

2011 CarswellOnt 7851,

2011 CarswellOnt 7851

Jones 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 an appeals with respect to taxation year 2009, 2010 and 2011 on premises known municipally as 1190
Tecumseh Park Drive

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

Ontario Assessment Review Board

J. Laws Member

Heard: March 21, 2011

Judgment: March 21, 2011

Docket: WR 105365

© Thomson Reuters Canada Limited or its Licensors (excluding individual court documents). All rights reserved.

Counsel: R. **Baranowski**, for Assessed Persons / Appellants

D. Declerc, for Municipal Property Assessment Corporation

No one for City of Mississauga

Subject: Public; Tax — Miscellaneous; Property

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

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

2011 CarswellOnt 7851,

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

s. 40(17) — considered

s. 40(19) — considered

s. 44(3) — considered

J. Laws Member:

1 These appeals came before the Assessment Review Board on March 21, 2011 in the City of Mississauga. The Board delivered an oral decision at the conclusion of the hearing. Written Reasons for the decision were requested.

Issue

2 Whether the assessment of the subject property for the 2009, 2010 and 2011 taxation years at \$1,099,000 is correct and whether it is equitable with the assessment of similar lands in the vicinity.

Decision

3 The Board finds that the current value of the subject property as of the valuation day of January 1, 2008 is \$953,000.

4 The evidence does not support any reduction to the assessment to make it equitable with the assessments of similar lands in the vicinity.

5 As a result, the assessment of the subject property, as at January 1, 2008, for the 2009, 2010 and 2011 taxation years is reduced from \$1,099,000 to \$953,000.

Reasons for Decision

Background:

6 The subject property, located at 1190 Tecumseh Park Drive in the City of Mississauga, has an effective lot size of 25,700.40 square feet with 118.5 effective feet of frontage and 91.5 effective feet of depth. There is a 1,365 square foot, single storey side split house with an attached basement garage and a partially finished basement. The house was built in 1955.

7 It is assessed in the amount of \$1,099,000 for the 2009, 2010 and 2011 taxation years.

The Municipal Property Assessment Corporation's (MPAC) Position:

8 MPAC's position is that the subject assessment is at its current value and that the assessment is supported by the sales of two properties, 1187 Tecumseh Park Crescent in March 2008 and 1161 Tecumseh Park Drive in January 2007. The sales were time adjusted to the valuation date of January 1, 2008 and range from \$952,183 to \$1,558,186. These amounts were further adjusted for the physical difference between the subject property and the suggested comparables including quality rating, resulting in a range of adjusted sale amounts from \$953,000 to \$1,591,000. Ms. Declerc, MPAC's representative, contends that the fact that the subject assessment falls within this range indicates that \$1,099,000

2011 CarswellOnt 7851,

is the correct current value.

9 Ms. Declerc explains that the subject property is an unimproved older home, that Tecumseh is a unique market within MPAC's homogeneous neighbourhood of A88 and that it is in transition from older homes to 'executive style' new homes. Ms. Declerc's position is that the best comparables for determining the subject property's current value are older, unimproved homes on Tecumseh Park Crescent and Tecumseh Park Drive. It is also her position that where a residence is demolished and replaced after a sale, the sale reflects the value of the lot.

10 To demonstrate the equity of the assessment, Ms. Declerc provided two equity studies, derived from 85 sales and 35 sales respectively, both displaying a median assessment to sale ratio (ASR) of .98.

The Appellant's Position

11 The appellant's position is that the current value should be \$713,000 based on the average sale value per square foot of 1390 Woodeden Drive in February, 2008 and 1236 Cloverbrae Crescent in March 2006 and that the current value should be reduced to \$581,000 based on the assessed value per square foot of the same two properties.

12 Mr. Robert **Baranowski** of After Tax Paralegal Services Professional Corporation, representing the appellant, argues that MPAC failed to meet its burden of proof under subsection 40.(17) because the data for MPAC's suggested comparables is inaccurate: 1187 Tecumseh Park Crescent abuts a green space, a variable which MPAC did not consider in the adjusted sale price, and 1161 Tecumseh Park Drive was demolished after the sale and, therefore, did not exist as of the valuation day.

The Legislation:

13 In determining the value at which land shall be assessed, the Board must have regard to the following provisions of the Assessment Act (*Act*):

14 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.

15 Section 1 of the *Act* states:

"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.

16 Subsection 19.2(1)2 of the *Act* provides:

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.

17 In determining the value at which any land shall be assessed, subsection 44.(3)(a) and (b) of the *Act* requires the Board to do two things:

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,

2011 CarswellOnt 7851,

(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.

18 Subsection 40.(17) of the *Act* provides:

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.

