PONTCHARTRAIN PARK HOMES V. COMMISSIONER:
A Simple Case Complicated by Race

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Background

- Post War New Orleans faces an acute housing shortage
- Local Whites want to fortify the case for racial segregation
- Mayor engages Hamilton Crawford to build separate communities for Whites and Blacks
- Both communities receive FHA-insured financing
A Timeline of Transactions

- 1954 - PPHI formed to build a residential subdivision for Blacks
- 1955 - PPHI buys land and starts installing improvements
- January of 1957 - PPHI suspends building but continues selling
- Mid-1957 - PPHI sells some of the unimproved land at a gain
- PPHI reports gain as low-taxed long-term capital gain
- By February 1961, PPHI resumes building and finishes project
What is a Capital Asset? IRC § 1221(a)(1)

Property that is NOT:

• Held Primarily for Sale to Customers
• In the Ordinary Course of Taxpayer’s Business
The Usual Analysis

What is a Capital Asset? IRC § 1221(a)(1)

Property that is NOT:

• Held Primarily for Sale to Customers ✓
• In the Ordinary Course of Taxpayer’s Business ✓

Taxpayer Loses – The Government Wins
Judge Withey’s Legal Framework

General Rule:

• If a real estate developer sells unimproved land,
• Then such property is a capital asset at the time of sale.

There are exceptions to this general rule.
Judge Withey’s Authorities:
Unimproved Land is a Capital Asset

• **Farry**: Real estate developer sold a home that he rented to Black tenants

• **Mieg**: Real estate developer sold land that it never intended to include in a development project

• **Eline Realty Co.**: Real estate developer sold land rendered unsuitable for development by an unanticipated road project

None of these cases seem to resemble the facts here.
Judge Withey’s Authorities: Unimproved Land is Not a Capital Asset

- *Lawrie*: Real estate developer sold multiple unimproved tracts in a single transaction when it liquidated the business

- *Engasser*: Real estate developer sold land acquired for a residential development before starting the project

Don’t these cases mean that PPHI must lose?
Judge Withey’s Assessment of the Cases

- No criteria exists to resolve the issue
- The facts of this case must drive the outcome
Judge Withey’s Assessment of the Facts

• The market for homes to Blacks was “virtually unknown and untested,” especially for homes priced between $9K and $27K.

• PPHI had no duty to build the homes.

• Therefore, you can’t judge PPHI’s intentions for the land as you would a developer whose market is tested and known.
Judge Withey’s Key Observation

PPHI held the land as an investment until it was developed to the point where it could be sold to customers.

Implications:
• PPHI never had to abandon its plans to develop the land
• Any unimproved land would count as a capital asset to PPHI

Judge Withey’s rationale was soundly rejected on appeal.
Shades of Anti-Black Bias

• Real estate losses value when Blacks are present – FHA (1934)

• A builder that caters to Blacks assumes elevated risks – Judge Withey (1963)

• Homes occupied by Blacks are not as valuable as those occupied by Whites - Eberhardt et al. (2016)

• Areas where Blacks live elicit negative opinions (degraded, unsafe, unpleasant, underresourced) - Eberhardt et al. (2016)
Parting Observations

• The role of implicit bias cannot be overlooked

• Anti-Black bias can be a factor even if one of the parties is not Black

• Anti-Black bias can lead to irrational and incoherent legal rules

• Eliminating implicit bias must be a priority