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Jones 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 complaints with respect to taxation years 2006, 2007 and 2008 on premises known municipally as 1190 Tecumseh Park Drive

Edward Wynn Jones, Hugh Colson Jones (Assessed Persons / Complainant) and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga (Respondents)

Ontario Assessment Review Board

I. Oliveira Member

Heard: June 23, 2008

Judgment: September 19, 2008

Docket: WR 69679

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Counsel: R. **Baranowski** for Assessed Persons / Complainant

S. Futa for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

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(1) "current value" — considered

s. 19(1) — considered

s. 19.1(1) [en. 1997, c. 5, s. 13] — considered

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

s. 39.1 [en. 1997, c. 5, s. 25] — referred to

s. 40(11) — considered

s. 44(2) — considered

I. Oliveira Member:

1 These complaints came before the Assessment Review Board on June 23, 2008 in the City of Mississauga.

Issue

2 The issue before the Board for determination is whether the assessment of the subject property is incorrect. The property under appeal is located at 1190 Tecumseh Park Drive, in the City of Mississauga. Tecumseh Park Drive is a street where a number of properties have received assessment reductions for the 2006, 2007 and 2008 taxation years of anywhere between 23% and 33%. The representative for the complainant takes the position that the subject property's assessment should be reduced to be in line with an assessment reduction given to a comparable property known as 1272 Tecumseh Park Drive.

3 The Municipal Property Assessment Corporation (MPAC) takes the position that based on the sales comparison approach, the subject property's assessment is correct.

Decision

4 The Board reduces the assessment from \$792,000 to \$609,000 for the 2006, 2007 and 2008 taxation years.

Reasons for Decision

The Law

5 In making a decision in this matter, the Board is governed by section 1 and subsections 19(1), 19.1(1), 19.2(1)5, 44(2) and 40(11) of the *Assessment Act (Act)*.

6 Section 1 defines current value:

"**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.

7 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.

8 Subsection 19.1(1) states:

19.1(1) Assessment, single years and averages. — Subject to subsections (2) and (3), land shall be assessed for a taxation year at the current value of the land for the taxation year.

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9 Subsection 19.2(1)1 states:

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

1. For the 2006, 2007 and 2008 taxation years, land is valued as of January 1, 2005.

10 Subsection 44(2) provides that:

44(2) Reference to similar lands in the vicinity. — In determining the value at which any land shall be assessed, reference shall be had to the value at which similar lands in the vicinity are assessed.

11 Subsection 40(11) provides that:

40(11) Board to make determination. — After hearing the evidence and the submissions of the parties, the Board shall determine the matter and, in complaints involving current value, shall determine the amount of the assessment as necessary to reflect corrections to the current value.

Background

12 The subject property is a detached, bungalow single family dwelling, built in 1955, with a total building area of 1,365 square feet. The basement area is 1,365 square feet of which 173 square feet is finished. The irregular lot has a frontage of 118.5 feet by 91.5 feet and the effective lot size is 25,750 square feet or .59 acres.

Complainant's Position and Evidence

13 At the commencement of the hearing, Mr. **Baranowski**, representative for complainant, drew the Board's attention to the fact that the subject property is located on a street where a number of appeals have been heard by the Board for 2006, 2007 and 2008 taxation years and a large number of assessment reductions have resulted either by Assessment Review Board (ARB) decisions or by Minutes of Settlement. These assessment reductions range from 23% to 33% of the assessed values. Notwithstanding these percentage assessment reductions, Mr. **Baranowski's** position is that the subject property's assessment should be reduced even further to be in line with the assessment reduction given to 1272 Tecumseh Park Drive for the 2006 taxation year, which was assessed at \$891,000 and reduced to \$618,000 pursuant to Minutes of Settlement under section 39.1 of the *Act*.

14 Mr. **Baranowski** submitted that consideration should also be given to the poor condition of the subject's structure in that "necessary maintenance is required for the property to be compatible with other comparables".

15 Exhibit #7 is a document including the Statement of Issues and four comparable properties. The suggested comparable properties are as follows:

- 1272 Tecumseh Park Drive — The one-and-one-half-storey structure has a total building area of 1,973 square feet and a lot size of 34,091 square feet. The assessment was reduced from \$891,000 to \$618,000 for 2006 taxation year;
- 1226 Tecumseh Park Drive — The structure has a total building area of 2,113 square feet and the lot size is 13,800 square feet. This property is assessed at \$691,000 and sold in June of 2004 for \$560,000. The assessment to sales ratio (ASR) is 1.23;

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- 971 Indian Road — The two-storey structure has a total building area of 2,776 square feet and the lot size is 19,156 square feet. This property is assessed at \$724,000 and sold in November of 2004 for \$550,000. The ASR is 1.31; and
- 1049 Indian Road — The one-and-one-half-storey structure has a total building area of 2,721 square feet and the lot size is 21,300 square feet. This property is assessed at \$986,000 and sold in December of 2004 for \$625,000. The ASR is 1.31.

16 Mr. **Baranowski** submits that applying the average value per square foot (assessment value per square foot and sales value per square foot) of the above captioned properties would result in a revised assessment of approximately \$343,000 for the subject property.

17 Mr. **Baranowski**, however, is of the opinion that the subject property should be compared to 1272 Tecumseh, which is now assessed at \$313.00 per square foot. He submits that this value per square foot when applied to the subject property, would result in a current value of \$427,000. This value should be further decreased by one-third of the 1272 Tecumseh lot value, or an additional \$27,000, bringing the final current value to \$400,000.

