your Honor, may I have a moment to discuss something here?

THE COURT: Yes, sir.

Q (Continuing) Mr. Simmons, one last question, and then I will ask you to answer Mr. Fitzpatrick's questions.

I would like to know if in your opinion the assessed value as you have just related to us as placed on the property by the city is in fact too high?

A Yes, I think so.

Q Do you think it is clearly and convincingly too high?

A Yes, I do.

Q Thank you, I think Mr. Fitzpatrick will have some questions for you.

1 CROSS-EXAMINATION

2 BY MR. FITZPATRICK:

3 Q Mr. Simmons, I just have a couple of

4 questions.

5 Could you perhaps advise the Court when

6 you were retained to perform this appraisal.

7 A I was contacted about three weeks ago.

8 Q When did you undertake the actual

9 appraisal?

10 A About two weeks ago.

11 Q Nowhere have I heard any mention of

12 either the market or the cost approach in your testimony.

13 Is there any reason for that?

14 A It may not look like it, but the sheets

15 I have with the sales on it is a type of market approach in

16 that you find what your overall rates are -- making comparisons

17 on a sales basis is very difficult.

18 Q I notice one other thing which seems to

19 me to be of some consequence, and I pose this question to you:

20 Do you, when you are making an assessment which is effective

21 as of a particular year -- in other words, in 1974 were you

22 asked to make this assessment you would have been unable, I

23 believe, at that particular time, to use the figures for

24 1975. Is that correct?

25 A Yes.

Q You have used 1975 figures in this appraisal here.

A Yes.

MR. FITZPATRICK: Thank you. I have no further questions.

THE COURT: All right, thank you, Mr. Fitzpatrick. Do you have anything on redirect, counsel?

MR. PASCAL: No, sir, we rest.

THE COURT: All right, sir. You may step down, sir.

- - - - - - - - - - - - - -

WITNESS STOOD ASIDE.

MR. PASCAL: Your Honor, pardon me -- coming in and out with the jury I overlooked to put Mr. Simmons' notes and work documents into evidence.

THE COURT: All right, sir.

MR. PASCAL: And I don't think Mr. Fitzpatrick has any objection, but I would like to do so at this time, and the order in which they go in does not concern me; if you would just let me know so I can mark mine the same.

THE COURT: Those would be the same four documents the witness has testified from?

MR. PASCAL: Yes, sir.

MR. FITZPATRICK: Your Honor, in regards to each of these documents, insofar as they reflect elements of knowledge which occurred in calendar year 1975, I would object to that for the reasons which I have previously stated; that the assessment is effective as of the first of a particular calendar year. Other than that, I have no objection.

THE COURT: All right, sir, your objection will be noted, and I will take the objection under advisement, Mr. Fitzpatrick.

MR. PASCAL: May I respond?

Your Honor, I think Mr. Fitzpatrick's observation is a question of weight and not admissibility, so I think they are clearly admissible, and, in addition, I would note that he did not inquire of Mr. Simmons that what he is doing on these sheets is improper, and it is something for his evidence, but it has not come out on our side of the case.

THE COURT: It's a point of law, but it goes to admissibility rather than the weight, and I will rule on that at some subsequent time.

As I understand it, the plaintiff now rests.

MR. PASCAL: Yes, sir.

THE COURT: Is there any evidence for the defendants?

MR. FITZPATRICK: Yes, I would like to call Mr. Chandler.

THE COURT: Mr. Chandler, please come forward.

RICHARD A. CHANDLER, a witness called by the defendants, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. FITZPATRICK:

Q Mr. Chandler, would you please, for the record, state your name.

A Richard A. Chandler.

Q Your employer?

A I'm the Assessor for the City of Richmond.

Q All right, sir. Do you have any professional qualifications which you might care to share with the Court.

A Well, yes, sir. I'm a member of the American Institute of Real Estate Appraisers, which we briefly call MAI. I am a member of the Society of Real Estate Appraisers, and I carry another professional designation from the International Association of Assessing Officers of CAE which stands for Certified Assessment Evaluator.

Q Yes, sir. How long have you occupied this position as Assessor?

A I have been the Assessor since December, 1956.

Q All right, sir. Would you state for the Court what the assessment was on the subject property, that being Rittenhouse Square, for 1974.

A The assessed value was $2,760,800.00 as of January 1, 1974.

Q What was the assessed value for the property known as Rittenhouse Square for the year 1975?

A $2,300,000.00.

MR. FITZPATRICK: Your Honor, I think this is required under law this be done. That's why I am going through this.

THE COURT: All right. What was the

1 figure of '74?

2 THE WITNESS: $2,760,800.00.

3 THE COURT: Thank you.

4 Q (Continuing) Mr. Chandler, could you,

5 perhaps, identify and explain to the Court what your function

6 as City Assessor is.

7 A Yes, sir. Very briefly, Your Honor --

8 THE COURT: The Court is aware of what

9 the function is, Mr. Fitzpatrick, being a resident

10 of the City of Richmond, but go ahead and explain

11 for the record.

12 A (Continuing) Briefly, the function is to

13 discover or locate all the real estate in the locality annually

14 as of January 1, to list it in the proper owner's name as of

15 January 1, with a brief legal description, obviously, to deter-

16 mine its financial status, and, of course, to have it appraised

17 and assessed as of January 1 of this year.

18 Q Are you familiar with the policy of

19 appraisals in your office?

20 A Yes, sir, I set the policies.

21 Q Might you elaborate and describe with

22 regard to apartment complexes what the methodology of appraisals

23 in your office is.

24 A Yes, sir. First of all,we set up an

25 appraisal team. That team generally consists of a supervising

1 appraiser who is at the top management level and, assisting
2 him, actually doing the work, probably, one of our more senior
3 appraisers, and this team is one that monitors the amounts on
4 a continual basis. They are responsible for all the apartments
5 in the City, city-wide. They apply by doctrine the same
6 appraisal principles, the same methods, the same practices
7 and tests to each of the apartments.

8 This insures for me, Your Honor, that
9 there is uniformity and uniform application to each and every
10 department in the City, and it also gives me some continuity
11 and uniform judgment applied to all the departments which I
12 give the responsibility to, say, two appraisers consisting of
13 a team.

14 The appraisal methodology or appraisal
15 procedure for apartments is that they are reviewed constantly
16 and continually. There is a continuous collection of data,
17 market data, and other information on which they can build
18 their estimate of value, and there are continuous studies of
19 value trends or value indicators -- such indicators would
20 obviously be in rental levels, expenses, operation ratios,
21 capitalization rates, yield rates, obviously sales of any
22 apartments and current construction costs of various apart-
23 ments.

24 Consequently, there is an ongoing cost
25 sales and income analysis. When a change in these value indi-

1 cators, or when one of the analysis, or, you might say, a
2 coordination of analysis -- whenever they suggest a change
3 in the value of the apartment that is different from the
4 assessed value, either above or below -- in other words, if we
5 find or sense a change in the value of an apartment from these
6 indicators that is at variance from the assessed value, then
7 appraisal updates -- reassessments, some people call them --
8 but appraisal updates of all the apartments are initiated for
9 whichever apartments need it.
10 In the subject instance, I think, during
11 1972, certainly during the latter part of 1972, there were
12 indications that the apartment assessments had fallen below
13 market value, or, conversely, the market value of the apart-
14 ments had begun to exceed the then assessed values, and all the
15 apartments were scheduled for reappraisal and updating during
16 calendar 1973 for the January 1, 1974 assessment.
17 Obviously, Rittenhouse Square was among
18 them. As a matter of fact, during the early part of 1973,
19 the staff mailed out questionaires to each and every apartment
20 owner and organization requesting certain information that
21 would enable them to make the appraisals of the property.
22 The team analyzes data plus the data
23 we have collected over the years on a continuing basis, and
24 in their investigation they developed economic rental levels.
25 Many times the actual rent of apartments are either above or

1 below what they should rent for, and a doctrine that we use
2 is what we call economic rental value.
3 They develop typical operating expenses,
4 indicate gross cap rates, and they also develop what we call
5 gross rent market; that's a price earnings ratio -- well, for
6 apartments in general which they would apply in the actual
7 updating of each apartment.
8 The senior appraisers of this team that
9 monitors apartments then begin to field-check each and every
10 apartment and make an appraisal update of each apartment
11 utilizing what is called the appraisal process.
12 Briefly, I think a previous witness,
13 Mr. Simmons, explained that encompasses analyzing the cost
14 approach considering the rate, considering the market approach,
15 which is the comparison of sales, and obviously the income
16 approach for apartments. It's no question that the economic
17 approach or the capitalization approach is given the greatest
18 weight or the greatest credence, and this was our methodology,
19 the income approach, was given the greatest weight and the
20 greatest significance in the appraisal process by the appraisers
21 in my office, and that, too, was done on the subject property.
22 Again, the same procedure, the same
23 methods, the same tests were applied to each of the apartments
24 in the City during calendar 1973 for the 1974 assessments and
25 in years prior thereto.

In other words, the same bases and the same methods were applied uniformly to all the apartments. New values, new market values -- and in Richmond the assessed value is the market value or the market value is the assessed value -- new values were thus estimated for each and every apartment during 1973 for the 1974 assessment, and they were reported as required by law to each of the apartment owners before January 15, 1974.

In the subject case, Rittenhouse, the market value estimated by the staff, which was the assessed value of $2,760,800.00, was reported to them prior to January 15, 1974.

That is the basic methodology that we used in the subject instance, and it is the basic methodology in the office for apartments.

Q Mr. Chandler, in the overall scheme of things, people may be aggrieved by an assessment. Is there an administrative remedy of any kind available to them?

A Yes, sir. Between January 15th and February 16th of each and every year anyone aggrieved by an assessment, whether it has changed or not, may file an application for review with supporting information showing either that their assessment is assessed for more than its market value or that it is assessed in equity comparison. They are processed subsequent to February 15th and the

applicant notified by our office.

Q All right, sir. To whom is this administrative remedy, and how is it composed; that is, who creates it, who appoints its members?

A Well, now, that administrative remedy is with my office. Now, that is created by State Statute, of course, and also by our City Code.

There is a further appeal procedure. After they make application to us and they are dissatisfied with our decision they can make a further appeal on or before July 1 of each and every year to the Board of Review of Real Estate Assessors that is an immediate appellate body. They are appointed by this Court. Again by State Statute, one may be a real estate broker, real estate appraiser and building contractor. They hold hearings, receive evidence and make decisions which are binding upon the City for that year, and from them, then, the appeal is to this Court.

Q Mr. Chandler, could you advise the Court and counsel whether or not this appeal procedure was followed in this particular instance.

A The plaintiff did file -- well, they made an attempt to file -- with our office. They filed blank applications and requested, I believe, one of the field members to give them an extension to March 15th to supply supporting data.

