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Buijs v. Municipal Property Assessment Corp., Region No. 15

In the matter of Section 40 of the Assessment Act, R.S.O. 1990, c. A.31, as amended

In the matter of appeals with respect to taxation years 2009 and 2010 on premises known municipally as 1483 Spring Road

Adriaan Buijs, Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region No.15 and the City of Mississauga, Respondents

**Ontario Assessment Review Board**

A. LaRegina Member

Heard: November 12, 2010

Judgment: March 23, 2011

Docket: WR 99416

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

R. Leroux, P. Alves, 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

**Statutes considered:**

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

Generally — referred to

s. 1 — referred to

s. 1(1) "current value" — referred to

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- s. 19(1) — referred to
- s. 19.2(1) [en. 1997, c. 5, s. 13] — referred to
- s. 19.2(1) ¶ 2 [en. 2004, c. 7, s. 3(1)] — referred to
- s. 40(19) — referred to
- s. 40(26)(b) — referred to
- s. 44(3) — referred to
- s. 44(3)(a) — referred to
- s. 44(3)(b) — referred to

**A. LaRegina Member:**

1 These appeals came before the Assessment Review Board on November 12, 2010 in the City of Mississauga.

**Issue**

2 The issue before the Board for determination is whether the assessment for the subject property of \$1,091,000 for the 2009 and 2010 taxation years is at current value and whether the assessment is equitable with the assessment of similar lands in the vicinity.

**Decision**

3 The Board finds that the current value of the subject property to be \$1,091,000 for the 2009 and 2010 taxation years.

4 The Board finds that based on the adjusted ASR of the sales comparables provided by the Municipal Property Assessment Corporation (MPAC), the current value of \$1,091,000 requires a further adjustment to \$1,003,000 to make the assessment equitable with the assessments of similar lands in the vicinity.

5 The decision of the Board is to reduce the assessment from \$1,091,000 to \$1,003,000 for the 2009 and 2010 taxation years.

**Reasons for Decision**

***The Subject Property:***

6 The subject property, built in 1967, is a detached single-family two storey backsplit, located at 1483 Spring Road, in the City of Mississauga in homogeneous area A91. This residence is made up of 3,192 square feet of total building area with 2,179 square feet on the first floor, 1,013 square feet on the second floor, and 1,156 square feet in the basement of which 671 square feet is finished space. The subject lot has an effective frontage of 80 feet and effective depth of 126 feet. The effective lot area is 10,018 square feet. The subject has an attached double garage and an outdoor pool.

***Legislation:***

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7 The Board must have regard to section 1 and subsections 19.(1), 19.2(1), 40.(19) and 44.(3)(a) and (b) of the *Assessment Act (Act)* when determining whether or not the assessment under appeal is correct.

8 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.

9 Subsection 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 Subsection 19.2(1) of the *Act* states:

**19.2 (1) Valuation days.** — Subject to subsection (5)<sup>[FN1]</sup>, 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.

11 Subsection 40.(19) of the *Act* states:

**40.(19) Board to make determination.** — After hearing the evidence and the submissions of the parties, the Board shall determine the matter.

12 Subsection 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.

13 Subsection 40.(26)(b) provides that if an appeal for 2009 is not fully disposed of by March 31, 2010, the appellant is deemed to have made the same appeal for the 2010 taxation year.

***Determination of Current Value:***

14 Subsection 44.(3)(a) of the *Act* requires the Board to determine the current value of the property.

***MPAC's Evidence and Argument:***

15 On behalf of MPAC, the assessor, Mr. Leroux, introduced three sales of comparable properties all of which were outside the homogeneous area of the subject but still within close proximity within the White Oaks section of Lorne Park. Mr. Leroux stated that he attempted to find sales in the same area but because of the unique features of the property he had to widen his search to find comparables that were more similar to the subject property. The three comparables are all two storey sidesplits or backsplits similar to the subject and are described below as follows:

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<i>Address</i>	<i>Assessed Value</i>	<i>Building Area (Sq. Ft.)</i>	<i>Lot Size (Sq. Ft.)</i>	<i>Sale Price</i>	<i>ASR Ass/ Adj Sale</i>	<i>Sale Date</i>	<i>Time Adjusted Sale Amount</i>	<i>Adjust To Subject</i>	<i>Adjusted Sale Amount</i>
<i>Subject</i> 1483 Spring 0 Road	\$1,091,00	3,192	10,018						
1109 Springhill Dr	\$783,000	2,609	10,018	\$813,000	.92	2007/05	\$847,945	39%	\$1,181,000
1667 Ruscombe Close	\$939,000	2,891	10,018	\$1,025,000	.88	2007/05	\$1,069,067	16%	\$1,242,000
1485 Mildway Crt	\$980,000	2,639	13,068	\$1,000,000	.97	2007/10	\$1,014,327	11%	\$1,129,000
<i>Average</i>					.92				

16 Mr. Leroux's evidence included the sale price of each property as well as the time adjusted sale amount to reflect the January 2008 valuation. The adjustment to the subject represents the total quantified adjustment required to equalize the comparable property to the subject property. The adjustment is determined by comparing the sum total of the valuation components for the subject property against those of the comparable sold property. Comparables which are deemed superior to the subject require a negative adjustment while the inferior ones require a positive adjustment. The Adjusted Sale range of the two comparables was between \$1,129,000 and \$1,242,000.

17 Mr. Leroux also introduced the Equity Analysis, Appendix D, which concludes the median Assessment to Sales Ratio (ASR) of 1.04 based on the sale of 11 two storey single family homes in the Lorne area which occurred between November 2006 and June 2008. Mr. Leroux submits that the results of the Equity Analysis show that the MPAC valuation model is doing a very good job of determining current value as the median ASR of 1.04 is within the range of .95 to 1.05 ASR.

18 Mr. Leroux states that based on the comparables, his opinion is that the best comparable is number 2, 1667 Ruscombe Close, which has an adjusted sale value per square foot of \$369. The second best comparable which is also a good indicator of value is number 3, 1485 Mildway, which has an adjusted sale rate per square foot of \$384. Mr. Leroux concludes that both of these values are higher than the assessed value per square foot for the subject property which is \$341 per square foot of building area. Mr. Leroux also points out that 1667 Ruscombe has a 20% adjustment, 1485 Mildway has a 15% adjustment and 1109 Springhill has no adjustment.

#### ***Appellant's Evidence and Argument:***

19 Mr. **Baranowski** began his evidence by stating that the word "homogeneous area" means that the area is very similar in nature, has the same economies and variables to the subject property.

20 Mr. **Baranowski** introduced three approaches to determine a fair value for the subject property.

#### ***Approach #1***

21 Mr. **Baranowski** entered into evidence the Property Assessment Notice for the subject property which indicated

that the increase between 2005 and 2008 valuation for the subject was 38% while the average for the municipality was 21% over the same period. Mr. **Baranowski** claims that if one applies the average municipal increase of 21% to the subject property the assessed value would be \$960,000 and not \$1,091,000.

### *Approach #2*

22 Mr. **Baranowski** claims that as per Exhibit 2, "Property Assessment Detail Report" if you reduce the assessment by 15%, which is an arbitrary market increase not otherwise defined, the assessment of the subject property should be \$949,000.

### *Approach #3*

23 Mr. **Baranowski** introduces a third approach which applies the assessment rate per square foot of building area based on 1489 Jalna Avenue \$299, (\$954,000 divided by 3,154 square feet of building area) as per Exhibit 4. Mr. **Baranowski** claims that this comparable is located in A91 which is the same area as the subject and also has the same building area and lot size as the subject; 1489 Jalna was also built within a two year period and has the same quality level as the subject property. Therefore, if one applies the \$299 value per square foot of building area to the subject is 3,192 square feet, the resulting value of the subject would be \$954,000.

24 Mr. **Baranowski** concludes that based on the three approaches, the average is \$954,000, and the median is \$949,000. Mr. **Baranowski** claims that this is 100% proof that the assessment as returned by MPAC is incorrect.

