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1654235 Ontario Inc. v. Municipal Property Assessment Corp., Region No. 14

In the matter of Section 40 of the Assessment Act, R.S.O. 1990, c. A.31, as amended, and in the matter of appeals with respect to taxation years 2009, 2010, 2011 and 2012 on premises known municipally as 10432 Islington Avenue

1654235 Ontario Inc., Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region No. 14 and the City of Vaughan, Respondents

Ontario **Assessment Review Board**

Y.J. Duan Member

Heard: June 14, 2012; August 14, 2012
Judgment: January 7, 2013
Docket: WR 116332

Counsel: R. **Baranowski**, for Assessed Person / Appellant

S. Ladak, J. Johnston, for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Valuation — Uniformity, equity and equality — Miscellaneous

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Market value — Selling price of comparative property — Residential

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Market value — Selling price of comparative property — Commercial

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Similar real property in vicinity

Statutes considered:

Assessment Act, R.S.O. 1990, c. A.31

Generally — referred to

s. 1(1) "current value" — considered

s. 19(1) — considered

s. 19.2(1) ¶ 2 [en. 2004, c. 7, s. 3(1)] — considered

s. 19.3 [en. 1997, c. 5, s. 13] — considered

s. 40(17) — considered

s. 44(3) — considered

***Y.J. Duan Member*:**

1 These appeals came before the Assessment Review Board ("Board") on June 14, 2012 and August 14, 2012 in the City of Vaughan.

Issue

2 The subject property is located in Kleinburg, a unique upscale neighbourhood of Vaughan. It has a 0.58 acre lot with a 2,880 square foot two-storey detached family home and a 1,536 square foot former commercial auto service garage and gas station. The Appellant purchased the subject property in May 2005 for $925,000.

3 The Municipal Property Assessment Corporation ("MPAC") assessed the subject property at $961,000 for the 2009-2011 taxation years and at $957,000 for the 2012 taxation year. MPAC has recommended assessments of $957,000 for all taxation years. For the 2009, 2010 and 2011 taxation years, MPAC returned the assessments at $661,000 in the residential property class and at $300,000 in the commercial property class. After an inspection and a review of the zoning by-law, MPAC determined that 0.14 acre is zoned residential and 0.44 acre is zoned commercial. MPAC apportioned the 2012 assessment of $957,000 at $323,000 in the residential property class and $634,000 in the commercial property class and recommends this for all taxation years.

4 Mr. **Baranowski**, representing the Appellant, maintains that the May 2005 purchase price of subject property was inflated. It included $157,000 special consideration for gas pumps, tanks and hoists. Mr. **Baranowski** introduced invoices totalling $78,000 for work done on the former gas station. Mr. **Baranowski** believes that the current value of the subject property at January 1, 2008 should be reduced by these amounts. Alternatively, based on his Assessment to Sales Ratio ("ASR") study of three properties, Mr. **Baranowski** argued that the assessment of the subject property should be reduced to $851,700 to make it equitable with similar lands in the vicinity. Mr. **Baranowski** also took the position that the subject property should be apportioned between the residential property class and the commercial property class based on its use rather than zoning.

5 The issues are:

i. Whether the assessments of $957,000 are correct and equitable?

ii. What is the correct apportionment between the residential property class and the commercial property class?

Decision

6 The Board finds that:

i. The most probable current value of the subject property at January 1, 2008 is $957,000 and no reduction to this current value is required to make it equitable with that of similar lands in the vicinity.

ii. The correct apportionment is $658,000 in the residential property class and $299,000 in the commercial property class.

7 The assessments for taxation years 2009, 2010 and 2011 are reduced from $961,000 to $957,000, and the assessment of $957,000 for the 2012 taxation year is confirmed. For all taxation years the assessments are apportioned at $658,000 in the residential property class and $299,000 in the commercial property class.