1 project's gross rent and multiply it by a number and that
2 should give you some indications of its fair market value?
3 That's the procedure, isn't it?
4 A Yeah, it's really a unit of comparison
5 that is primarily used in the market data approach. Like I
6 say, it's principally a price earnings ratio.
7 Q Don't you agree that a gross rent multi-
8 plier of 6 would be applicable for the period we are concerned
9 with here today, for both years, that that's what apartments
10 were selling for?
11 A As a matter of fact, the sales that I
12 am familiar with indicate a range of about 5.2 to 7.25; 6 is
13 in the middle there.
14 Q Do you think 6 is a reasonable multiplier
15 to apply to this project based on what you know about it?
16 It's not unreasonable, is it?
17 A No, it's not unreasonable if you apply
18 it to, you know, the potential gross income, not to the actual
19 income.
20 Q You stated that there is an income
21 analysis ongoing in your office as to apartment projects. Did
22 I understand you correctly?
23 A Yes.
24 Q I see. Did you personally get in contact
25 with any of the owners of this project and ask them for income

As I recall, I talked to the owner for the plaintiff, and the information was not forthcoming. I believe they did offer to give a little, but at any rate, we did process the application anyway, although we did not receive any information or evidence to support the claim, but they did not appeal to the Board of Review.

MR. FITZPATRICK: All right, sir. Thank you. I have no further questions.

THE COURT: Any questions on cross-examination?

MR. PASCAL: Yes, sir.

CROSS-EXAMINATION

BY MR. PASCAL:

Q Mr. Chandler, have you ever been to Rittenhouse Square? Have you ever seen the project, walked through it, been in the model apartment?

A I have seen it, yes, sir.

Q Have you driven by it?

A I have been on the grounds.

Q You mentioned something called gross rent multipliers.

A Yes, sir.

Q Is that the procedure whereby you take a

statements of '73 or 1974?

A Oh, no, I didn't do it personally, sir, that was handled, obviously by the Supervisor, but as a matter of fact, the request went out over my name.

Q Who is the man who requested financial information from Rittenhouse Square?

A Well, it would have gone out on a form with my name and Mr. Garland Johnson's name on it.

Q Who is responsible for mailing that?

A My office.

Q You don't know in fact that it was mailed, do you?

A Yes, sir, as a matter of fact they were generated by the computer and Rittenhouse is in the computer. It's hard that it would have been missed.

Q Did your office receive an unusually large number of requests from property owners in 1974 requesting that their assessments be reduced?

A An unusually large number?

Q Yes.

A No, sir.

Q It was consistent with prior years?

A Yes, sir. You know, I can obtain the actual figures for you if you like.

Q Have you had occasion to review the

operating statements that were supplied to Mr. Call -- I think Mr. Fitzpatrick got them, and --

A I saw the one that you passed just a little while ago.

Q You hadn't seen it before today?

A No, I personally had not.

Q Do you know of any other comparable properties in the City of Richmond that are adjacent to a cemetery and a City Dump?

A No, but I'll be -- you know, if you would like for me to, I will be diligent enough to look for one.

Q I'm sure you are intimately familiar with all the property in Richmond, and if you can't think of one, that's good enough for me.

Would you say that a vacancy rate of 21.6 is extraordinarily high for an apartment complex?

A Unusually, yes, sir.

Q Would you admit that 5 to 6 percent is the norm?

A 5 to 10 was considered the norm. You know, the norm varies with the time.

Q So I understand.

A And with the management of the property.

MR. PASCAL: I don't have any further

questions. Thank you, Mr. Chandler.

THE COURT: All right, sir. Is there anything on redirect, Mr. Fitzpatrick?

MR. FITZPATRICK: No, I don't believe so.

THE COURT: You may step down, Mr. Chandler. Thank you.

- - - - - - - - - - - - - -

WITNESS STOOD ASIDE.

THE COURT: Your next witness, please.

MR. FITZPATRICK: I would like to call Mr. Garland Johnson, if I may, please.

THE COURT: Mr. Garland Johnson.

GARLAND JOHNSON, a witness called by the defendant, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. FITZPATRICK:

Q For the record, would you please state

your name and present occupation.

A My name is Garland Johnson. I'm a Division Head for Virginia Mutual Savings & Loan in the Appraisal Division.

Q All right, sir. Could you tell me what your occupation was when the assessments which are the subject matter of this case were made.

A I was a Senior Appraiser for the City of Richmond.

Q All right, sir. Could you give me some of your qualifications and educational experience.

A I have had thirteen years in the appraisal of real estate, six years at Rountree & Associates Real Estate Appraisers and Consultants, six years at the City of Richmond, one year at my present job with Virginia Mutual.

Q Do you have any designations, professional designations?

A I hold the SRPA in the Society of Real Estate Appraisers and the CAE in the International Association of Assessing Officers.

MR. FITZPATRICK: Your Honor, I would submit that Mr. Johnson is an expert.

THE COURT: Any objection?

MR. PASCAL: No, sir.

THE COURT: All right. The Court so

1 rules that he is an expert, Mr. Fitzpatrick.
2 Q (Continuing) Mr. Johnson, focusing your
3 attention on the subject property, that being Rittenhouse
4 Square, did you or were you the individual, Senior Appraiser,
5 who made an appraisal on this property?
6 A Yes, I was.
7 Q Perhaps you could let us know exactly
8 what you did in making that appraisal.
9 A The first thing in making the appraisal
10 was to estimate the gross potential income of the subject
11 property.
12 Q What is that?
13 A That is what the property should rent
14 for if all the units were occupied.
15 Q All right, sir.
16 A This was done by looking at other proper-
17 ties in the general area of the subject, obtaining rents from
18 these projects, and adjusting, if possible, the rents that the
19 subject should command.
20 I had a list of rents, through the paper
21 and through knocking on a few doors at the projects, that
22 were then being charged.
23 Q Did you make any inquiry of the Resident
24 Manager or anyone of the owners as to what the rents were?
25 A Yes, sir, it was a standard process for

1 me to go see the rental Manager, obtain the rents that were
2 in effect then, and if I was doing the appraisal, let's say,
3 in April or May, early for the next year, I would ascertain
4 whether the rents were going up, if they were going to stay
5 the same, what they were going to do.
6 Q Let me clear that point now.
7 Now, for the assessment for 1974, you
8 were having to gather data, as I gather from your testimony,
9 in April or May of 1973. Is that correct?
10 A Yes, sir, we do the assessments -- the
11 City Assessor's Office does the assessments the year before
12 they actually go into effect. I was working 1973 for the
13 tax year of 1974.
14 Q All right, sir. Is that the standard
15 procedure or --
16 A Yes, sir.
17 Q All right. Proceed, if you will.
18 A After I had knocked on several doors,
19 talked to the Rental Manager, got a list -- in our files we
20 keep the number of units, number of two-bedrooms, number of
21 three-bedrooms, number of one-bedroom units -- and the Rental
22 Manager gave me rents in each class.
23 They seemed to be economic rents at that
24 time, and for my assessment or for my appraisal that's the
25 gross income figure that I would have used on that particular

1 project.
2 Q All right, sir. How else did you proceed
3 in making this particular appraisal?
4 A Okay. Doing assessment work I had
5 approximately 850 apartment projects to appraise for that year.
6 It's easier -- for equalization purposes it's easier to use
7 a gross capitalization rate than a net rate for a net rate
8 and then capitalize that income, so what I did was go through
9 the market, find several sales of these similar units that
10 were comparable to the subject. One was Chateau Village which
11 had sold, and it had a 17 percent gross cap rate, and the
12 other one was on Dove Street, Monticello Village, I believe
13 the name of it is, and that had a 17 percent cap rate, overall
14 gross cap rate.
15 Q Now, so that the Court will understand,
16 which year are we talking about?
17 A We are talking about 1973 for the tax
18 year of 1974.
19 Q Thank you, sir.
20 A In my estimation, the subject property
21 was not as good as the two sales that were used, and I did
22 use an 18 percent overall gross cap rate on the subject which
23 seems to be, after looking at the project, feasible to use
24 that particular cap rate, and using these two sales, I thought
25 it should go up at least one percentage point.

1 This is, in a nutshell, how the assessment
2 was completed. Now, I had looked at several sales for several
3 other projects in the general area, and, in fact, by the end
4 of the year I had looked at all 800 -- I believe it was 850--
5 projects throughout the city.
6 Q Would I be correct in assuming that this
7 had a bearing on your appraisal of the subject property?
8 A You mean all the other ones I had looked
9 at?
10 Q Yes, sir.
11 A Yes, sir.
12 Q Did you utilize what is generally known
13 as the cost approach?
14 A For a check I had used the cost approach,
15 and I had used the market approach on the property. Like I
16 say, the only two sales I could find that were anywhere com-
17 parable were the two I just stated.
18 Q Yes, sir. Why did you settle on the
19 income approach?
20 A Well, it has an income stream, and if a
21 potential buyer would be interested in buying that property,
22 that's the way they would look at it; an income stream rather
23 than a market approach or a cost approach. They would be
24 interested in the income, the product.
25 Q All right, sir. Have you been in

1 Rittenhouse Square on the premises?

2 A I was in in 1974 for the tax year 1975.

3 I finally did get in the project. I talked to the Rental

4 Manager in '74, and the information I got was pretty sketchy.

5 I got, well, we had some units at a

6 little -- I don't know what I have used here -- we have some

7 units that at this time, say, go for $120.00. How many?

8 Well, we have some at $120.00, we have some at $115.00, we

9 have some at $145.00 per month, and what I have done was to

10 stabilize that.

11 All two bedrooms should be equalized,

12 so I had used $120.00 on one bedroom, $130.00 on two bedrooms,

13 and I think $145.00 for three bedrooms.

14 Q What was the condition of the property?

15 A It is, of course, a brick project. It

16 faces the dump -- some of the buildings face the dump -- and

17 I notice some vacancies in it, especially in the ones that face

18 the dump.

19 It was otherwise in an average condition

20 for that area.

21 Q All right, sir. Did you, at any time,

22 ask for specific data from the owner?

23 A I asked for information, operating and

24 expense statements, for 1972-73, '71-72 and '73, and I never

25 could get the information. I had spoken to Mr. Gordon in his

office one day -- well, when I first started doing the project and we asked for the information, and we just never had gotten it, not only on this one, but on other information on other projects that he owns.

Q What gross capitalization rate did you finally settle on?

A On 18 percent.

Q Yes, sir.

A Because of the situation with the landfill next to it. The sales indicate a 17 percent, and I thought this had an effect on the property, and I settled on 18 percent overcall cap.

Q What effect do you think the landfill will have -- as you were there in '74 -- later, from your observation, at the time you were there?

A The landfill, in '74, I think, was adjacent, I believe, to the property. As they have moved back towards the -- I guess it would be in a southerly direction -- now, and I don't think that would have a whole lot -- well, it might have some effect on it, but it would not have the effect it did in 1974, because the last time I was there, it had been filled and they were moving it back.

Q And as a consequence your assessment was what for the years 1974 and '75?

A 1974 would be $2,800,000.00 -- excuse me,

1 $2,700,000.00.

2 Q And 1975?

3 A 1975 -- $2,300,000.00.

4 Q Why did you drop in 1975?

5 A Well, in January -- in April, I believe,

6 of -- excuse me, in February, I guess, of 1974 Mr. Pascal came

7 into the office and asked me for 15 reviews, and this was

8 the last day of filing for our assessment for that year.

9 I gave him 15 copies, and I told him they

10 had to be in that night before 5:00 o'clock; that that was

11 the cut-off date.

12 He brought them in, and I told him the

13 information should be on the application. When he brought them

14 back in he had the name of the property and he had signed it

15 as agent for the property owner with no other information.

