Tribunals Ontario | **Tribunaux décisionnels Ontario**

Assessment Review Board | Commission de révision de l’évaluation foncière

ISSUE DATE: July 05, 2024 **FILE NO.:** WR 186394

Assessed Person(s):	1504700 Ontario Inc.
Appellant(s):	1504700 Ontario Inc
Respondent(s):	Municipal Property Assessment Corporation Region 09
Respondent(s):	City of Toronto
Property Location(s):	3340 Lawrence Avenue East
Municipality(ies):	City of Toronto
Roll Number(s):	1901-052-730-03500-0000
Appeal Number(s):	3508730, 3512282 and 3524950
Taxation Year(s):	2022, 2023 and 2024
Hearing Event No.:	783679
Legislative Authority:	Section 40 of the *Assessment Act*, R.S.O. 1990, c. A.31

APPEARANCES:

Parties	**Representative**
1504700 Ontario Inc.	Robert Baranowski
Municipal Property Assessment Corporation	Christine Giorgio
City of Toronto	No one appeared

HEARD: May 7, 2024 by video conference
ADJUDICATOR(S): Dan Weagant, Member

DECISION

OVERVIEW

[1] 1504700 Ontario Inc. (the “Appellant”) believed the assessment returned by the Municipal Property Assessment Corporation (“MPAC”) for the 2022 taxation year was too high. In accordance with s. 40 of the *Assessment Act,* R.S.O. 1990, c. A.31 (the “Act”) the Appellant filed its appeal of the assessment with the Assessment Review Board (the “Board”). Pursuant to s. 40(6) of the Act, that appeal was subsequently deemed to apply to the 2023 and 2024 taxation years.

[2] MPAC returned a value for 3340 Lawrence Avenue East (the “subject property”) of $2,499,000 for 2022 in the Commercial property class. The Appellant agrees with the property class but believes the current value of the subject property is $1,400,000. MPAC believes the assessment returned reflects the current value of the subject property and is therefore correct.

Areas of Agreement

[3] The Parties agree that the subject property is in the Commercial property class.

Issues for the Hearing

[4] The Board must decide the following, as set out in s. 44(3) of the Act:

1. The correct current value of the subject property, and in particular:

    a. Comparability of other properties.

    b. The correct fair market rents to be applied in the income approach to value.

2. Whether a reduction in the current value should be made, when reference is made to the assessments of similar lands in the vicinity*.*

Result

[5] The Board finds that the correct current value of the subject property is $1,900,000 and that when reference is made to the assessments of similar lands in the vicinity, no reduction in this value is required for it to be considered equitable assessment.

ANALYSIS

Description of Subject Property

[6] The subject property lies at the corner of Lawrence Avenue East and Greencedar Crescent. It is accessible from both streets and has an area of 0.65 acres. The land is improved with a single-storey, multi-tenanted building with a total area of 9,776 square feet.

Issue 1 – What is the correct current value of the subject property?

<u>MPAC's Evidence</u>

[7] MPAC applied two approaches to determining the current value of the subject property. Its primary approach is the income approach to value. As a secondary 'test' of the income approach results, MPAC also used the direct comparison approach.

[8] The income approach to value involves the calculation of current value by first determining the Potential Gross Income ("PGI") of the property by multiplying the leasable area by the Fair Market Rent applicable to the uses present at the subject

property. The PGI is then reduced by an amount for vacancy and collection loss and non-recoverable expenses to arrive at the property's Net Operating Income. ("NOI").

[9] The NOI is then divided by a market driven capitalization rate ("Cap Rate") to determine the current value of the subject property.

[10] MPAC used the base rent rates included in two leases within the subject property and three leases in other properties with similar tenants. That analysis resulted in a median rent per square foot of $19.00. MPAC then reflected on the actual leases at the subject property that had been considered by the Parties in a settlement process earlier in the assessment cycle. That analysis resulted in a median rent at the subject property of $17.00 per square foot. The PGI was calculated by MPAC at $166,192.