Reasons for Decision

Legislation

8 For the 2009, 2010, 2011 and 2012 taxation years, in determining the value at which land shall be assessed, the Board must have regard to the following provisions of the *Assessment Act*, R.S.O. 1990, c. A. 31 ("Act"):

9 Section 19.(1) of the Act states:

19.(1) Assessment based on current value. — The assessment of land shall be based on its current value.

10 Section 1 of the Act defines "current value" as follows:

"current value" means, in relation to land, the amount of money the fee simple, if unencumbered, would realize if sold at arm's length by a willing seller to a willing buyer.

11 Section 19.2(1)2 states:

19.2(1) Valuation days. — Subject to subsection (5)[FN1] , the day as of which land is valued for a taxation year is determined as follows:

2. For the period consisting of the four taxation years from 2009 to 2012, land is valued as of January 1, 2008.

12 Section 40.(17) states:

40.(17) Burden of proof. — For 2009 and subsequent taxation years, where value is a ground of appeal, the burden of proof as to the correctness of the current value of the land rests with the assessment corporation.

13 Section 19.3 states:

19.3 Classification day. — The day as of which land shall be classified for a taxation year is June 30 of the previous year.

14 Section 44.(3) of the Act states:

44.(3) Same, 2009 and subsequent years. — For 2009 and subsequent taxation years, in determining the value at which any land shall be assessed, the Board shall,

(a) determine the current value of the land; and

(b) have reference to the value at which similar lands in the vicinity are assessed and adjust the assessment of the land to make it equitable with that of similar lands in the vicinity if such an adjustment would result in a reduction of the assessment of the land.

Analysis and Conclusion

15 Under s. 44.(3) of the Act, the Board must determine the current value of the land, and, having reference to the value at which similar lands in the vicinity are assessed, adjust the current value of the land to make it equitable with that of similar lands in the vicinity if such adjustment would result in a reduction of the assessment.

Current Value

16 The best evidence of current value is an arm's length and market-tested sale of the subject property on or close to the valuation day, January 1, 2008. If no such transaction has taken place, the Board looks to sales of comparable properties in the vicinity to determine if the sales evidence suggests that the current value requires correction.

17 Ms. Johnston, a property valuation analyst with MPAC, testified that the subject property is unique, and she could not locate any comparable sales in the York region. Mr. **Baranowski** provided the Board with a number of sales, none of which is of assistance. 10459 Islington Avenue sold in January 2007 for $1, and the Board cannot use this sale as the sale price indicates that there were special considerations at play. 10503 Islington Avenue sold for $825,000 in January 2007. It was built in 1900 with an effective site area of 10,797 square foot and a building total area of 2,259 square foot. It is a residential dwelling with a commercial or industrial unit. The subject property is significantly newer, bigger and with commercial zoned land. The Board finds that the two properties are not comparable. The remaining comparable properties proposed by Mr. **Baranowski** sold in March 1989, February 2001, March 2001, August 2002, February 2010 and April 2010 and are too far removed from the January 1, 2008 valuation date.

18 MPAC uses an Automated Cost System ("ACS") to value small commercial and industrial properties when there is not enough sales data. The ACS report suggests a current value of $957,000 for the subject property with a land value of $653,000 and a building net value of $304,000. Mr. **Baranowski** questioned the land value and introduced a real estate listing of a 1.6 acre of land for $750,000. On cross-examination, MPAC established that the listing was for property zoned half agriculture and half open space. With respect to the other nine suggested comparable land sales provided by Mr. **Baranowski**, they were owned by the City of Vaughan, exempted from taxation, had open space zonings or were rural lands. They are not comparable.

19 The Appellant purchased the subject property in May 2005 for $925,000. The Board held a hearing on June 5, 2008 to review the 2006, 2007 and 2008 assessments. At that hearing, Mr. **Baranowski** also argued that the May 2005 purchase price was inflated and included consideration totaling $157,000 for the pumps, tanks and hoists. Member Wyger wrote on page 4 of WR 69628A:

> The only such document was the LTT affidavit produced...which clearly allocated the entire consideration to land, building, fixtures and goodwill, and zero to chattels or items of tangible personal property.