16 He said that,we will get some information within two weeks

17 or thereabouts, so I talked to Mr. Chandler, and he said,

18 okay, we will extend that for two weeks, and after two weeks

19 we didn't get any information as to operating expenses, and

20 after the February 15 -- excuse me, by March 15th when our

21 review period was over we still hadn't gotten the information,

22 so there is no way that we could have changed the assessment

23 because we didn't have any information provided us to change

24 it.

25 Q My question, I suppose, was why did you

1 reduce the assessment in 1975?
2 A Mr. Gordon called me in, I think,
3 November, or December of '75 and asked me to take a look at
4 the property, and I told him I would if he would send me some
5 information. He did send me a month's operating statement.
6 Q For what year?
7 A It would be from January 1st to September
8 30th of 1974.
9 Q All right, sir. Did that have some
10 influence on you?
11 A Yes, it did. I was kind of shocked at
12 the vacancy rate. There was some maintenance expenses that
13 were higher than the typical apartment project in the general
14 area or of most all the projects in the City, and because I
15 didn't have the information I did not have a track record
16 to base any kind of analysis on, so I took the 9 months
17 operating statement at face value and reduced the assessment
18 because of the vacancy, and the maintenance.
19 Q Am I correct in assuming that that is
20 the only document that you had in your possession?
21 A That's the only thing that I can remember
22 getting from the owners, this 9-month statement right here
23 from January 1st to September 30, 1974.
24 Q All right, sir. Does it remain your
25 opinion that the assessment for the years 1974 and '75 as you

1 found them are correct?
2 A I think if I had a track record and knew
3 what the vacancy and credit loss in the particular project was,
4 I would have dropped the vacancy rate and I would have also
5 dropped the -- I think it's under maintenance, but I'm not
6 sure -- and spread it out over several years.
7 Apparently the project needed some
8 repairs and they were all done in one year, and this is the
9 yearthat I got the statement and I thought maybe -- I didn't
10 know if the landfill had anything to do with it or not, but
11 I think if I had to do it today and had the information that
12 I have seen now on the property, it would be probably between
13 two million seven and three million. I don't know, I haven't
14 worked the figures out yet, but I would not have dropped the
15 assessment that much.
16 Q I see. You may answer Mr. Pascal's
17 questions, if you will, please.
18
19
20 CROSS-EXAMINATION
21 BY MR. PASCAL:
22 Q Mr. Johnson, you used a term called
23 "economic rents", and I just want to clarify what that means.
24 Does that mean that in your opinion as an appraiser in '73
25 and '74 and '75 -- were you still employed by the City then?

1 A Yes.

2 Q The rents charged by Rittenhouse were

3 neither too high or too low, but were really proper for what

4 the market would bear?

5 A That's what I had stated; that I had

6 checked the area, checked other information, but primarily

7 based my gross income potential on the statement.

8 Q Therefore, whatever vacancy rate existed

9 at the project would not be attributable to the fact that it

10 had rates that were too high or too low -- it couldn't be

11 attributed to that, could it?

12 A I wouldn't think so.

13 Q Now, you said you had 850 projects, I

14 think, that you were involved with. Was one of them Hampshire?

15 A Yes, sir.

16 Q And the assessment for Hampshire for

17 1974 and '75, in fact, was $3,110,000.00, wasn't it?

18 A I don't know, I don't have that infor-

19 mation with me.

20 Q All right. I'll ask you to assume that

21 is correct. It's already in evidence on some of Mr. Simmons'

22 work.

23 But, in July of 1974, that project sold

24 for less than 3 million dollars, is that correct?

25 A Again, I don't know what the figures

are.

Q All right. I'll ask you to again assume that it is. Would that indicate to you that the property may have been assessed at above its fair market value? That is a possibility, isn't it?

A That's a possibility.

Q All right. Let me ask you about the dump. You said the dump was moving back. I want to take you back now in your mind to 1972. I want you to tell me where the dump was in 1973.

A I'd say it was level back to, probably, right around that last building in the group.

Q And there was no change in 1974, was there?

A No change.

Q It was the same in 1974, am I correct?

A Are you talking about the assessment or the landfill?

Q I am talking about the dump.

A I don't think so.

Q You don't think there was any change?

A Again, I was on the project once when I looked at it. Of course, I have driven by there several times.

Q So, as far as you are concerned the dump

1 was the same in 1974 and 1975 as it was in 1973. Am I correct?
2 A No, it's gradually going back toward
3 Gillies Creek, the way I understand it.
4 Q How far did it move in that period of
5 time?
6 A I don't have any idea.
7 Q Then I assume you can't say it has a less
8 or greater or any change in impact on the project if you don't
9 know how much it has moved.
10 A It has moved some, but how much, I don't
11 know.
12 Q All right. Now, you said that the assessed
13 value of this property in '74 was $2,700,000.00, didn't you?
14 A I think so, yes, sir.
15 Q Mr. Chandler said it was $2,760,800.00,
16 didn't he? Were you in here then?
17 A I wasn't in here.
18 Q All right. You may assume, and I will
19 vouch the record, that he did in fact say that. Which one of
20 you is right? What is the assessed value?
21 A I'm sorry?
22 Q Which one of you is right? What is the
23 assessed value?
24 A Well, I think --
25 THE COURT: Excuse me just a minute -- he

1 is not called upon to pass on the credibility of Mr. Chandler's
2 testimony, is he, Mr. Pascal?
3 MR. PASCAL: No, sir, he is not, and I
4 can rephrase my question and ask him to explain the
5 difference.
6 Q (Continuing) You are the person who
7 assessed it, and he is the assessor. Can you explain that
8 difference?
9 A Right. At the time in 1974 there were,
10 I think, five individual cards on the property which includes
11 the pool. The units were broken down into five individual
12 tax cards. I say I believe there were five. Of course, I am
13 doing it on the entire project rather than so many units on
14 each card.
15 When I changed it or increased it it came
16 to $2,743,000.00 on the cards that were changed. The pool, I
17 don't think, was changed. The pool card -- there was a separate
18 card for the pool, and there may have been a separate card
19 for maybe the laundry or something like that which was not
20 changed. I have the cards here, so I could add them up.
21 Q That's all right. You said that you did
22 the assessment for 1974 in 1973, correct?
23 A Right.
24 Q And you commenced your work in April or
25 May of 1973, correct?

A Right.

Q And you finished your work in 1973 -- when in 1973?

A Probably in December.

Q What happenes, Mr. Johnson, if something happens in December after the time you have completed your work that would affect the fair market value of that property?

A If they have a fire, you are talking about, or if something happens on the building, or economically?

Q I'm talking about anything at all.

A If I know about it, I change it.

Q And it's possible that you didn't know about something that happened in December of 1973 that would affect the fair market value of that property. Am I right?

A It's a possibility.

Q What I want to ask you about is whether or not you are familiar with the statute of the City of Richmond called "The Minimum Housing Code". Are you familiar with that?

A Yes, sir.

Q That was introduced in the City Council in December of 1973 and enacted at the first council meeting of 1974. Am I correct?

A Okay.

1 Q Now, one of the things that housing Code
2 says is that every room in any apartment or any dwelling must
3 have either a window or an exhaust fan. Are you familiar with
4 that?
5 A Right.
6 Q I want you to tell me how many apartments
7 at Rittenhouse have a room without a window or exhaust fan.
8 MR. FITZPATRICK: Your Honor, this might
9 be a little bit misleading, and I am going to have
10 to make an objection to this, because we are really
11 getting into a hypothethical situation, and I
12 think if we want to introduce the law relating to
13 this, the minimim hazard standard, that's one thing,
14 and let the Court read it, and it will find that
15 this particular law did not go into effect, unless
16 there was a change of ownership, that there was a
17 Grandfather Clause in there.
18 MR. PASCAL: Your Honor, I think counsel
19 is leading --
20 THE COURT: It's rather hard for me to
21 hear you.
22 MR. PASCAL: I think he is supplying the
23 witness with an --
24 THE COURT: The Housing Code itself is the
25 best evidence of what it says, and if we have it,

1 let's introduce it. I sustain your objection.
2 MR. PASCAL: I am going to move that the
3 Court take judicial notice -- I'm asking this
4 question as a hypothetical. I don't think its
5 exact terminology is going to have bearing. I am
6 going to ask Mr. Johnson how he compensated for
7 this.
8 THE COURT: What is your position?
9 MR. FITZPATRICK: I believe this, again,
10 is a question of law, and, quite frankly, I believe
11 the Court should rule.
12 THE COURT: All right. Let's see the
13 Code, then, and I will read it. What is the section
14 that you are referring to?
15 MR. PASCAL: I will put a check mark at
16 the section I am talking about, Your Honor.
17 THE COURT: Mr. Fitzpatrick, does that
18 Section also limit it to a change of ownership?
19 MR. FITZPATRICK: In my opinion, yes, sir.
20 THE COURT: Where is the clause that
21 limits it, Mr. Fitzpatrick? I would like not to
22 have to read the whole minimum property standard
23 section unless you can't put your finger on it.
24 I'll tell you what I am going to do --
25 I am going to let the witness answer subject to the

1 Code not being limited to a change of ownership,
2 Mr. Pascal.
3 MR. PASCAL: That's agreeable.
4 THE COURT: And if, when I read it, it
5 is limited to a change of ownership, I will exclude
6 that testimony.
7 MR. PASCAL: I understand.
8 Q (Continuing) Let me try and bring us back
9 where we were, Mr. Johnson. I was suggesting to you and
10 asking you to assume as I think is the case that the Minimum
11 Housing Act said that every room in a dwelling, which would
12 include apartment units, must have either a window or venti-
13 lation, a mechanical type of exhaust fan, and I ask you whether
14 or not you considered the fact in your appraisal or assessment
15 of Rittenhouse.
16 A I knew about it. I knew about the
17 standard. I don't know of any -- I don't know where it has
18 been enforced, though. Usually realtors like Thalhimers,
19 Harrison-Bates, people like that that handle a lot of property,
20 when they did have a turn-over in there, they would call
21 sometimes, but most of the time none ever knew about it.
22 Q Well, let's assume that we have an owner
23 who is complying with the law. Whether he can get away with
24 something or not, let's make that assumption. You didn't
25 make any adjustment and didn't consider at all that

1 Rittenhouse might have had 50 or 60 or 70 units in it that
2 all of a sudden, in December of 1973, became absolutely un-
3 rentable.
4 THE COURT: Mr. Pascal, there is no evi-
5 dence on the record that that fact did occur,
6 so you are asking him really to --
7 MR. PASCAL: Your Honor, I believe,
8 because he was qualified as an expert, I can ask him
9 a hypothetical --
10 THE COURT: But the hypothetical has to
11 be based upon facts in the record, doesn't it?
12 You can ask him hypothetical questions, but there
13 has got to be some facts to justify it.
14 MR. PASCAL: But we are in the process of
15 examining what considerations he gave or would have
16 given and what adjustments he made.
17 THE COURT: Well, I don't think it is
18 proper to ask even this expert about considerations
19 of which there is no evidence in the record that
20 those conditions existed at Rittenhouse.
21 MR. PASCAL: All right, sir, Your Honor.
22 THE COURT: All right.
23 Q (Continuing) Mr. Johnson, would you tell
24 me what you think a fair net capitalization rate is for
25 Rittenhouse.