25 Mr. **Baranowski** also introduced the MPAC Market Model Report for the 2008 base year into evidence (Exhibit 5). From this model he made the following points:

(1) According to Mr. **Baranowski**, he claims that under the section "Sales Comparison Approach to Value" it clearly states that, "In areas where there are few sales or inadequate data information, the sales comparison approach may not necessarily have been used and another approach to value would be utilized". Mr. **Baranowski** states that according to the MPAC Market Model Report, if sales do not exist, MPAC should not use comparable sales from other areas which are not similar but rather change the approach to value. Mr. **Baranowski** points out that in this appeal MPAC, in fact, did not follow the model and used comparables from other homogeneous areas which are not similar.

(2) Mr. **Baranowski** also points out that under the section "Additive Model" it clearly states that "the adjustments are usually in the form of a dollar rate-per-square-foot, dollar rate-per-unit or a flat dollar-amount". Mr. **Baranowski** claims that based on the Market Model the dollar rate per square foot methodology is clearly an appropriate methodology that MPAC is using to value properties.

(3) Mr. **Baranowski** also quotes from the "Fine tuning of Values" section of the model report that "Valuation staff then begins the important process of reviewing the estimates of current value, commonly referred to as fine tuning". Mr. **Baranowski** states that these adjustments must be made on merit and not just chasing sales in the area as MPAC typically does. Mr. **Baranowski** also claims that these adjustments should not be made after the return of the Roll as stated in paragraph 2 of the same section.

(4) Mr. **Baranowski** also points out that in the "Ratio Sales Study" section of the report it states that "in cases where there are a significant number of low value sales or an exceptionally wide range in sale prices, assessment to sale ratios can become skewed and additional tests are required to determine fitness for use". In addition, he points out that to support the equity analysis there should be a stratification report to ensure that equity has been achieved across

major property characteristics. Mr. **Baranowski** claims that one must establish vicinity and similarities of properties that are used for an ASR study and that a property that has a value of \$500,000 is not the same as a property that has a value of \$1,500,000. Mr. **Baranowski** claims that this is a wide range of values that can produce skewed results.

(5) Mr. **Baranowski** finally points out that the Market Model clearly states that 85% of the value is accounted by the following characteristics, location, building area, quality, age and lot dimension including frontage and depth.

26 With regard to time adjustments, Mr. **Baranowski** states that the best fit line in the "Sales to Assessment Ratio Over Time" graph should intersect 1.0 at the valuation date of January 2008. The best fit line supplied by MPAC intersects the valuation date at a point which is higher than 1.0. Mr. **Baranowski** claims that this results in a Time Adjustment Factor which is artificially higher. Mr. **Baranowski** claims that if the line intersected the valuation date at 1.0 the Time Adjustment Factor would be lower and the best fit line would be flatter. Mr. **Baranowski** claims that the time adjustment factors used by MPAC are not valid.

### ***MPAC Summation***

27 Mr. Alves starts his summation by indicating that Mr. Leroux presented his *curriculum vitea* stating that he has been employed with MPAC as an assessor since 1986 in the Mississauga area. Mr. Alves claims that Mr. Leroux has a very good knowledge of the area and clearly understands the comparability and vicinity when it comes to property assessments. Mr. Leroux could not find sales in the same homogeneous area and, therefore, produced sales from the White Oaks section of Lorne Park which is very similar to the subject area. The comparables presented are in very close proximity to the subject property. Based on the three comparables presented by Mr. Leroux, the adjusted sale range was from \$1,129,000 to \$1,242,000. The subject property is assessed at \$1,091,000 which is below the range and therefore a reasonable assessment.

28 Mr. Alves submits that if one takes the traditional approach, the best comparable is 1667 Ruscombe Close. He adds that although the home was renovated, but this occurred after the sale in May 2007. This property is located three streets north of the subject property. It has 2,891 square feet of building area compared to the subject at 3,192 square feet. (within 10% of the subject building area) Lot size is identical. Also, they were built two years apart and both have a garage and pool.