20 Member Wyger found the sworn statement of the Appellant on the Land Transfer Tax affidavit to be more reliable evidence than the hearsay statement relayed by Mr. **Baranowski** and confirmed the 2006, 2007 and 2008 assessments at $925,000. There is no new evidence at this hearing to suggest that the Board should come to a different conclusion than Member Wyger with respect to the 2005 purchase price.

21 According to MPAC's study of 330 ASR, a 23.39% time adjustment factor ("TAF") should be applied to the 2005 purchase price. This translates to a January 1, 2008 current value of $1,141,357 ($925,000 × 1.2339=$1,141,357), higher than the $957,000 suggested by the ACS model. MPAC, however, maintains its recommendation of $957,000 produced by ACS.

22 The Board reviewed the $78,000 invoices submitted by Mr. **Baranowski**. Some for roof repairs and replacement of eaves troughs which are ordinary maintenance costs. A majority of the invoices were for work done prior to January 1, 2008, and the last invoice relates to a study of a proposed addition. The Technical Standards and Safe Authority, a governing authority for licensing, operating and decommissioning of gas stations, ordered the owner of the subject property to empty all of the fuel tanks and remove all of the fuel tanks, gas pumps and pipes and cleanup of the gas station in July 2004, at least 10 months before the May 2005 purchase by the Appellant. The Appellant would (or should) have been aware of potential cleanup costs involved in a purchase of a former gas station and taken into consideration these costs in reaching the 2005 purchase price. Any amounts subsequently spent on the actual clean ups of the former gas station and a proposed addition would only increase and not decrease the value of the subject property at January 1, 2008.

23 The Board finds that MPAC has met its burden of proof described in s. 40.(17) of the Act and concludes that $957,000 is the most probable current value of the subject property at January 1, 2008.

Equity with Similar Lands in the Vicinity

24 MPAC did not present any evidence with respect to the equity issue. Mr. **Baranowski** noted that MPAC's TAF studies included three properties with the same property codes as the subject property. Mr. **Baranowski** found the three properties to have an average ASR of 0.89:

Address	*Property Code*	*2008 Assessment ($)*	*Sale Date*	*Sales ($)*	*Time Adjusted Sales ($)*	*Assessment to Time Adjusted Sales Price Ratio*
11221 Highway 50	420	1,721,000	2006-09	1,950,000	2,170,000	0.79
1765 Albion	420	1,137,000	2006-11	1,081,080	1,188,000	0.96
2985 Sandalwood	420	2,001,000	2006-03	1,875,000	2,169,000	0.92
					Average	*0.89*

25 In order to the ASR to have meaning, the sales date should be relatively close to the valuation day. All three properties were sold in 2006, too far removed from the January 1, 2008 valuation day. There is no reliable evidence leading the Board to the conclusion that the current value as determined above requires a further adjustment to achieve equity.

Apportionment between the Residential Property Class and Commercial Property Class

26 Section 19.3 of the Act states that the day as of which subject property shall be classified for a taxation year is June 30 of the previous year.

27 MPAC inspected the subject property in September 2011 and April 2012. In addition to arguing that classification should be based on zoning. MPAC alleged that the subject property was being used for commercial purpose as there were advertising signs on the subject property. The Board agrees with Mr. **Baranowski** that the classification of a property should be based on its use rather than zoning. The inspections occurred after the last relevant date of June 30, 2011, and

there is no other evidence to suggest a change in use for the 2009-2012 taxation years. The Board apportions $658,000 ($957,000 × [$661,000 =~ $961,000]=$658,000 rounded) to the residential property class and $299,000 to the commercial property class based on 2009-2011 assessments as returned.

Conclusion

28 The assessments for taxation years 2009, 2010 and 2011 are reduced from $961,000 to $957,000 and the 2012 assessment is confirmed at $957,000.

29 For all taxation years, the assessments are apportioned $658,000 in the residential property class and $299,000 in the commercial property.

FN1 Subsection 5 permits the Minister to prescribe a different valuation day. A different day has not been prescribed.

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