1 A A net capitalization rate?
2 Q Yes, sir.
3 A Okay. I would say Rittenhouse -- now, are
4 you talking about 1974, '73?
5 Q No, sir, my questions are directed to
6 '74 and '75.
7 A From the information available, and
8 particularly on the two sales that I stated previously, one
9 of the sales came out at 9 percent and the other sale came out
10 at 9.35 percent, and if I capitalize the net income of that
11 project at that particular cap rate it would be over 3
12 million -- it would be 3 million -- I don't know what it would
13 be, but it would be a whole lot higher than what it is now.
14 MR. PASCAL: I am going to ask if the
15 witness could please be given Plaintiff's Exhibit
16 Number 3.
17 Q (Continuing) You have in front of you,
18 Mr. Johnson, in the right-hand corner a date of 1973, so we
19 will be talking about tax year 1974 based on 1973 experience.
20 Is that correct?
21 A Right.
22 Q The net rental income, excluding tenant's
23 deposits and everything that have to be held in trust, I
24 believe, according to that document is 300 --
25 A The net income?

1 Q No, that's the gross income.
2 MR. FITZPATRICK: Where are we reading
3 now?
4 THE WITNESS: What is the figure?
5 Q (Continuing) I want the gross income at
6 the top.
7 A $376,032.00.
8 Q Yes, sir. I just wanted to make sure we
9 agree that is the gross income.
10 A Okay.
11 Q Okay. Now, to arrive at the net income
12 we would subtract the expenses that are listed under that.
13 Am I correct?
14 A Right.
15 Q And if we did that -- if you give me a
16 minute I will find my actual figure -- we arrive at a net
17 operating income for 1973 of $167,996.00 -- I'm sorry --
18 $208,836.00.
19 A Oh, a net income.
20 Q Yes.
21 Have you read the report from Mr. Call's
22 office?
23 A No.
24 Q You haven't read it? All right.
25 MR. PASCAL: Your Honor, again, subject to

1 the correctness of the assumption, I am going to
2 ask the witness to assume that that is in fact the
3 case.
4 THE COURT: That what?
5 MR. PASCAL: $208,000 --
6 THE COURT: Is that figure on there?
7 MR. PASCAL: The number has not been com-
8 puted in that manner.
9 A (Continuing) That figure is not on
10 this?
11 Q That's right.
12 A Okay.
13 Q Assume that the net operating figure is
14 $208,836.00, and if we apply a net cap rate of 9.3 percent to
15 that, what would that formula come out to? Would you like a
16 calculator to work it?
17 A Can you give me the net?
18 Q $208,836.00.
19 A And what is the net rate?
20 Q The one you suggested when you were
21 testifying.
22 A 9?
23 Q 9.3 percent.
24 A $2,320,000.00.
25 Q $2,320,000.00?

1 A $400.00.
2 Q Now, applying the net cap rate to the net
3 income is, in your opinion, an acceptable way of arriving at
4 fair market value, is it not?
5 A That's one way.
6 Q And by that way it comes out to
7 $2,320,000.00.
8 A I haven't had a chance to look at these
9 expenses.
10 Q You may assume they are correct. I don't
11 want to get into the expenses with you. That is considerably
12 lower than the actual assessment of --
13 MR. FITZPATRICK: Excuse me, Your Honor,
14 I believe the witness has a right to qualify his
15 answer in the fashion which seems appropriate.
16 Here he has been handed an exhibit which he has
17 never seen before and says I'm not going to accept
18 some of these expenses, which is an integral part
19 of the question.
20 THE COURT: Well, the witness can qualify
21 his answer. That is permitted, Mr. Pascal.
22 Now, if you want to get into challenging
23 some of the figures, though, Mr. Fitzpatrick, I
24 think that would be a proper subject for your
25 redirect examination, but certainly he can qualify

his answer by saying, assuming the veracity of these figures. You will have an opportunity then to let him go into the figures if you want to.

MR. FITZPATRICK: All right, sir, thank you.

THE COURT: What is the qualification that you would place on your testimony concerning those documents?

THE WITNESS: I wouldn't accept all the information.

THE COURT: All right. Your next question, Mr. Pascal.

MR. PASCAL: I have no other questions for the witness, Your Honor.

THE COURT: All right, Mr. Fitzpatrick.

MR. FITZPATRICK: I have no questions.

THE COURT: No questions. All right.

The Court has a question, sir. Do I understand your testimony to be that you are the person most directly responsible for the actual assessment of this property?

THE WITNESS: Yes, sir.

THE COURT: And there were other people working but you were directly concerned with it.

THE WITNESS: Yes, sir, I actually visited

1 the property and worked up my analysis and actually
2 put the figure on it.
3 THE COURT: All right. Do I also under-
4 stand that the only actual figures given to you as
5 to income or expenses were the figures that you got
6 from various people concerning the rental?
7 THE WITNESS: All right. On the owner's
8 project, on not only this one but others, I would
9 go to the Manager, and I would usually say -- I
10 tell them who I am, I identify myself, and ask them
11 about rents.
12 THE COURT: What I am trying to find out
13 is what you actually did, and this may be very unfair
14 to ask you, but do you know what you actually did
15 in reference to this property in '74 and '75?
16 THE WITNESS: I was actually in the rental
17 office. I got some of the information on some of
18 the units.
19 One of the problems in doing assessment
20 work is there may be a one-bedroom apartment and
21 the same unit may rent now for $120.00 but they
22 are going up to $130.00. I have to stabilize that
23 income so all of them will be equalized before I
24 can come up with a growth potential.
25 I would get things like, well, some of

them rent for $130.00, some for $120.00, some for $135.00, that type of thing.

We have our plats that when the property was built we know how many two-bedrooms there are, how many three-bedrooms there are, that type of thing.

THE COURT: But did you have any information at all -- well, would you have had the information on Plaintiff's Exhibit Numbers 1 through 5 when you did the assessment -- well, you couldn't have had all of them.

THE WITNESS: The only information that I had was when Mr. Gordon sent me the nine months statement of operating income. I can't remember ever having any expense statements to work with, and to do a good job you need to have a track record as to what it is costing you to repair buildings, what it's costing you in vacancies, that type of thing. That's the reason when I did receive this, I reduced it, because this was the only thing I had really had to go on. There was a big vacancy rate way above anything else in the area.

THE COURT: That's for the year '74?

THE WITNESS: This would be for 1974, but I think Mr. Gordon called me in, like, December,

1 and asked me to review it for '74, which I did, and
2 that's the year I dropped it.
3 THE COURT: What about '75? Were you
4 furnished any expense information at all?
5 THE WITNESS: I'm sorry -- we are working
6 a year behind -- 1974 assessment -- there was no
7 change then in 1974 for the tax year of 1975.
8 I received this information.
9 THE COURT: All right. Now, what is the
10 document you are talking about "this"?
11 THE WITNESS: Rittenhouse Square Asso-
12 ciates statement of income and loss, January 1, 1974
13 to September 1, 1974; nine months.
14 THE COURT: Now, my last question is
15 assume that that data that has now been introduced
16 into evidence as Plaintiff's Exhibit 3, I believe --
17 THE WITNESS: Yes, sir.
18 THE COURT: Assume that that data had
19 been made available to you at the time you were
20 making the assessment. Would your assessment have
21 changed?
22 THE WITNESS: It would have probably
23 changed somewhat from -- it would have changed for
24 '75. I don't think it would have changed as much --
25 I reduced it, what, $400,000.00. I don't think it

would have changed over -- I did change it $400,000.00, and I don't think now, after I can see this information, get a track record on the property, I don't think I would have changed it as much. I would have probably been somewhere between $2,300,000.00 to $2,700,000.00, somewhere in that range. I would not have dropped it as much as I did, because I would have reconstructed the statement, and in reconstructing the statement it looks like -- from this it looks like all of his painting came at one time rather than spreading it out over a three or four-year period.

I notice in here there is a $24,544.00 figure for painting, and I would hate to have to use that every year, and it should be spread out.

THE COURT: All right.

Gentlemen, are there any other questions that you would want to ask of the witness that may have been prompted by my questions?

MR. FITZPATRICK: No, Your Honor, I have none.

MR. PASCAL: Yes, sir, one just by way of clarification.

BY MR. PASCAL: (Continuing)

Q Mr. Johnson, do I understand your testimony to be that the assessment for 1974, that being the one for two million, seven hundred some thousand dollars, is, in your opinion at this time, too high?

A Are you talking about 1977 or --

Q 1974.

A I reduced it to $2,300,000.00, so obviously I think that was too high.

Q Mr. Johnson, the reduction applies to 1975.

A Right.

Q In fact, in 1974 it was assessed at 2.7 million dollars. Is that, in your opinion, for 1974 alone-- isn't it true that you now believe that to be too high?

A It's a possibility. I don't know.

MR. PASCAL: Thank you. No further questions.

THE COURT: All right, you may step down. May this witness be excused?

MR. FITZPATRICK: Yes, Your Honor.

THE COURT: Thank you very much.

- - - - - - - - - - -

WITNESS STOOD ASIDE.

1 MR. FITZPATRICK: I have one further
2 witness, Your Honor, but obviously --
3 THE COURT: Let's take about a ten-minute
4 recess.
5
6 NOTE: At this point a recess is had,
7 whereupon the case is resumed, viz:
8
9 THE COURT: Your next witness.
10 MR. FITZPATRICK: I would like to have Mr.
11 Call, please.
12
13
14
15
16
17 JOSEPH BRYANT CALL, III, a witness called
18 by the defendant, having been first duly sworn, testifies
19 as follows:
20 DIRECT EXAMINATION
21 BY MR. FITZPATRICK:
22 Q Would you please state your name to the
23 Court.
24 A My name is Joseph Bryant Call, III.
25 Q What is your present occupation, Mr.

1 Call?

2 A I'm a Real Estate Appraiser and Consultant

3 with the firm of Rountree & Associates of this City.

4 Q Could you, perhaps, give us some of your

5 qualifications.

6 MR. PASCAL: Your Honor, I will save time

7 and stipulate Mr. Call is an expert in the field.

8 THE COURT: Do you still need it, Mr.

9 Fitzpatrick?

10 MR. FITZPATRICK: I think it would be

11 beneficial.

12 THE COURT: All right. Thank you, Mr.

13 Pascal. You may proceed.

14 A (Continuing) I have been in the real

15 estate business twelve years, seven of which have been devoted

16 to full-time real estate apprisal and consultation work.

17 I am a member of the American Institute

18 of Real Estate Appraisers and have appraised property both in

19 the metropolitan Richmond area and other areas surrounding,

20 both the City and the general state at large.

