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Medeiros 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, 2010 and 2011 on premises known municipally as  
1380 Birchview Drive

Jaclyn Diane Medeiros William Medeiros, Assessed Persons/Appellant and The Municipal Property Assessment  
Corporation, Region No. 15 and the City of Mississauga, Respondents

**Ontario Assessment Review Board**

P. Andrews Member

Heard: November 8, 2011

Judgment: November 8, 2011

Docket: WR 113425

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

J. Fantetti, D. Declerc, 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

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

s. 1(1) "current value" — referred to

s. 19(1) — referred to

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s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

***P. Andrews Member:***

1 These appeals came before the Assessment Review Board on November 8, 2011 in the City of Mississauga. An oral decision was delivered at the conclusion of the hearing. Written reasons were requested by the Appellants.

**Issue**

2 The subject property, 1380 Birchview Drive, is a two-storey detached house on an effective lot of 23,958 square feet, with an effective frontage of 100 feet and an effective depth of 240 feet. The house was constructed in 2004 and the Municipal Property Assessment Corporation (MPAC) classifies its quality level as 8.0. It has four bedrooms and a total building area of 4,095 square feet (2,079 square feet on the first floor and 2,046 square feet on the second floor) plus a 2,320 square foot unfinished basement. In addition there is an attached garage and an outdoor pool. The subject property is assessed at \$2,379,000 for the 2009, 2010 and 2011 taxation years. The property sold in September 2005 for \$2,100,000.

3 Mr. Joseph Fantetti, appearing on behalf of MPAC, called one witness Ms. Denise Declerc.

4 Ms. Declerc states that the subject property has been assessed based on the evidence of the sales of comparable properties in the vicinity of the subject property using the MPAC mass appraisal model. In evidence Ms. Declerc provided the sales of three suggested comparable properties.

5 Mr. Robert **Baranowski**, appearing on behalf of the assessed persons Mr. and Mrs. Medeiros, provided twelve suggested comparable properties, three of which sold. Mr. **Baranowski** suggests that the subject property should be valued at the average sale price per square foot of the three properties that sold which he calculates would equate to a value of \$1,863,000.

6 The Board must determine both the correct current value for the subject property and whether the assessment of the subject property is equitable with the assessments of similar properties in the vicinity of the subject property.

**Decision**

7 For the reasons stated below and as directed by subsection 44.(3)(a) of the *Assessment Act*, R.S.O. 1990, A.31 as amended (the *Act*), the Board finds that the current value of the subject property, as at the valuation day January 1, 2008, is \$2,140,000.

8 Further, the Board finds that there is no evidence before it leading to the conclusion that the current value of the subject property, as determined above, requires a further adjustment in accordance with subsection 44.(3)(b) of the *Act*

9 Accordingly, the assessment of the subject property as at January 1, 2008, for the 2009 taxation year, is reduced from \$2,379,000 to \$2,140,000.

### Reasons for Decision

10 The initial task for the Board is to determine the current value of the subject property as required by subsections 44.(3)(a) of the *Act* ...*the Board shall...determine the current value of the land...*

11 Subsection 19.(1) of the *Act* states that ...*the assessment of land shall be based on its current value...* and Section 1 of the *Act* defines current value as...*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.*

12 The best test of current value is an arm's length and market tested sale of the subject property on the valuation day, January 1, 2008 or close to it. If, as in this case, no such transaction took place, the next best measure of current value is arm's length and market tested sales of comparable properties in the same vicinity and market on or close to the valuation day. This measure acts as a benchmark and a gauge of the accuracy for the assessed value of the subject and comparable properties.

13 Ms. Declerc provided the Board with sales of three properties (including the subject property) which she suggests are "good indicators of the Subject Property's current value." The properties range in year of construction between 2004 and 2006; in total building area between 3,799 square feet and 4,140 square feet; and are assessed at values between \$2,000,000 and \$2,379,000. The properties sold at dates between September 2005 and September 2008 and at values between \$2,000,000 and \$2,150,000.

14 Mr. **Baranowski** also provided the Board with the sales of three suggested comparable properties, one of which is a duplicate of a property presented by MPAC. The properties range in year of construction between 1997 and 2006; in total building area between 3,799 square feet and 5,409 square feet; and are assessed at values between \$2,000,000 and \$2,292,000. The properties sold at dates between September 2008 and August 2009 and at values between \$1,985,000 and \$2,500,000.

15 To enable an estimate of value for the subject property to be derived from a comparable property, there must be sufficient elements of similarity in terms of physical factors such as total building area, land area, land frontage, age of construction, physical condition, etc., and in terms of neighborhood characteristics such as access to amenities, type and nature of housing etc, so as to enable a direct comparison to be made between the comparable property and the subject property.