19 Subsection 40.(19) of the *Act* provides:

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

Current Value:

20 The parties presented four suggested comparables which are summarized in the table below:

Property Address	Assessment (\$)	Sale (\$)	Effective Frontage and Depth (Sq. Ft.)	Building Size (Sq. Ft.)	Number of Storeys	Year Built
1190 Tecumseh Park Drive	1,099,000	N/A	118 × 91	(25,700)	1,365	1
1187 Tecumseh Park Crescent	1,076,000	1,600,000 (03/2008) adjusted to 1,591,000	105 × 285 (32,670)	1,649	1 3/4	1947
1161 Tecumseh Park Drive	1,098,000{*}	850,000 (01/2007) adjusted to 953,000	(27,878){**}	1,022	1	1958
1390 Woodeden Drive	713,000	925,000 (02/2008)	(13,503){***}	1,560	1	1960
1236 Cloverbrae Crescent	773,000	890,000 (03/2006)	(13,068){***}	1,955	1	1962

Notes: * This value was created by MPAC for the purpose of the appeal. The property was demolished after the sale and an assessment for the original property was not returned. The property has a pool and is located on a corner lot.
** The lot frontage and depth were not provided; it is located on the point of a land mass surrounded by Tecumseh Park Crescent and Tecumseh Park Drive.
*** The lot frontage and depth were not provided.

21 Mr. **Baranowski** argues that MPAC failed to meet its burden of proof as to the correctness of the current value as required under 40.(17) of the *Act*. The Board rejects this argument. In determining whether MPAC has met its burden it is not necessary for MPAC to prove that the current value is exactly correct, only that it is more likely or probable that it is correct than not correct. MPAC's evidence, on its own, persuades the Board that the assessment as returned lies within

2011 CarswellOnt 7851,

the range of values and, therefore, has met its burden.

22 The Board rejects Mr. **Baranowski's** two suggested comparables for the purpose of determining current value. They are not comparable to the subject because both have lot sizes that are approximately half the size of the subject and 1236 Cloverbrae Crescent's residence is significantly larger than the subject and was renovated in 2002.

23 In reviewing MPAC's two suggested comparables, the Board rejects 1187 Tecumseh Park Crescent for the purpose of determining current value. The property is not comparable to the subject with a 30% larger lot, 20% larger house and one-and-three-quarter storeys. Because an abutting green space was not accounted for, the correctness of the assessment is questionable and, as a result, MPAC's adjusted sale value is likely incorrect as well.

24 The best evidence of current value is the sale of 1161 Tecumseh Park Drive. While it was demolished after the sale, evidence was presented regarding its original characteristics and the Board finds that it is a valid sale for the purpose of determining current value. It is located within a few lots of the subject property and has a similarly sized lot and the residence was of a similar age. MPAC has adjusted the sale price to reflect the differences including quality, building size, pool and corner lot. The Board accepts MPAC's time adjusted factors and its adjusted sale price to reflect the differences between it and the subject property. The adjusted sale price for 1161 Tecumseh Park Drive is \$953,000 (Exhibit #1, Page 4).

25 The Board would prefer to have a larger sampling of sales, however, in this particular case the best evidence is a single sale. Based on the adjusted sale price of this single sale, the Board finds that the current value of the subject property is \$953,000.

Equity:

26 The Board is of the view that to reduce an assessment below current value to make it equitable with the assessments of similar lands in the vicinity the Board must have evidence that similar lands in the vicinity are assessed below their current values.

27 The Board finds that the best evidence before it to determine equity is the assessment to sales ratio evidence (ASR) of the parties.

28 MPAC introduced two ASR studies of time adjusted sales in A88. The first, Appendix C in Exhibit #1, contains 85 residential sales with a median ASR of 0.98.

29 The second, Appendix D in Exhibit #1, includes 35 time-adjusted sales of single-family homes that include homes with one to one-and-three-quarter storeys. The median ASR is 0.98 and the average is 0.99. Of the 26 single storey homes, the medium ASR is 0.98 and the average is 0.97.

30 Mr. **Baranowski** suggests that equity should be determined using the average value per square foot of his two suggested comparables. He also suggests that the four sales on Tecumseh, found in MPAC's Exhibit #1, Appendix D, should be used to determine equity. The Board disagrees on both counts. While properties on Tecumseh are relevant for determining current value, an ASR study should, if possible, include a larger sampling as its purpose is to determine whether MPAC's model is tending to produce correct assessments. The larger the sample, the better the analysis. Therefore, the Board casts a wider net than either of Mr. **Baranowski's** two sales or the four sales on the Tecumseh streets.

31 The above ASR analyses indicate to the Board that MPAC's model is tending to under-assess properties in the vicinity of A88 but not to the extent that justifies an adjustment for the purpose of equity.

2011 CarswellOnt 7851,

32 Based on these reviews of various ASR's the Board concludes there is no evidence to support that the assessment of the subject property should be reduced below its current value to make it equitable with the sale of similar lands in the vicinity.

33 In conclusion, the assessment as returned is reduced from \$1,099,000 to \$953,000 for the 2009, 2010 and 2011 taxation years.

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

END OF DOCUMENT