21 The types of properties appraised by

22 myself include raw land to single family residential, multi-

23 family, special purpose property, industrial plants and the

24 like. A considerable amount of time on my part was spent in

25 the last two years doing primarily condemnation work for the

1 Virginia Department of Highways and Transportation.
2 Q Do you have any professional designations,
3 Mr. Call?
4 A I do. I have an MAI, which is a Member
5 of the American Institute of Real Estate Appraisers.
6 MR. FITZPATRICK: I would ask the Court
7 to consider him an expert.
8 THE COURT: All right, so ordered, Mr.
9 Fitzpatrick.
10 Q (Continuing) Mr. Call, who were you
11 employed by to do this appraisal?
12 A I was employed by the City of Richmond
13 to make this appraisal.
14 Q Were you placed under any restrictions
15 in estimating your value?
16 A The only major restriction in estimating
17 fair market value for the property primarily has to do with
18 making the two retrospective appraisals. In other words,
19 typically one appraises property as of the date of inspection,
20 and in this case I was requested by the City to make my
21 appraisal as of two dates in the past, those dates being
22 January 1st of 1974 and January 1st of 1975.
23 Q Can you tell me what intellectual processes
24 you went by to enable you to do just that.
25 A Certainly. To begin with, when I took

1 the assignment back in August I was asked, in addition to
2 estimating the fair market value -- I was asked by the City
3 to make certain comments concerning the uniformity of the
4 property's assessment, and to complete my assignment I
5 first inspected the subject property which consists of an
6 apartment unit with 319 apartment units bearing from one
7 bedroom to three bedrooms.
8 I then went into the market and
9 researched what market data was available as of the two
10 dates of appraisal, data which had not occurred subsequent
11 to each of those two dates, to find certain information that
12 might help me process data concerning the subject into a
13 value indication.
14 In making my appraisal for fair market
15 value for the subject, I considered three approaches to
16 valuing the property. They were the cost approach, the
17 market approach and the income approach.
18 In the cost approach I went out and I
19 gathered land sales of similarly zoned land having pretty
20 much the same basic amenities as did the subject site though
21 they varied in size, topography and number of units per-
22 mitted. However, I was able to reasonably correlate the
23 values of these land sales for a final indication of the
24 value of the subject land.
25 I then, in a detailed analysis,

1 estimated the reproduction costs new of the subject's improve-
2 ments, which included all land improvements into an estimated
3 value of costs new as of the two dates we are concerned with
4 and applied my statement of accrued depreciation from all
5 causes, namely physical, functional, and economic to arrive
6 at the depreciative cost of the improvements.
7 To that cost I added my estimated or
8 formerly estimated land value and came up with an indication
9 of value for the subject by the use of the cost approach
10 for each date.
11 Then I went into the market and I looked
12 to see if any other projects somewhat similar to the subject
13 had transferred prior to the two dates of appraisal. I was
14 lucky. I found a couple of projects, a few of which weren't
15 highly comparable and a few that I thought were more com-
16 parable. They had seemed to transfer between $7,500.00
17 per apartment unit to a high of $10,000.00 per unit. Some
18 transferred as early as '69, and others transferred just a
19 few months before January 1st of 1974.
20 I was able, comparatively speaking, to
21 look at the quality of construction in each of these pro-
22 jects and compare the physical attributes that each project
23 had to the subject to conclude on a final value indication
24 by the use of the market approach.
25 In this case I believe I estimated

1 that the subject's 319 unit, by the use of the market
2 approach, had roughly a value of $8,475.00 a unit. Well,
3 that includes the market approach.
4 Then I went in to look at the subject
5 property from a completely different angle, and an outlook
6 perhaps an investor might look at the property from, and
7 that's how much money will the subject produce, how much
8 will it net me, and what am I willing to pay for it based
9 on its ability to generate an income stream over a holding
10 period of, say, ten years.
11 Well, what I went in and did was to
12 study the subject's operating history which was supplied by
13 the owner of the project from, I believe, '71 until '74,
14 or 1970 to 1974, I believe, and I stabilized this income.
15 Certain years had tremendous expenses
16 and fairly stable rents, and other years the rent dropped
17 down; the vacancy fluctuated from a low of around 6 to a
18 high of around 27 percent.
19 I estimated the subject, on a stable
20 basis, should sustain a vacancy of about 15 percent, which
21 is, in my opinion, somewhat higher than the vacancies
22 being sustained by other similar projects.
23 Well, this alarmed me a little bit,
24 because the subject sustained an average vacancy over the
25 years of study of about 13.8 percent. The highest vacancy

1 was in the year 1974, and that was roughly 27 percent, so I
2 asked around and knocked on doors and did a little digging,
3 and what I came to find out was that the subject is located
4 next to an active dump operation run by the City.
5 It wasn't too hard to see that, but I
6 couldn't conclude that the dump seriously affected it until
7 I did a little more knocking.
8 Well, I talked to the Resident Manager
9 and one of the employees of Paul Gordon, and they said at
10 times the dump had really contributed to high vacancy in the
11 subject property, and I said, well, why, and it was indicated
12 or pointed out to me that at times the dump broke down, the
13 machinery and equipment, and refuse was allowed to build
14 up which certainly smelled bad. It was unsightly, it
15 increased the rat problem in the neighborhood, and I thought
16 that this seriously affected the subject's ability to
17 generate a constant flow of income.
18 I called the City and they confirmed
19 this statement made by the employees of Paul Gordon, but,
20 however, I asked these employees also whether or not in the
21 past the subject had ever sustained 100 percent occupancy or
22 near that level, and they said yes.
23 Well, I did a little further investi-
24 gation, and found that the dump had been at its present
25 location for a number of years and this problem had come and

1 gone. However, the project was built next to the dump while
2 the dump was present, but it still has a definite impact on
3 the project.
4 Well, I called the City back and asked
5 them about the dump, and they indicated they usually control
6 it, but from time to time the equipment broke down and it was
7 just something that was going to happen.
8 Well, in further investigation I realized
9 that the dump in previous years, especially the years when
10 the project was sustaining an unusually high vacancy, was
11 in full operation contiguous and adjacent to the subject
12 property. The dump is really an old mined out area, it is
13 a big hole, and they are slowly filling that hole, and as they
14 fill the hole they are not going to redig it and put more
15 garbage in it, they are going to move on toward Gillies
16 Creek, according to City officials. This led me to believe
17 the dump is sort of a transitory problem.
18 Well, an investor looking at the property
19 doesn't look at the property based on one year's handling,
20 one big point he considers is the project's potential, not
21 what it's doing now, but what he can make it do.
22 Well, this explains my vacancy and
23 credit loss of 15 percent which is higher than that typically
24 experienced by the market.
25 Next, from the resulting effective

1 gross income that I estimated the project could produce, I
2 deducted certain expenses from the subject, not necessarily
3 the same expenses that the subject has experienced as of this
4 date or that date, but a stabilized expense.
5 Some years you have heavy maintenance
6 problems and other years you have relatively low maintenance
7 costs, so you really can't penalize the property for a reason-
8 ably high experience in one year, you have to look at it as
9 an investor and find out what it is going to cost to maintain
10 the project.
11 This is the same case with security
12 guards, ground maintenance. Management fees I estimated at
13 5 percent, so the subject is currrently paying management fees
14 of approximately 7 percent. I feel that there are a number
15 of well-organized management firms in the Richmond area that
16 would be more than glad to manage the subject property at
17 5 percent. There are a number that are paying 5 percent.
18 Well, I continued this process on down
19 until I came up with a final net figure, that's money in the
20 pocket, that the subject is going to produce. Then I thought,
21 what am I going to do with it, and the best thing to do is
22 what they teach you in school to do, and that is to capitalize
23 it. With Rittenhouse I found this to be true. So I went
24 back to the sales that I picked up and found that a couple
25 of sales were producing income somewhat similar to the

1 subject at the same basic expense and with the same problems
2 with the exception of the dump, and I found that they sold
3 on the basis of a 9 to 9-1/2 percent roughly overall capi-
4 talization rate to be applied to the net operating income.
5 The way I did this was I found the net
6 operating income from actual rental statements of these
7 sales, and I divided their respective sales prices into the
8 net operating income and found that two of my most highly
9 comparable sales transferred on that basis.
10 Then I said, well, the subject suffered
11 a little more than these and possibly is a little riskier,
12 it's not of the same quality, it is of a little lesser
13 quality, and it certainly has the uncertainty of the dump,
14 so perhaps I should utilize a rate which would fall in the
15 upper realm of this range; that the subject should produce
16 to arrive at an indication of value by the use of the income
17 approach.
18 Finally I sat back and I scratched my
19 head and said, I have got some fairly good indications, but
20 really on what basis does a property like this sell, and,
21 quite frankly, the property would be mostly lured to the
22 income approach, because basically it's investor oriented,
23 and it's sold on the merits of the income that it produced
24 over a given period of time, so I thought the income approach
25 and the indications arrived at in that approach were perhaps

the best two indications, but then again I looked at those five sales, two of which were pretty good, and I thought, well, maybe I better temper those indications with the market approach and put a little credence on the market approach, which I did.

The cost approach is generally a good indication for newer properties and special purchase properties but because the subject suffered some forms of obsolescence that are somewhat speculative, as the dump, I kind of felt depreciation to utilize on a cost approach might be somewhat speculative, so I discounted the indications I arrived at in the cost approach.

Incidentally, they were the highest indications, and I didn't feel they were reflective of an investor's thinking or a buyer's thinking or a seller's thinking, so I pretty much concluded basically on two values for the subject property, one being 2-1/2 million dollars for the year 1974, and the second being 2.7 million dollars for 1975.

Q Mr. Call, did you prepare a written appraisal in conjunction with this matter?

A Yes, sir, I did.

Q Do you have that appraisal with you?

A Yes, sir.

MR. FITZPATRICK: I would like to

1 introduce Mr. Call's appraisal in as evidence after
2 he has concluded his testimony.
3 THE COURT: All right. Any objection,
4 Mr. Pascal?
5 MR. PASCAL: No, sir.
6 THE COURT: All right.
7 Q (Continuing) Mr. Call, a question has
8 been raised in previous testimony regarding the effect, if
9 any of the adoption of the Minimum Housing Code.
10 Now, if you will, sir, assuming that
11 certain matters in the Housing Code would have an adverse
12 effect on the letting of apartments or the marketability
13 thereof, what would that do to your appraisal?
14 A It would diminish the value of the
15 property.
16 Q To what degree, would you say?
17 A Well, may I go ahead and lead you,
18 because I'm familiar with the problem and I forgot to bring
19 it up during my testimony, and I think I can expound upon it.
20 Q I wish you would, sir.
21 A In inspecting the property I was told
22 by the employees of Mr. Gordon that at the present time, that
23 being today, not 1974 or '75, that there are approximately 50
24 apartment units in the project, these are basement type
25 apartments, ground level apartments, built on rolling land,

1 and the kitchens, unfortunately, in these 50 apartments,
2 happen to be at the extreme back end of the apartment.
3 Well, the kitchen, I believe, by the
4 Minimum Property Standards Law, today the City requires that
5 a kitchen have an exhaust fan or a window. In this case these
6 kitchens don't have either, so they suffer somewhat. Well,
7 either you can't rent them or you have got to fix them.
8 I tried to ascertain if the subject project fell under the
9 Minimum Property Standards at that time and found, unfortunate-
10 ly, after I had written this report, that the property did
11 not fall under the standard for the year 1974, however, did
12 for the year 1975, but to go further, I called the environ-
13 mentalist or the agency in the City that is responsible for
14 taking care of overseeing and inspecting properties and
15 making a ruling or decision on an issue such as this, and I
16 talked to a Mr. Patillo and a Mr. Spencer --
17 MR. PASCAL: Your Honor, I am going to
18 have to object to that. This is hearsay.
19 MR. FITZPATRICK: I think it's in --
20 THE COURT: Well, I sustain the objection,
21 if he is going to raise it, Mr. Fitzpatrick, as
22 being hearsay.
23 MR. FITZPATRICK: All right, sir.
24 Q (Continuing) Of your own knowledge,
25 then, Mr. Call, can you indicate what you would have done

had this been in force?