[11] The vacancy allowance applied by MPAC was based on its Market Valuation Report ("Report") for commercial properties in Ontario and specifically for standard retail properties within the City of Toronto. That allowance ranged from 3.71% to 4.92% in the Report. MPAC selected a vacancy allowance of 5% to apply to the subject property, resulting in an Effective Gross Income ("EGI") of $157,882.

[12] The EGI was then reduced by MPAC to reflect the non-recoverable expense allowance. That percentage was also drawn from the Report with an indicated median non-recoverable expense allowance from 162 standard retail properties of 5.33% and an average of 6.2%. MPAC selected an allowance of 5%, reducing the EGI to $149,988, representing the NOI.

[13] To determine the applicable Cap Rate, MPAC reviewed the sales of five properties in the east part of Toronto. Those sales were of similar properties as compared to the subject property, with the same property code and with leasable areas ranging from 6,971 square feet to 11,500 square feet. The indicated Cap Rates of these five sales ranged from 5.5% to 6.5% with an average of 5.9% and a median of 5.6%.

From this, MPAC used a Cap Rate of 6.0%.

[14] When the NOI was divided by the Cap Rate, the resulting estimate of current value of the subject property adduced by MPAC was $2,499,000, rounded.

[15] In its application of the direct comparison approach to value, MPAC considered six sales that took place between February 2015 and September 2016. These were sales of properties in the same property code in the east part of Toronto. They range in size from 5,530 square feet to 11,500 square feet. When the sale price of each comparable property was divided by the square footage of each of the six sales, the sale price per square foot ranges from $196 to $340, with an average of $257 per square foot and a median of $263 per square foot.

[16] MPAC applied the median square foot value of this sample of six sales to the subject property's 9,776 square feet of leasable area and arrived at a value of $2,513,644, serving as a confirmation of the value determined through its income approach to value.

[17] MPAC's case concluded with the opinion that the correct current value is $2,499,000 as determined through the income approach, noting that the income approach should be considered the best approach to value in this case because it most closely follows the reasoning prospective purchasers of income producing properties use in valuation.

<u>Appellant's Evidence</u>

[18] The Appellant applied the direct comparison approach to value whereby the sales of comparable properties that sold in proximity of the valuation day (in this case January 1, 2016) are used to determine current value of the subject property. The Appellant cited three sales that occurred in 2015:

Address	**Building Area / Year Built**	**Site Area**	**Sale Amount**
3300 Lawrence Avenue East	7,056 square feet / 1982	.55 acres	$1,400,000
4379 Kingston Road	9,802 square feet / 1972	.67 acres	$1,900,000
440-450 Kennedy Road	7,630 square feet / 1975	.41 acres	$ 1,570,000
Subject Property	9,776 square feet / 1977	.65 acres	N/A

[19] All three properties have a property code of 430, the same as the subject property and lie within the east part of Toronto. The Appellant selected the sale at 3300 Lawrence Avenue East owing to its proximity to the subject property, recognizing that it would be affected by the same locational benefits. That property sold for $1,400,000. With a leasable area of 7,056 square feet, the sale price per square foot equates to $198. When applied to the subject property's 9,776 square feet, the result is $1,935,648.

[20] The Appellant testified that because of the difference in the areas of 3300 Lawrence Avenue East and the subject property, an adjustment to value was required. The Appellant submitted that to account for economies of scale, the value per square foot of $198 needs to be reduced by the percentage difference in the size of the two properties. 3300 Lawrence Avenue East is 28% smaller that the subject property. That adjustment results in a total value of $1,935,648 reduced by 28% for a final, indicated value of the subject property of $1,397,088 or $1,397,000 rounded.

[21] The Appellant also adduced a value derived from the sale at 4379 Kingston Road ("Kingston") that was described as very comparable to the subject property, as it is only 26 square feet larger, with a 2015 sale price of $1,900,000.

