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Krilavicius 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 complaints with respect to taxation years 2006, 2007 and 2008 on premises known municipally as 30
Gibson Lake Drive

Gwendolyn Louise Krilavicius, Assessed Person/Complainant and The Municipal Property Assessment Corporation, Re-
gion No. 15 and the Town of Caledon, Respondents

Ontario Assessment Review Board

F. Saponara Member

Judgment: January 23, 2009

Docket: WR 72713

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

D. Noble, 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" — referred to

s. 19(1) — referred to

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

s. 40(11) — referred to

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s. 44(2) — referred to

F. Saponara Member:

1 These appeals came before the Assessment Review Board on October 6, 2008, in the Town of Caledon. The Board delivered an oral decision at the conclusion of the hearing. The Municipal Property Assessment Corporation (MPAC) has requested written reasons following the hearing. This decision amends the oral decision given at the hearing to correct an error in calculation that was made at the hearing.

Issue

2 The main issue for the Board's determination is which comparable properties proposed by the parties provide the best indicator of the subject property's current value as of January 1, 2005.

Decision

3 The Board determines that the assessment under appeal for the subject property be reduced from \$882,000 to \$784,000 for the 2006, 2007 and 2008 taxation years.

Reasons for Decisions

Description:

4 The subject property is a two-storey home, built in 1974. The building has a total area of 4,214 square feet and is situated on a lot having a total area of 100,782 square feet, and it backs onto green space.

Compliance With Board Order Number 84688

5 The Board had issued an Order requiring that an inspection of the subject property be done. The Board was advised at the start of the hearing, that such an inspection had not been carried out as ordered. The Board finds MPAC to be non-compliant with the Board Order. The Board also finds that the parties had not cooperated in exchanging all documentary evidence, which they planned to introduce at the hearing. As a result of the parties' non-compliance with the Board Order, the Board is of the view that the quality of the evidence submitted to the Board during the hearing is overall poor.

Assessment Under Appeal

6 Ms. Noble, representing MPAC, submits that the direct sales approach has been used to establish the current value of the subject property as of January 1, 2005. This valuation approach entails the use of sales of comparable properties as a way of arriving at the value of the subject property.

7 Using this valuation methodology, MPAC has set the current value of the subject property, as of January 1, 2005, at \$882,000.

8 In support of the assessment, Ms. Noble proposes six comparable properties as per Exhibit 5. Mr. **Baranowski** objects to the evidence provided, on the grounds that five of the proposed comparables are not the same comparable properties disclosed by MPAC to the complainant prior to the hearing. According to Mr. **Baranowski**, MPAC's proposed comparable properties as disclosed to him are those per MPAC Comparables Report of September 26, 2006, entered into the

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record as Exhibit 6.

9 Confronted with such a fundamental disagreement on key evidence before the Board, and in view of the outstanding Board Order, the Board called for a recess and directed that the parties review their records and determine which of the proposed comparable properties, had been disclosed as required by the Board Order, and which could be submitted as evidence.

10 Upon resumption of the proceedings, the parties confirmed to the Board that they agreed to rely on the following comparable properties; 25 Gibson Lake, 33 Gibson Lake and 60 Gibson Lake.

11 Ms. Noble argues that her proposed comparable property located at 33 Gibson Lake provides a good indicator of the subject property's current value. This property is located across the street from the subject property, is of the same quality as the subject property and sold on the open market in September 2004 for \$640,000, being equivalent to \$221.05 per square foot. By applying this value indicator to the subject property, it is Ms. Noble's position that the subject property's current value would be \$931,505.

Grounds For Appeal

12 The evidence introduced by the complainant and presented to the Board is contained in Exhibits 2, 3, 4 and 6. The key evidence consists of a number of photographs of the subject property, two proposed comparable properties, and a list of the criteria for a Class 7 Quality of Construction dwelling.

13 Mr. **Baranowski** argues that the subject property's current value as established by MPAC is overstated for two main reasons. First, MPAC has assigned an incorrect Quality of Construction Code of 8 to the subject property. Secondly, the sale of the two comparable properties proposed by the complainant, indicate that the average selling price of similar properties, after being time adjusted, is \$138 per square foot. It is the complainant's position that based on this value indicator, the subject property's correct current value as of January 1, 2005, is \$583,000.

Legislation:

14 The Board must have regard to section 1 and subsections 19(1), 19.2(1), 40(11) and 44(2) of the *Assessment Act* (*Act*) when determining whether or not the assessment under appeal is correct.

15 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.

16 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 or average current value, as determined under section 19.1.

17 Subsection 19.2(1) of the *Act* provides:

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.

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18 Subsection 40(11) of the *Act* states:

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.