A Well, I was able to ascertain --

MR. PASCAL: Wait a minute, that's avoiding my hearsay objection. There is no evidence that it is or is not in force. That's not the case.

THE COURT: All right, I sustain the objection.

Q (Continuing) In your investigation of the property you found, I believe, some 50 units which, under the terms of the Minimum Property Standards Act, would not have passed muster. Is that correct?

A Under the terms of the Minimum Property Standards Act, they would not have passed for the year 1975, however, would have for '74 because the standard Act had not come into being until 1975, late 1974.

Q Taking a full 50 fully enforced, what would that have done to your appraisal?

A It would have diminished my opinion of value for the property as a whole, because these apartments, one, on a temporary basis, could not be rented, or, secondly, it was going to cost an additional sum to put them in a position to be rentable.

The actual cost to do this, I do not know. I was unable to ascertain whether or not there was a

1 Q And can you estimate roughly the amount
2 of decrease you would have assigned for the year 1975?
3 A I can't estimate roughly, but I can
4 say that I would doubt that it would cost in excess of
5 $100,000.00.
6 Q And your assessment for the property
7 for 1975 was, again, what?
8 A My appraisal of the subject property for
9 the year 1975 was 2.7 million dollars.
10 Q So, you would, perhaps, drop that by
11 what figure?
12 A I would perhaps drop it by no more than
13 $100,000.00, and I would call that $100,000.00 the cost to
14 cure these functionally obsolete 50 apartments.
15 Q All right, sir.
16 MR. FITZPATRICK: I have no further
17 questions on direct.
18 THE COURT: Any cross-examination,
19 Mr. Pascal?
20 MR. PASCAL: Yes, sir. Do I understand
21 that Mr. Call's report is now in evidence?
22 MR. FITZPATRICK: That is correct.
23 THE COURT: I haven't seen it, so I
24 guess he is going to offer it.
25 MR. PASCAL: If we are going to get it

in, why don't we get it in now.

THE COURT: All right. Let him identify it, then. Is that the one you are going to introduce, Mr. Fitzpatrick?

THE WITNESS: I would like to have one to refer to.

THE COURT; Let's have the original if there is one.

THE WITNESS: They are all originals, sir.

THE COURT: That is interesting. All right. Let's make this original of all originals Defendant's Exhibit A.

MR. PASCAL: Your Honor, I would like to note that the plaintiff has no objection to his appraisal report insofar as it reflects his opinion of the property.

We do have an objection, and a continuing one, to the appraisal report insofar as it contains hearsay such as a reference by Mr. Call, I called so and so and asked him a question and here is what he said -- I do object to it in all instances when it's done.

THE COURT: It's probably objectional for the truth of what it asserts, but it is

1 acceptable as to how he reached his findings.
2 MR. PASCAL: Yes, sir, I understand.
3 THE COURT: All right, proceed.
4
5
6 CROSS-EXAMINATION
7 BY MR. PASCAL:
8 Q Mr. Call, your report that has now
9 been introduced into evidence purports to put you in the
10 position of a potential purchaser, really, on January 1,
11 1974, and January 1, 1975, and you are analyzing what you
12 can expect out of this property. Is that a fair statement?
13 A In general terms, yes, sir.
14 Q Now, you have appraised it according to
15 to the cost approach, the market approach, and the income
16 approach, and I would like to go through some of the points
17 of your report, one at a time. I'll try to stick to one
18 area, I won't jump around on you, okay?
19 A Yes, sir.
20 Q Let me start with your cost approach,
21 and, more specifically, your analysis of the cost of the
22 land if vacant.
23 Would you explain to me exactly what
24 that means when you are doing the cost approach.
25 A Well, when I am doing the cost approach,

I go out into the market place since this is an apartment project to see what other apartment lands throughout the general area of somewhat the same utilities -- some of them, perhaps, are improved at a greater density than others -- to see what investors are paying investors and developers are paying for the land, and observe the market and get a general feel for it by looking at this and seeing what they are paying per permitted apartment unit.

I didn't go on a square foot indication as much as some of the sites could be developed at a greater density than others, so I thought price paid per permitted unit would perhaps be the most reflective unit.

Well, I went out and I was able to locate a number of relatively old sales, because the apartment development in Richmond had somewhat stabilized for a while and not many land transfers were taking place. However, I found that some sold for 376, some 591, some $447.00 per permitted unit.

Well, in looking at everything comparatively speaking, I pretty much felt that the subject land, if vacant and available for development as of those dates, would have a value of approximately $500.00 per permitted unit for its 319 units.

Q All right. I want to make sure we are looking at the same part of your report. It's about thirty

pages into it.

We have Sale Number 1, Sale Number 2 --

A Right.

Q Okay. Now, some of these sales were not in the City of Richmond, were they?

A Well, they were in or close by. I believe one of them -- I am not exactly sure, I can't recall the details of every one, I worked on this report a while back -- one of them possibly straddled the City line.

I looked at about 15 sales and adopted these five in my opinion as being most reflective of the market at that time.

Q Not all of them are in the City, are they?

A I'm not sure. I will be more than glad to sit here and read through them to see if I can locate which ones are or which ones aren't in the City, sir, but if you have looked up on a map and located them, I will generally concede that some are in the County if you have found that.

Q And when one is buying property for the purpose of developing apartments, different rates to include sewer tap fees, cash rates apply in the County as opposed to the City.

A Certainly.

Q And some of these sales are from 1967.

A Yes, sir, it wasn't much, but I used the best, is what I was getting to.

Q Were any of these pieces of property next to a dump?

A No.

Q Were any of these pieces of property next to a cemetery?

A No, sir. I looked long and hard for one next to each of the two and I looked long and hard.

Q There is only one.

A You better believe it, and I don't think there will be another one.

Q Did you personally go out and examine each one of these properties that you have related?

A Not recently. I have looked at them over the years. A lot of these sales were in my files from appraisals I had made previously and had inspected, but they really indicate -- rather than each one being highly significant they indicate a general trend that apartment land in the market was worth, somewhere around $500.00, all else being equal excluding the adverse condition of the dump.

Q I would like you to look at the third paragraph on that page that begins Sale Number 5.

A Yes, sir.

1 Q And I will read -- there is no indication
2 in the market to this appraiser's knowledge that property land
3 of this type has increased measurably during this period.
4 What period are we talking about?
5 A Well, I used the word "5-year"
6 in this statement. Perhaps I should have said 8 or 10
7 years. I have been observing sales that occurred as far
8 back as '64, but basically from '68 to the date of appraisal
9 apartment land sales in this type of property, this being
10 generally the eastern end or the north core of Richmond,
11 for this type of apartment, have been transferring roughly
12 around that range, and they haven't been appreciating at
13 any noticeable rate I could find.
14 Q My question is what the period is.
15 Is it 1968 through 1976? Is that a fair statement?
16 A Let's just say from the earliest date
17 of sale I have in the report to 1974 and 1975, sir.
18 Q Okay. Does that statement apply to
19 the land value or to the land plus the improvement value or
20 both?
21 A That statement in this land value
22 analysis section applies only to the subject land if vacant.
23 It does not apply to the improvements on the property.
24 Q Would you accept, for purposes of
25 arriving at the value of a piece of property, the City's

1 assessment for that property as being reflective of whether
2 or not it had increased or decreased in value?
3 A Well, I hate to answer that with the
4 assessor here, but, no, I really don't take the assessment
5 of a piece of property into mind when I am valuing it. I
6 try to look at it objectively,and the City Assessor's opinion
7 I don't want to influence me in any way, so, no, I wouldn't
8 consider it as having a bearing on the property's value one
9 way or the other.
10 Q Does that mean you don't think the
11 opinion is trustworthy enough?
12 A No, sir, they are paying me for my
13 opinion, not my opinion plus somebody else's.
14 Q On the next page over from the one we
15 have just been talking about you discussed the effect of the
16 dump, and you also talked about that in response to Mr.
17 Fitzpatrick's questions, and you said the dump is moving
18 further and further away.
19 A Yes, sir.
20 Q Is it moving 10 feet a year, a mile
21 and a half a month? How much further away, how fast and
22 over what period of time, because I assume if you make that
23 statement you have done the research.
24 A Obviously it's moving. I can't control
25 how quick they pushed that mess away from the project, and

I wouldn't hope to be able to venture a guess on how fast it's moving.

I would certainly like to expound on that if I could -- okay.

Q So you don't know how fast it's moving away.

A No, sir.

Q And you don't know in what increments it's moving away.

A No, sir.

Q And you don't know how far away it was moving and in what increments in 1974 and 1975.

A You are absolutely correct, sir.

Q Let me move on to that part of your report that deals with another evaluation approach, that called the market approach. Would you turn to that part of your report.

A Yes, sir.

Q Okay. Now, what you have said is that there are several projects that are highly comparable to Rittenhouse.

A Yes, sir.

Q Since you didn't use the name I will use the sale numbers you have referred to.

None of those were next to the dump,

1 were they?

2 A No, sir, not a one of them.

3 Q None were next to a cemetery.

4 A No, sir.

5 Q None of them had a reputation for being

6 a dope center, did they?

7 A No, sir.

8 Q None of them had rat problems.

9 A No, sir.

10 Q How many of those were in the east end

11 of the City?

12 A Let me flip through them; I will name

13 out the general location of each one, sir.

14 Q No, just tell me one is, two is not,

15 et cetera. That's all I want.

16 A One sale that I utilized in my report

17 was located in the east end of the City.

18 Q That is Sale Number 1?

19 A No, sir.

20 Q Which one is that?

21 A Sale Number 4.

22 Q Which others are in the east end;

23 any?

24 A None of the others, just this one.

25 Q None of the others.

1 Now, the East End is the, I believe you
2 called it, in your report, weakest section of the overall
3 market of Richmond.
4 A That's correct.
5 Q So, 1, 2, 3 and 5 are in a stronger
6 market than is Rittenhouse, correct?
7 A Yes, sir.
8 Q Thank you. Now, at the top of that page
9 we were just talking about, the one that has your sales
10 summary and adjustment chart on it --
11 A Yes, sir.
12 Q You said that properties of this type
13 decrease in value at the rate of 2-1/2 percent a year. I
14 would like to know the effective date of that statement. When
15 did it start and when did it stop?
16 A It started in 1971 and it stopped in
17 1973.
18 Q Well, in the last paragraph right above
19 the sales summary chart you said that the Rittenhouse property
20 was worth 2-1/2 percent less in 1975 than it was in 1974
21 because of that.
22 A Yes, sir.
23 Q So, am I correct in assuming that you
24 didn't mean '73, it actually continued through '75?
25 A I utilized what data was in the market

to support my conclusions as best I could. I will admit some sales were inferior to others and some perhaps weaker and not as reflective of the value for the subject property.

In my final analysis in the report I dimished the credibility of the market approach because of these weaknesses, but I did make a statement in this section for the lack of anything else in the market because all I found was one apartment complex that transferred one date and subsequently resold later on at a slight reduction in value. All had dropped from market favor slightly previously, and there was nothing in the market to my knowledge present that would indicate that they wouldn't continue.