29 Mr. Alves submits MPAC has plotted the sale to assessment ratio of 138 sales and drawn the best fit line to establish the Time Adjustment Factor of .57% increase per month. This factor is used to adjust the value forward or backward to the valuation date of January 2008 as per legislation.

30 Mr. Alves submits that Mr. **Baranowski's** first approach established a value of \$960,000 based on applying the average rate of increase in assessment from 2005 to 2008 for Mississauga to the subject. Mr. Alves claims that the 2008 assessment is based on the sales comparison approach and that there is no legislative requirement to refer to the 2005 assessment value.

31 Mr. Alves submits that Mr. **Baranowski's** second approach is simply to remove a 15% market adjustment because he did not like it.

32 Mr. Alves submits that Mr. **Baranowski** has produced no sales evidence. Therefore, he cannot establish the current value of the subject property and furthermore cannot determine equity. Mr. Alves submits that based on the evidence provided by Mr. **Baranowski**, he has no case supporting his appeal.

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33 Mr. Alves submits that MPAC has provided three comparables to support current value and indicated that the best comparable is 1667 Ruscombe with an adjusted sales value per square foot of \$369 compared to the subject at \$341 per square foot.

34 In support of equity, Mr. Alves submitted that Mr. Leroux presented Appendix C, the ASR of 18 sales in the area for all single family homes which equated to 1.02 and Appendix D, the ASR of 11 sales in the area of single family two storey homes which are more similar to the subject and equated to an ASR of 1.04. Both of these studies support the fact that no adjustment is required to the current value.

35 Mr. Alves submits that Mr. **Baranowski** presented one comparable in support of equity and that is 1489 Jalna. Mr. Alves states that Mr. **Baranowski** cannot use this property to support equity because the *Act* clearly states that one must "have reference to similar lands in the vicinity" therefore requiring more than one comparable. Furthermore, Mr. **Baranowski** cannot make an equity adjustment if he has not established current value. To support his case, Mr. Alves referred to the following case law:

(1) In support of the comparable 2, 1667 Ruscombe, which is within 10% of the subject's building area, a decision by A. LaRegina *Ooi v. Municipal Property Assessment Corp., Region No. 15*, [2009] O.A.R.B.D. No. 14(ARB File No. 73463) which stated that a 10% range for building area is a reasonable range for comparable properties.

(2) Mr. Butterworth's decision *Crymble v. Municipal Property Assessment Corp., Region No. 15*, [2010] O.A.R.B.D. No. 397(ARB File No. 90765) where he indicated in point 13 that Mr. **Baranowski** failed to recognize time adjustments. Mr. Alves claims that Mr. **Baranowski** still fails to do so.

(3) Mr. Butterworth's decision *Crymble, supra*, where at point 31, Mr. Butterworth accepted the ASR of .96 based on 88 sales in the vicinity as appropriate in support of equity.

(4) Member Seaborn's decision *Cogan v. Municipal Property Assessment Corporation, Region No. 3 and the City of Ottawa* (July 22, 2004) File No. DM32084 (unreported) which states that the Assessment Model is an evaluation tool used by MPAC and is not a requirement under the *Act* and that it is not the model which is to be tested but rather the correctness of the current value of the subject property. Mr. Alves submits that the model is not on trial, it is simply an evaluation tool. The question is what is going on in the market and what do sales support.

36 Mr. Alves also submits that there is no indication that the neighbourhood adjustments are incorrect. The neighbourhood adjustment for the subject is 1.07 for A91 and for 1667 Ruscombe located in A94 is 1.08 which only represents a difference of .01.

37 Mr. Alves requests that based on the evidence provided by MPAC, the Board confirm \$1,091,000 for current value and that no adjustment be made for equity.

#### ***Appellant's Summation***

38 Mr. **Baranowski** begins his summary by stating that he understands that comparable number 2, 1667 Ruscombe, is three blocks north of the subject but he also points out that Oakville is three blocks west. He claims that the number of blocks does not make them comparable. Mr. **Baranowski** submits that the most important element is that the comparables are located in the same homogeneous area as the subject. With regard to the case law presented by Mr. Alves, Mr. **Baranowski** submits that the *Cogan, supra*, indicating that the model is not on trial, was given in 2004 under a totally different *Act*. Mr. **Baranowski** submits that while the model is not on trial, it is the model which MPAC uses to create

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the assessment and, therefore, indirectly the model is on trial.