19 Subsection 44(2) of the *Act* states:

44(2) Reference to similar lands in the vicinity. — For taxation years before 2009, 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.

Findings By The Board:

20 Based on the evidence presented by the parties and in accordance with the provisions of the *Assessment Act* outlined above, the Board agrees with the parties' proposition that the best evidence of the correct value for the subject property is given by the sales of comparable properties that have been sold on the open market close to the valuation date of January 1, 2005.

21 The Board agrees with Mr. **Baranowski** that the complainant is entitled to know how the current value of \$882,000 was arrived at. It is the Board's view that in this case MPAC failed to adequately explain how the assessment of the subject property has been determined. This shortcoming on the part of the assessor does not, however, relieve the complainant of the burden of demonstrating that the assessment is incorrect.

22 In this regard, the Board is satisfied that the complainant has provided sufficient evidence in the form of comparable properties and quality of construction criteria, to establish that the subject property's current assessment is incorrect. Therefore, the main objective of this hearing is to determine the correct current value of the subject property.

23 The parties are basically in agreement with the valuation approach to use in establishing the current value. What they essentially don't agree with is which of the three proposed comparable properties should be used to determine the current value of the subject property.

24 The Board is cognizant of the arguments made by the parties that the comparable properties submitted by both the complainant and MPAC are not identical to the subject property and none of the properties have sold right on the valuation date of January 1, 2005.

25 The Board is of the view that a value must nevertheless be established based on the best evidence available, even if such evidence is limited, as it is in the case at hand.

26 Of the three comparable properties proposed, the Board finds that the properties located at 33 Gibson Lake and 60 Gibson Lake provide the best evidence of the subject property's current value. The Board rejects the proposed comparable property at 25 Gibson Lake, as not being a valid comparable, because this property has an indoor swimming pool, is a newer home, and has two more bedrooms than the subject property.

27 Also, the evidence before the Board indicates that property prices in the Town of Caledon were on a rising trend prior to the valuation date. The evidence before the Board is that the overall price increase for the area, from June 30, 2003 to January 1, 2005, is 0.008% per month. Hence, the sale prices of the comparable properties have been adjusted by 0.008% per month for the timing difference between the actual sale date and valuation date.

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<i>Comparable Property Address</i>	<i>Sold Date</i>	<i>Selling Price \$</i>	<i>Time Adjustment \$</i>	<i>Building Area Sq.Ft.</i>	<i>Adjusted Price \$</i>	<i>Adjusted Selling Price/Sq.ft. \$</i>
33 Gibson Lake	September 2004	640,000	15,360	2,832	655,360	231
60 Gibson Lake	September 2003	465,000	55,800	3,676	520,800	142
Average		552,500		3,254	588,080	186

28 The Board finds that the average selling price of the above comparable properties is \$186 per square foot. Using these market sales transactions as an indication of the current value of the subject property, the Board finds that the subject property's current assessment value of \$882,000 for the 2006, 2007 and 2008 taxation years is too high. The Board determines that by applying the value indicator of \$186 per square foot, to the subject property's total area of 4,214 square feet, the current value assessment (CVA) for the subject property, as of January 1, 2005, for the taxation years 2006, 2007 and 2008, is \$784,000.

29 The Board is unable to reflect in the current value the impact of the lower quality of construction and maintenance deficiencies, as the complainant failed to submit any evidence on the amount by which the current value of the property needs to be adjusted as a result of these factors.

30 As noted above, the Board has time adjusted the sales of the comparable properties from the actual sale date to the valuation date of January 1, 2005. It has done so based on the evidence provided by the complainant that property prices in the Town of Caledon have on average been increasing. If the comparable properties sale prices are not adjusted, it would result in an understatement of the subject property's current value. The Board agrees with MPAC's view that there are shortcomings in the use of an overall average for the municipality; however, MPAC has not provided the Board with a more accurate adjustment factor. Consequently, the overall average increase for the municipality is the best evidence available to the Board.

Correction Of Decision:

31 At the conclusion of the hearing, the Board gave an oral decision reducing the assessment of the subject property from \$882,000 to \$777,000 based on the average sale price per square foot of the acceptable comparable properties. The Board made a mistake in the calculation of the time adjustment amount and in the process of preparing written reasons has corrected the mathematical error.

32 Rule 108 of the Assessment Review Board Rules of Practice and Procedure allows the Board at any time without prior notice to the parties to correct an error in calculation and the Board has done so. The Rule is set out below:

108. Correcting Minor Errors — The Board may at any time and without prior notice to the parties correct a technical or typographical error, error in calculation or similar minor error made in a decision or order, and may clarify a misstatement, ambiguity or other similar problem. There is no fee if a party requests this type of correction.

33 The Board apologizes to the parties for the confusion that this error in calculation may have caused.

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