Now, if I had found a sale that perhaps had increased in value I may have offset what has happened in the past, what is happening now and not made any deduction, but this had taken place, so I exhibited it in the report.

Q I understand you are just interpreting what you have observed in the market.

A Yes, sir.

Q And what I want to know is the approximate rate of 2-1/2 percent decrease per year applies from 1971 through 1975 in your opinion, doesn't it?

A Yes, sir. I am extending it from '73 all the way to 1975.

Q Let me ask you a theoretical question.

1 You are now an expert, okay?
2 A Yes, sir.
3 Q If property were assessed at X in 1973
4 when we applied that rule the assessment in 1974 should be
5 X less 2-1/2 percent, correct, if we just applied the rule.
6 A If we are just working in the parameters
7 you put forth, just working on this one little tidbit of
8 information.
9 Q Not looking at anything else.
10 A Yes, sir, it's mathematically proven it
11 will happen.
12 Q Sale Number 3 on your Sales Summary
13 Adjustment Chart -- that's the Hampshire project, is it not?
14 A Yes, sir, it is one of the past projects
15 of Mr. Gordon.
16 Q Right. And how did you verify that
17 sales price?
18 A You know, I really didn't. I had asked
19 you if you would give me the information I needed to process
20 this because I was asked not to process Mr. Gordon and you
21 told me it was coming and it never came, so there was no way
22 that I could verify it, but I used public information.
23 MR. PASCAL: Judge, I have to acknowledge
24 he is absolutely right, and I didn't locate this
25 until yesterday myself, but I wonder if that

1 couldn't be shown to the witness.
2 THE COURT: Show it to Mr. Fitzpatrick.
3 Q (Continuing) Every time a piece of
4 property is sold and the Deed is recorded, the Court issues
5 you a receipt -- you are familiar with the process, correct?
6 A Yes, sir.
7 Q Okay. I acknowledge to this this is
8 not certified and the printing is not the best of all, but
9 I think you can read it. It says from Hampshire Associates,
10 Hampshire something Associates, to Dominion Associates,
11 and is this the sale you were talking about?
12 A Yes, sir.
13 Q This receipt bears the date you reported
14 on the sale, July 26, 1974.
15 A It does bear that date.
16 Q Consideration, $2,752,000.00.
17 A $2,752,581.00, and what, 16 or 66 cents--
18 I can't read the cents.
19 Q It's very difficult. I think it is
20 16.
21 A I have never seen one transfer for
22 dollars and cents, but go ahead, sir.
23 Q May we acknowledge that sales price
24 on your sale Number 3?
25 A I have got stated $2,753,000.00 even

1 money, sir.
2 Q You accept the receipt I just have
3 given you as being the actual consideration?
4 A I guess in filling out a receipt it is
5 more or less like a sworn statement. I would have to adopt
6 this figure.
7 Q Had I provided you this receipt two
8 weeks ago when you and I were touring Rittenhouse together
9 would you have accepted it?
10 A Yes, sir, if it were correct, yes, sir.
11 Q You refer on about one more page over
12 to something called "gross annual earnings", and the project
13 selling for six times their gross annual earnings.
14 A This is a rule of thumb I have found,
15 that projects of this type over the last number of years appear
16 to sell on that basis, some for 5.5, some for 6.23, some
17 for 5.4, but 6 is a pretty standard yardstick.
18 Q And you have made that determination
19 by taking their actual earnings and multiplying it by 6,
20 correct?
21 A No, I backed into it.
22 Q Did you take their estimated earnings?
23 A I divided their effective gross earnings
24 into their sales price. Generally this figure was found
25 that way, and on none of the sales I exhibit --

1 Q Conversely, though, if we knew a
2 project's gross earnings and multiplied it by 6, we would
3 arrive --
4 A Yes, it is just an additional yardstick
5 thrown in to show that I didn't walk into this through a
6 tube. I try to approach it from many angles.
7 Q Okay. I would like you to turn over
8 to that page dealing with the operating history of Rittenhouse,
9 and it's probably 20 pages away from where we are now.
10 A I'm sorry I didn't number these pages
11 for you, it would have made it a lot easier.
12 MR. PASCAL: Your Honor, while he is
13 looking, I wonder if I could move this Clerk's
14 Receipt into evidence.
15 THE COURT: Do you object, Mr.
16 Fitzpatrick?
17 MR. FITZPATRICK: No objection.
18 THE COURT: All right, it will come in
19 by stipulation, then, as Plaintiff's Exhibit
20 next in order.
21 Q (Continuing) Now, let's look at the
22 year 1973 and the actual operating information for purposes
23 of arriving at a fair market value for 1974. Is that the
24 appropriate manner in which to approach it?
25 A Yes, sir.

1 Q Would you tell me from your chart what
2 the gross annual earnings for 1973 were.
3 A The gross potential earnings or the
4 actual earnings?
5 Q No, the actual earnings as reported by
6 the project.
7 A $376,032.00.
8 Q All right. And, theoretically, accord-
9 ing to your multiple, if we were to multiply that by 6 we
10 should arrive at approximately the fair market value of this
11 property. Am I correct?
12 A If that is what you have calculated
13 on your calculator, sir, and it came out to that, it would
14 be correct, yes, sir.
15 Q You are welcome to use it. That comes
16 out to $2,256,000.00 by that method, okay?
17 A Yes, sir.
18 Q And let's do it in 1974 for purposes
19 of valuing the property for 1975. If we do that it will come
20 out $2,378,088.00, both of those substantially less than
21 the conclusions you reached back where you were talking
22 about the multiplier of earnings.
23 A Yes, sir, they certainly are.
24 Q Well, what is that $482,055.00 that I
25 see back on that page? That isn't the actual earnings of

1 this project, is it?
2 A No, that's my opinion of what the
3 project should produce with ample prudent management.
4 This is my opinion that the property should produce. I
5 don't rely necessarily on just what it has done.
6 As I indicated earlier the project has
7 been sustaining unusually high and sometimes low vacancies,
8 and credit losses. I can't look at just one year, or I don't
9 feel that I can, I don't think it is correct. An investor
10 is going to look at an overall past operating history, he
11 is going to make up his mind what the property is going to do.
12 He can't isolate one figure and apply one bit of market data
13 and come up with the big hair ball.
14 Q When you give that conclusion there,
15 you are talking about not what the project did, not based
16 on its actual available earnings, you are talking about what
17 it could do if some changes were made. That's what your
18 opinion is. Am I correct?
19 A It is my opinion of the property's
20 value if I were the investor and I were buying it -- not
21 ideal things that could be done, not super-adequate things
22 that wouldn't normally be done -- it is my opinion of what
23 a prudent investor, a greedy little man wanting dollars, a
24 typical investor, is going to pay for the bricks and mortar
25 and economics of that project.

Q Okay. Let's move on to that portion of your report that deals with the income approach, and I guess what I am going to ask you to do is turn to something that you and I have called a pro-formula income statement summary, income approach, 1974, and income approach 1975.

A I'm right at that, sir.

Q Now, what this is is your estimation of what the income should be allowing a 15 percent vacancy rate and what the expenses ought to be.

A Yes, sir, that's basically what it is.

Q Okay. I would like you to turn over to 1975. I will look at that one first, if you would.

Now, you had the estimated income rate at $514,020.00.

A Yes, sir.

Q And that means that you have made the assumption that the project is 100 percent full 100 percent of the time, all year long, no lag in between somebody moving out and somebody moving in each apartment; maximum rent, correct?

A This figure is my opinion of the ceiling rent based on comparing this property with other property, other apartment complexes, also looking at what the property has been producing, what its growth potential was and also looking and verifying its publishing rate for that period of

1 study.

2 Those apartments were leasing at

3 $115.00, $125.00, $135.00, each category of apartment units

4 or different apartments rent on different bases, counted

5 up and mathematically extended out the $514,000.00 is the

6 gross capable amount of money that that project could pro-

7 duce during that year in my opinion. That means the answer

8 to my question is --

9 A Well, I wanted to make sure our language

10 was right. I didn't understand your language exactly, sir.

11 Q Then you added air conditioning rental,

12 because those apartments with air conditioning -- I think

13 they are 37 and 38 -- they demand $10.00 a month higher.

14 A Yes, sir.

15 Q And, again, that is assuming that every

16 air conditioner in the apartments was in fact always rented

17 and none were ever vacant for any period of time.

18 A Yes, sir.

19 Q And you subtracted vacancy rates esti-

20 mated at 15 percent.

21 A Yes, sir.

22 Q Now, in fact, an investor on January 1,

23 1975 would know that that project exerted 27.6 percent,

24 wouldn't he?

25 A Yes, sir.

1 Q But you think 15 percent is reasonable.
2 A Based on the review of the other four
3 years presented by the owner, 14.371 was a 6 percent vacancy,
4 7.9, 13.6 and all of a sudden it doubled in 1974 and jumped
5 to 27.6, and I, as an investor on January 1, 1975 would
6 certainly be aware the project is in trouble. Any appraiser
7 would look at that year and say, what's happening to this
8 property, this is terrible.
9 Q And you would say I as an investor,
10 am not going to have a --
11 A Certainly. I can do a whole heck of
12 a lot better job.
13 Q Let's just test your judgment by looking
14 at what actually happened in 1975.
15 MR. FITZPATRICK: Your Honor, I
16 object to that for the reasons that I have stated
17 before. We are assessing as of a particular date,
18 that being January 1, 1974, and 1975, and all
19 appraisals and assessments are made effective
20 as of that date. We do not, nor does the
21 appraiser, in this case Mr. Call, who has tried
22 diligently to divorce himself from any knowledge
23 subsequent to those years and those times, as
24 is the assessor only able to estimate what is
25 the fair market value of a property at a given

1 date.

2 He has, I believe, adequately answered

3 what he would do, but to throw something in which

4 occurred subsequently and not available at that

5 time is totally improper.

6 THE COURT: All right, Mr. Pascal.

7 MR. PASCAL: I disagree, Your Honor.

8 The question is based upon the reasonableness

9 of Mr. Call's assumption. He is saying I would

10 have assumed on January 1, 1975, that vacancies

11 would not continue at the level of 27.6 percent.

12 I don't know how Mr. Fitzpatrick can

13 say it's not relevant, but the facts, the black

14 and white, the operating statements show that

15 judgment to be wrong for whatever reasons, because

16 if that judgment is wrong his summary is wrong.

17 THE COURT: For the time being, gentle-

18 men, I am going to let it in, and I'll rule on it

19 later, Mr. Fitzpatrick.

20 I tend to believe that Mr. Fitzpatrick

21 is correct, though, Mr. Pascal, but at some point

22 you may want to brief this whole matter, but it

23 seems to me anything that happened in 1975 would

24 be irrelevant for our consideration here, but for

25 the time being I will let it in so we have a

1 complete record. You have a continuing objection
2 in the record for anything coming in after 1975.
3 Q (Continuing) Now, we have effective
4 growth of $440,793.00, correct?
5 A Yes, sir.
6 Q And you have $179,353.00, correct?
7 A Yes, sir.
8 Q That means the expenses of this project
9 in your reasonable estimation on January 1 were 40 percent,
10 correct?
11 A You have got the calculator, sir, that
12 is not a figure I have on paper.
13 Q It's a figure I have worked out and
14 you may assume.
15 A 40 percent of what, sir?
16 Q $179,353.00.
17 A Is 40 percent of which figure?
18 Q The effective gross, $440,793.00.
19 A If that is what your --
20 Q Yes, sir, assume it is. If Texas
21 Instruments doesn't work we will stand corrected.
22 Now, I want you to turn back two pages
23 because I think you have contradicted yourself. Back there
24 you said reasonable expense rates are somewhere between 48.6
25 and 46.2, and you said that's what any reasonable investor

can expect to find.