[22] Finally, the Appellant submitted that the Board could also consider the mid-point

between these two findings, based on sales as the current value of the subject property, and that the best evidence in this case is the direct comparison approach.

Findings on Issue 1

[23] In accordance with s. 44(3)(a) of the Act, the Board must first determine "the current value of the land." Section 1 of the Act defines current value as "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." Accordingly, the Board must first determine what the subject property would have sold for in an arm's length transaction on the statutory valuation day. The valuation day for the 2022, 2023 and 2024 taxation years is January 1, 2016.

[24] In this case, the Parties adopted differing approaches to determining current value. The Board agrees with MPAC in its assertion that multi-tenanted commercial buildings are exchanged in the market based on their revenue generating potential, and that for this reason, the income approach to value is the best approach to apply to determine current value. This too is a generally accepted principle; however, in its application, the income approach is highly dependent on the data inputs and their relative accuracy of market conditions.

[25] In this case, MPAC drew on its own Report to indicate the vacancy and expense allowances and the Cap Rate applicable to this type of retail commercial property. When it came to calculating the PGI of the subject property, MPAC chose to use the actual rents as the Fair Market Rent at the subject property rather than market-based rents.

[26] This Board has frequently held that best rents for a determination of current value using the income approach are market rents. This market approach avoids any valuations arising from idiosyncrasies in the nature of a subject property that are not consistent with the commercial real estate market overall.

[27] In the absence of fair market rents derived from other comparable properties, the Board finds that the best approach to determining the correct current value of the subject property is the direct comparison approach.

[28] Both Parties undertook an analysis of the sales of comparable properties with varied results in opinion. MPAC applied a median sale price per square foot derived from six sales it deemed to be of comparable properties. The Appellant applied the price per square foot of a nearby property it deemed to be comparable to the subject property and adjusted that value to account for the difference in the size of the subject property as compared to the Appellant's comparable.

[29] The Appellant submitted that the best evidence of the current value of the subject property is a size-adjusted value per square foot of 3300 Lawrence Avenue East, arriving at a value of approximately $1,400,000. This suggests that a property with a larger leasable area situated on a larger piece of land, in the same neighbourhood would sell for the same price as a smaller comparable property.

[30] MPAC submitted the sale of 3300 Lawrence Avenue East was not a good indication of value in this case because it included a vendor take back on a portion of the mortgage, indicating that the value in exchange was related to something other than the value of the property itself.

[31] For these reasons, the Board disregards the sale of 3300 Lawrence Avenue East as an indication of the current value of the subject property.

[32] In their respective analyses, both Parties included Kingston. This property sold in 2015 for $1,900,000. MPAC shows it as having a leasable area of 9,717 square feet, while the Appellant shows it as having 9,802 square feet. There is no disagreement on the sale value in evidence. The resulting price per square foot is between $193.84 and $195.53 per square foot. When applied to the subject property's 9,776 square feet, the

result are values of $1,883,543 and $1,916,585, with a mid-point of approximately $1,900,000, rounded.

[33] The Board finds that the current value of the subject property is the per square foot value of a sale of the most comparable property in evidence. The correct current value is $1,900,000.

Issue 2 – Is a reduction in the current value determined necessary for it to be considered equitable assessment when reference is made to the assessments of similar lands in the vicinity?

[34] Neither party advanced a case regarding the necessity of reducing the current value determined for the purposes of equitable assessment.

[35] The Board finds therefore, that there is no evidence to support a reduction in the current value determined for it to represent equitable assessment.

CONCLUSION

[36] The Board finds that the correct current value of the subject property at 3340 Lawrence Avenue East is $1,900,000.

ORDER

[37] The Board orders that the assessment of the subject property is reduced to $1,900,000 in the Commercial property class for the 2022, 2023 and 2024 taxation years.

"Dan Weagant"

DAN WEAGANT
MEMBER