39 Mr. **Baranowski** submits that MPAC states that he has only produced one comparable in support of equity when in fact, MPAC has only presented one sale in support of current value. Truly, there is no difference in these two positions states Mr. **Baranowski**.

40 With regard to an ASR study, Mr. **Baranowski** submits that this is a test and not a method of determining or assessing properties. With regard to the model, Mr. **Baranowski** requests that the model should be on trial because the model is incorrect. He further submits that Mr. Leroux has no experience in statistics and cannot answer questions as they relate to the model. Mr. **Baranowski** submits that the model should be based on fact and should be correct and should be used by individuals who understand it.

41 Mr. **Baranowski** submits that within the ASR Equity Study, Appendix C, there is a spread in ASR's from .81 to 1.26 for the 18 sales which occurred representing a 45% spread or dispersion. Furthermore, we do not know the differences in the properties used for the study. It appears that the properties used in the study are different from the subject.

42 Mr. **Baranowski** also refers to the ASR Equity Study, Appendix D, which presents 11 ASR's with a 45% spread ranging from once again, .81 to 1.26. Also, Mr. **Baranowski** points out that of the 11 ASR's only three fall within the range of .95 to 1.05. Mr. **Baranowski** submits that both ASR Equity Studies are incorrect based on the lack of similarities of the comparable sales and also based on the low sample size and the 45% range of ASR's.

43 With regard to the Time Adjustments, Mr. **Baranowski** submits that he is not clear on the validity of the Sale to Assessment over time process. The best fit line is based on 138 sales of all types of properties including semis, townhouses, bungalows, two storeys, etc., from all different homogeneous areas. Mr. **Baranowski** states that he is clear on the fact that January 2008 is the valuation date and the best fit line should intersect 1.0 on that date. Mr. **Baranowski** states that the best fit line does not intersect 1.0 and if it did, the line would almost be flat indicating very little to no time adjustment. Mr. **Baranowski** indicates that the TAF (time adjustment factor) as calculated by MPAC is incorrect because the best fit line is not properly placed and therefore, the time adjustments should not be accepted as presented by MPAC. Furthermore, Mr. **Baranowski** submits that in the "Sale for Price change over time" chart, Appendix B, there are six sales which occur during the month of January 2008 with a spread of 21% in ASR's from .93 to 1.24 and that these monthly spreads have not been taken into consideration in the time adjustment factors.

44 Mr. **Baranowski** claims that the onus is on MPAC to defend the assessment. With regard to comparable 2 which they claim is the best comparable, this property was assessed at \$939,000 and sold in mid 2007 which was six months before valuation for \$1,025,000. If one calculates the assessment rate per square foot for the comparable, it is \$325 versus the assessment rate of the subject which is \$342. Mr. **Baranowski** claims that even based on the assessment of MPAC's best comparable, the assessment of the subject should be \$1,037,000.

45 In closing, Mr. **Baranowski** concludes that MPAC has used properties in a different homogeneous area, they have used incorrect time adjustment factors and adjustment factors for market and neighbourhood that are highly suspect and not well explained. Furthermore, the range of ASR's used for the equity studies approaches 45% and therefore, MPAC's complete presentation is highly suspect and cannot be relied upon for accuracy and is therefore not valid.

46 He presented 1489 Jalna Avenue which is identical to the subject in terms of lot size, building area, date built and located in the same homogenous area. While the property did not sell it was assessed at \$945,000 while the subject is assessed at \$1,091,000. Mr. **Baranowski** states that in this case there is inequity and if you move from mass appraisal to property specific appraisal it takes only one property to prove inequity. Based on the assessment of 1489 Jalna Avenue,



Mr. **Baranowski** requests that the Board reduce the assessment of the subject property from \$1,091,000 to \$950,000.