A Yes, sir.

Q Okay. But when you become the reasonable investor you only allow 40 percent.

A Do you want that I should take a little bit more off, sir?

Q Would it be reasonable, in your opinion, to assume that the actual expenses on your 1975 statement really ought to be quite a bit higher than they are, and, in fact, about 40 percent of that figure?

A Yes, sir, you are correct. I think in '74 I maintained a consistency between 40 and 50 -- 45 and 50 percent -- if you will calculate that out I will explain why all of a sudden in '75 this expense is running closer to your calculated percentage of 40, if you would like me to, and why it's not consistent with that being experienced by other projects. It is not a contradiction, it's a play on figures here.

Q Well, my concern is that two pages earlier you said a project like this ought to experience expenses of 48 percent.

A Yes, sir.

Q And then when you actually worked it out you showed a greater profit by showing smaller expenses and you can't have it both ways.

1 A In 1974 I confirmed my statement. In
2 1975 the reason that the expenses appear as a percentage
3 of an effective gross are lower because my real estate taxes
4 charged in 1975 was substantially lower than that charged in
5 '74 inasmuch as the assessment had changed and I was basing
6 that charge on $43,240.00 as opposed to the previous year of
7 almost $12,000.00 more.
8 That's why it seems to pull outside of
9 that range, sir.
10 Q Does that mean you consider the fact
11 after January 1, 1975, the reduction that you had to make
12 from the previous overcharge on the water charges?
13 A Generally you can usually find out what
14 the probable assessment is on a property if you look at the
15 cards. Although it's not official, generally it is posted
16 before the year and you can find out a little bit of every-
17 thing on the project before the ringing of the bell.
18 Q Does that mean that you consider the
19 fact after January 1, 1975, the reduction of the water
20 charges?
21 A Because of a prior year's --
22 Q Does that mean you considered the fact
23 of 1975 in your appraisal?
24 A You know, I may have on that operating
25 expenses. I sometimes make a slight mistake once in a

1 while.
2 Q I understand. That's all I wanted.
3 Is it a fair statement for me to say that
4 for this project the income approach to evaluation is
5 really the most indicative one we can make?
6 A I would confirm your statement, yes,
7 sir.
8 Q And the cost approach is probably the
9 least reliable of all of them.
10 A I feel that is true, too.
11 Q And market is somewhere in the middle.
12 A Yes.
13 Q Okay. I want to get one last question
14 that concerns what is called the capitalization rate. I
15 believe you investigated one of 9.3 percent. I'm talking about
16 the net capitalization rate.
17 A Yes, sir.
18 Q Okay. You arrived at this by taking
19 2 sales of comparable property and saying I happen to know
20 that they made so many dollars a year according to their
21 operating expenses and that the sale price was X and you
22 divided the sale price into the net earnings and came up with
23 what is called the cap rate. Am I correct?
24 A Yes, sir.
25 Q Let's apply that exact same formula to

1 Rittenhouse. Aren't your estimates of earnings not anything
2 but actual earnings?
3 A I haven't done that because I didn't
4 feel that actual earnings were representative of the property's
5 potential.
6 Q You didn't feel that way with the two
7 you took from your statement.
8 A I most certainly did. I got income
9 statements on those properties and confirmed the details and
10 somewhat stabilized them -- well, I didn't have to stabilize
11 them, they were operating on an even-Steven basis, looked
12 good, looked highly reflective of the market.
13 By my own statement earlier, I said I
14 think the subject is an odd ball and it had to be leveled out
15 and stabilized. It had a lot of tremendous up and down swings.
16 I processed what I found in the market into a rate. I
17 realize I got a rate that ranged between 9 and 9.3, and I
18 felt that the higher the rate the lower the value, and I
19 felt the subject property was a little riskier than it, so I
20 adopted the rate in the upper realm.
21 Q But the capitalization rate you obtained
22 was based on actual operating expenses, correct?
23 A Yes, it certainly was.
24 Q Do you agree with me, Mr. Call, that the
25 fair market value of this property on January 1, 1974, is

less than 2.7 million dollars?

A My opinion of fair market value as of that date is $200,000.00 below 2.7 million.

Q Therefore, you agree with me that the City assessment for 1974 is too high, correct?

A Yes, sir.

MR. PASCAL: Your Honor, I don't have any further questions. Thank you.

THE COURT: Anything on redirect, Mr. Fitzpatrick?

MR. FITZPATRICK: Just one question, Your Honor.

REDIRECT EXAMINATION

BY MR. FITZPATRICK:

Q In 1975 is your appraisal of fair market value above or below the City's tax assessment?

A In 1975 my opinion of fair market value was substantially above the City's assessment for that year, sir.

Q Thank you.

MR. FITZPATRICK: The hour is a little bit late, Your Honor. I think I will forego any further examination.

THE COURT: Well, how much longer would you be, Mr. Fitzpatrick? Do you have any idea?

MR. FITZPATRICK: I suppose I could ask one or two questions just to clear something up.

THE COURT: Are there other witnesses after this?

MR. FITZPATRICK: No, sir.

THE COURT: All right. Let's try to wind up since we have been here this late rather than coming back tomorrow.

Q (Continuing) Mr. Call, I know that you, from your testimony, have considered many and varied approaches in coming to your appraisal of what you felt this property to be valued as to fair market value.

Did you decide upon one final approach?

A When you say "approach", do you mean the income?

Q The method, yes.

A I felt that the indications arrived at in the income approach were most reflective of the property's value, sir , and I tempered that indication slightly with the market approach. I didn't want to ignore another approach that it had --

Q So, in other words, would it be fair to

1 ask you to read the appraisal as a whole?
2 A Yes, sir, it would certainly be fair
3 to ask me to read the appraisal as a whole.
4 Q All right, sir. Now, there was one
5 question about the dump, and I think that you were asked
6 whether the dump moved 3 feet, 3 inches or a mile and a half
7 or whatever distance it was, and I think you had something
8 on your mind that you really wished to say and I think that
9 I would like to give you that opportunity to say it, sir.
10 A Yes, sir. I feel that regardless of
11 the fact that the dump might have moved 10 feet in the last
12 year and 100 yards the year before, the fact that it is
13 moving away, that it presently is approximately 100 yards
14 from where it was a number of years ago, is a definite factor
15 that should be considered by an appraiser in valuing a
16 property like this which particularly, in view of the fact
17 that the dump in my opinion is creating an added 5 percent
18 vacancy factor over and above that typically experienced by
19 a project like this.
20 Most properties studied seemed to have
21 a vacancy and credit loss from their rental of about 10
22 percent or less while the subject is sustaining an average
23 decrease or vacancy loss of 13.8 percent. So, I think that
24 since the dump impacts so heavily on the subject income the
25 fact that it is moving away should also have some impact on

1 the factor -- at least an appraiser could have less credence
2 in the vacancy for the last year.
3 In other words, the dump tends to instill
4 in me the thought that I should give less credence to the
5 permanent nature of the dump and tend to consider it only as
6 a temporary detriment to the property's value.
7 Q Thank you, Mr. Call.
8 MR. FITZPATRICK: I have no further
9 questions.
10 MR. PASCAL: One quick question, Your
11 Honor.
12
13
14 RECROSS-EXAMINATION
15 BY MR. PASCAL:
16 Q Again, Mr. Call, you are considering
17 what is going to happen in the future when you make that
18 statement about the dump, aren't you?
19 A No, sir, I am not considering, I am
20 making a prediction on what has happened in the past. As
21 I have done with all the income expense, I am trying to
22 stabilize something, because you can't appraise a property
23 for any one date without considering its whole past.
24 I think it would be inconsistent with
25 market behavior, and I am trying to put myself in the shoes

of a buyer, and certainly I wouldn't want to look at just one month's past operating statement or just one year, I would want everything I could, and especially when we are considering two and a half to 2.7 million dollar evaluations.

A little movement here and there can seriously affect the value, so you really want to stabilize everything, you just can't use all the history and come up with a value, you have to look at it overall as I feel I have done in this report, trying to look at the property from all different angles. Certainly there are some areas weaker than others, I will admit that, but I feel I have used my best professional judgment to attack the problem and come up with the answer for the people here in court.

THE COURT: Anything further, Mr. Pascal?

MR. PASCAL: That's all.

THE COURT: Let me clear up one matter in my mind.

Mr. Pascal asked you a question about the 1974 assessment and your opinion of that assessment, and he indicated that your assessment was $200,000.00 less than the City's assessment.

THE WITNESS: My appraised value was $200,000.00 less than the City's approximately appraised value, sir.

THE COURT: All right. And your conclusion was that the City's assessment was $200,000.00 too high for '74.

THE WITNESS: My conclusion -- well, may I expound on that a little bit, sir?

THE COURT: All right.

THE WITNESS: The City quite often does not have the same data that I might have in my possession. Sometimes they may only be given a one-year operating statement, so they generally tend to give more credence to one year, or you can have a high year or a bad year and a good year in a project like this, so perhaps their assessments of the property's value, based on what information they had concerning the project, was correct.

I fortunately was afforded the chance to look over 5 years history, and my opinion was made on an overall view of 5 years, whereas, perhaps, the City was only able to look at one year.

They may be correct in their assessment based on the work performed, however, I feel my opinion of 2 million 5, which is $200,000.00 less than the City's -- I feel stronger about my figure than I do about the City's.

THE COURT: Well, then, in '75 you were

1 privy to more information than the City was.
2 THE WITNESS: Yes, sir.
3 THE COURT: Because you came up with
4 2.7 and they came up with 2.3.
5 THE WITNESS: Yes, sir.
6 THE COURT: Any other questions?
7 MR. FITZPATRICK: No.
8 THE WITNESS: One thing I would like to
9 say, Your Honor -- I admitted that because of the
10 50 apartments in the project that, according to
11 the owner, could not be rented the value of
12 2 million 7 that I stated the property should be
13 worth for 1975 would probably be less than 2
14 million 7 and perhaps as far down as 2 million 6
15 because of the fact that one must consider the
16 fact that the kitchens don't have exhaust fans
17 or windows and you have got to get something in
18 there to ventilate those areas.
19 THE COURT: You are now considering
20 areas in 1975, as Mr. Pascal would add.
21 All right. Gentlemen, anything further?
22 All right. What do we do with this
23 case? Do you want to brief it, or do you want me
24 to decide it based on the record you have
25 presented today?

MR. PASCAL: Your Honor, I think there are sufficient questions that the Court has raised during the course of this that it may be appropriate for Mr. Fitzpatrick and I to submit briefs, and I don't think there is a need for a response.

MR. FITZPATRICK: I think that would be proper, Your Honor.

THE COURT: Do you want the record transcribed?

MR. PASCAL: Yes, sir, I would like to have the testimony that has been here today in my hand at the time I prepare my brief.

HEARING CONCLUDED.