18 Mr. **Baranowski** submitted Exhibit #10, the "Property Valuation Details" for the subject property. The variable description shows dollar amounts allocated to the base value, location, effective lot size, structure #1 (basement area, first floor area, finished basement area, depreciation and structure #2 (basement garage spaces). The total rounded value is \$792,000 (the subject's assessed value). However, just above this figure, there is a % adjustment to total — market (not otherwise specified) — 30% or \$182,965. It is Mr. **Baranowski's** position that this amount of \$182,965, which represents approximately 23% of the overall assessed value, should have been subtracted instead of adding it to the other itemized components.

19 In closing, Mr. **Baranowski** testified that this is an example of what happened to other properties on the same street which benefited from the said assessment reductions between 23% and 33%, due to the market/ neighbourhood adjustments being subtracted and not added.

MPAC's Evidence and Arguments

20 Mr. Futa, on MPAC's behalf, tendered into evidence, a Property Report containing six suggested comparable properties. Reference was made to the two properties sold in 2005:

- 1249 Tecumseh Park Drive sold for \$1,025,000. The bungalow structure, built in 1949, has a total building area of 1,869 square feet. The lot size is .94 acres. The ASR is .93; and
- 1179 Tecumseh Park Drive sold twice in 2005. In April it sold for \$860,000 and in August sold for \$925,000. The bungalow structure, built 1952, has a total building area of 1,301 square feet. The lot size is .70 acres. The ASR is .96 and .89 respectively.

21 Mr. Futa testified that the above properties are:

...all bungalow homes sold in the same economic neighbourhood and all build within a few years of the subject. Building area is very similar but lot sizes vary considerably.

22 He is of the opinion that MPAC's model is working when the ASR is looked at even for different lot

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sizes. The average ASR of the aforementioned three sales is .926, which in direct comparison shows the subject's assessment as being 7% below the market value, he added.

23 Mr. Futa further introduced into evidence a Property Report containing Mr. **Baranowski's** "comparable sales". Mr. Futa's position is that "these properties are not comparable to the subject's one storey home". Two of the properties, 971 and 1049 Indian Road, are two-storey structures and 1226 Tecumseh Park Drive is considered by MPAC as a vacant lot sale for development purposes.

24 In view of his evidence, Mr. Futa asked the Board to confirm the assessment.

Board's Analysis and Deliberations

25 The *Act* requires the assessment of property to be at its current value. The valuation date for the 2006, 2007 and 2008 taxation years is January 1, 2005. The best evidence of current value is a sale of the subject property during the relevant time period. There is no sale of the subject property to assist the Board.

26 If a property has not sold within the relevant time period, the Board looks to sales of comparable properties to assist in determining if a correction to the current value is required. Sales within 12 months on either side of the valuation date are often considered as being within the relevant time period. The Board finds that there are no sales of comparable properties to assist it. The reasons for this finding follows.

27 The representative for the complainant introduced evidence of three sales which occurred in 2004. These sales are not of much help to the Board in that, as per the assessor's evidence, the structures are of a different style (one-and-one-half storey, two-storey and MPAC's considered vacant land sale for 1226 Tecumseh Park Drive) than that of the subject's and the Board finds them not to be comparable.

28 MPAC's sales evidence does not help the Board either. The suggested comparable at 1249 Tecumseh Park Drive is 37% to 38% larger in total building area and effective lot size; and 1179 Tecumseh Park Drive, while the total building area is similar to the subject's, has an effective lot size 16% larger. For this reason, the Board cannot consider these two properties as being similar to the subject for the purpose of the sales comparison approach. Based on submissions of the parties, the Board is of the opinion that the larger the lot, the more attractive it may make the property to developers, which translates into a higher sales price.

29 The representative for the complainant argues that the subject's assessment should be in line with the revised assessment of 1272 Tecumseh Park Drive with a reduction for the difference in lot size. The Board also finds that the structure on this suggested comparable property is of a different style (one-and-one-half-storey) to the subject and therefore, the Board does not find it to be comparable.

30 There is other evidence and submissions the Board must consider in this matter. The Board (differently constituted) has heard several appeals of properties located on Tecumseh Park Drive for taxation years 2006, 2007 and 2008. Mr. **Baranowski** submits that in every case, time and again, properties have received assessment reductions to the tune of 23% to 33%, either by Board decisions or through the Request for Reconsiderations. The assessor, on the other hand, has not been able to explain the reasons for the assessment reductions, other than "it is a neighbourhood adjustment, a market adjustment". There is also the fact that the assessor, during cross-examination, nine out of 11 times was unable to answer the question asked. The "I don't know" answer, the Board finds, is a way out of disclosing pertinent facts which may be relevant and helpful to the Board in arriving at a proper decision in any assessment matter. The Board finds the assessor's answers to be evasive.

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31 The Board further notes that the sales information provided by Mr. **Baranowski** on his suggested comparable properties shows that, the three properties, on average, have an ASR of 1.37, which suggests they are over-assessed. This fact, coupled with all assessment reductions provided for properties on Tecumseh Park Drive, may be an indication that the assessments in this particular area are in need of what MPAC commonly calls "fine tuning".

32 Therefore, in the absence of any other evidence, the Board relies on the evidence presented in Exhibit #10, the "Property Valuation Details" and accepts Mr. **Baranowski's** argument that the market adjustment of \$182,965 which equates to 23% of the total assessment should have been subtracted instead of added. The Board also finds this to be in line with the numerous assessment reductions received by several property owners on the same street, where the 23% neighbourhood/market adjustment is the common denominator of assessment reductions.

33 In view of the above stated facts, the Board reduces the assessment from \$792,000 to \$609,000 (rounded) for the 2006, 2007 and 2008 taxation year.

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