***Board's Analysis and Conclusions:***

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1. Subsection 19.(1) provides that current value is the basis for assessed value.
2. The best evidence the Board can receive of current value is sales evidence for the subject property or comparable properties in the vicinity near the valuation day. For the 2009 taxation year properties are valued as at January 1, 2008.
3. As a result of reviewing the comparables presented by MPAC, the Board is in agreement with MPAC that while the comparables are not in the same homogeneous area, they are still in the same vicinity and that the types of homes in the vicinity are similar in nature. The Board is also in agreement with MPAC that the best comparable in support of current value is comparable 2, 1667 Ruscombe, which is similar in lot size and building area to the subject. Furthermore, the range of adjusted sales for all three comparables can be used to support the current value of the subject property.
4. With regard to the time adjustment factor and the best fit line, the Board is in agreement with Mr. **Baranowski** that there is some question as to the slope of the best fit line but Mr. **Baranowski** does not provide an alternative to the best fit line or an adjustment to the slope or time adjustment factors provided by MPAC. Therefore, the Board will accept the time adjustments as presented by MPAC to be reasonable and indicative of market conditions.
5. Therefore for the purposes of establishing current value, the Board will accept MPAC's argument that the adjusted sale range of the three comparables is between \$1,129,000 and \$1,242,000. Therefore, the current value of the subject should be \$1,091,000.
6. Mr. **Baranowski** has provided no sales comparables into evidence or other analysis to support any adjustments to the current value of the subject.
7. Therefore, based on the best available evidence, the Board establishes the current value of 1483 Spring Road at \$1,091,000 for the 2009 and 2010 taxation years.

***Is the Assessment of the Property Equitable With the Assessment of Similar Properties in the Vicinity?***

48 Subsection 44.(3)(b) of the *Act* requires the Board to determine if the assessment of a property at current value is equitable with the assessments of similar lands in the vicinity and to lower the assessment below current value if required to achieve equity.

49 The Board will not accept the Equity Studies presented by MPAC in both Appendix C and D. Between the lowest and highest ASR there is a 45% range, within the range of .95 to 1.05 there are six sales out of 18 in Appendix C and three sales out of 11 in Appendix D. Based on the Board's analysis of the Equity Studies presented in both Appendix C and D, i.e., the Board is concerned with the small sample size, the large range of ASR's .81 to 1.26 and the low sample of ASR's within the .95 to 1.05 range. The Board feels that the accuracy and level of confidence in the study is highly in question and will therefore not accept the Equity Study as presented to make a determination as it relates to equity.

50 Mr. **Baranowski** presented 1489 Jalna Avenue as the only comparable in support of equity. The Board is in

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agreement with MPAC that one property is not enough to make an equity adjustment. Therefore, the Board will not make an adjustment to current value based on only 1489 Jalna Avenue.

51 The Board will use the average ASR based on the adjusted sale of the three comparables presented by MPAC to adjust for equity. The average ASR of the three comparable sales was .92. Therefore, based on the average ASR of the three comparables, the Board will make a -8% adjustment to the current value of the subject property.

52 The Board will make a further adjustment to the current value from \$1,091,000 to \$1,003,000 to make the assessment equitable with the assessments of similar lands in the vicinity.

53 Based on the new assessed value of \$1,003,000 the property is now assessed in line with the assessments of similar properties in the vicinity. While there is no legislative requirement to refer to the 2005 assessment to establish the assessed value for 2008 valuation it was difficult for the Board not to note that the 38% increase was considerably higher than the average increase for the area of 22%. The new assessment represents an increase of 26.6% as opposed to 38% from the 2005 assessment. This further supports the adjustment made based on the adjusted ASR of the three comparables provided by MPAC.

***Conclusion:***

54 Based on the best available evidence provided to the Board, the assessment of the subject property is reduced from \$1,091,000 to \$1,003,000 for the 2009 and 2010 taxation years.

[FN1](#) Subsection 5 permits the Minister to prescribe a different valuation day. A different day has not been prescribed.

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