16 Ms. Declerc states that the sales values of her suggested comparable properties require adjustment by a time adjustment factor for the differences in market conditions between the sale date and the valuation date and that the time adjusted sale values require a further adjustment to adjust their time adjusted sale prices so that they have the same features and are in the same state and condition as the subject property.

17 The Board is cautious in making adjustments to the sale values of suggested comparable properties in as far as the Board is of the view that the greater the number of adjustments that are applied to the sale value of a property in an attempt to make the property and thus the sale value more "comparable" to the subject property the greater the possibilities of error and accordingly, the less the weight that should be placed on such evidence.

18 Ms. Declerc suggests that differences in market conditions between the sale date and the valuation day can be accounted for by a straight line time adjustment factor. The Board does not agree. A straight line time adjustment factor ignores fluctuations in value that occur within periods of market strength and periods of market weakness. Further, a straight line time adjustment factor does not address key variables in the fundamentals of

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the market, such as changes in market preferences over the time period in question. Accordingly, to minimize the impact of market fluctuations and to avoid inherent weaknesses in measuring values over time, the Board is cautious in the use of time adjustment factors, preferring to place a greater weight on sales of properties on or close to the valuation day. Generally, the Board accepts sales of properties that occur within six months on either side of the valuation day. When such evidence is either limited or not available, the Board has accepted sales of properties within greater time periods on either side of the valuation day.

19 Ms. Declerc suggests that the sale values of her suggested comparable properties should be further adjusted so that they have the same features and are in the same state and condition as the subject property. Ms. Declerc refers to Exhibit 1 (Appendix A) - Current Value Study which shows Adjustments to Subject percentages which MPAC has calculated as the "appropriate" percentage change to the actual sale value of a suggested comparable property to make that suggested comparable property directly comparable to the subject property. The percentage adjustments range from 0% to positive 19% and are derived by deducting the assessment as returned for the subject property from the assessment as returned for the suggested comparable property and expressing the answer as a percentage of the assessment as returned for the suggested comparable property.

20 Mr. **Baranowski** challenges how the adjustments in Appendix A can be relied upon given that an error in either the assessment as returned of the subject property or in the assessments as returned of the suggested comparable properties would undermine the validity of the entire table. Further Mr. **Baranowski** questions how a table that presumes as a starting position that the current value of the subject property is correct, can be useful in answering the question at issue. Namely: - What is the correct current value of the subject property?

21 The Board agrees with Mr. **Baranowski** and places no weight on the evidence of Ms. Declerc as to the "Adjustment to Subject percentages" and the "Adjusted Sale Amounts" (ranging from \$2,200,000 to \$2,553,000) shown of the Current Value Study - Exhibit 1 Appendix A.

22 As stated above, the Board prefers the unadjusted evidence of arm's length and market tested sales of comparable properties. Ms. Declerc and Mr. **Baranowski** each provided the sales of three suggested comparable properties, one of which is a duplicate.

23 The Board finds that MPAC Property No. 1 - 1391 Birchview Drive is directly comparable to the subject property in as far as they are of similar age, constructed in 2006 versus 2004; have the same quality level 8 and the same average condition; have similar building total areas 4,140 versus 4,095 square feet; and both have attached garages. Property No. 1 has a smaller lot area than the subject property, 13,503 versus 23,958 square feet, and unlike the subject property has no outdoor pool. These two factors should tend to reduce the value of 1391 Birchview Drive as against the subject property but would tend to be mitigated in as far as Property No. 1 has 1,150 square feet of finished area in the basement versus no basement finished area for the subject property. It sold in July 2008 for \$2,150,000 (\$519.32 per square foot) and is assessed at \$2,206,000.

24 The Board finds that MPAC Property No. 2 - the subject property, is not indicative of the market or values on the valuation day in as far as sales in September 2005 are too far removed from the valuation day to be indicative of either the market or values on the valuation day.

25 The Board finds that MPAC Property No. 3 (Appellant Property No. 6) - 1208 Birchview Drive, is directly comparable to the subject property in as far as they have similar land area 18,730 versus 23,958 square feet; are of similar age, constructed in 2006 versus 2004; have the same quality level 8 and the same average condition; have similar building total areas, 3,799 versus 4,095 square feet; and both have garages (basement

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versus attached) and outdoor pools. 1208 Birchview Drive sold in September 2008 for \$2,000,000 (\$526.45 per square foot) and is assessed at \$2,000,000.

26 The Board finds that the sales of appellant's properties Nos. 3 and 7 are not indicative of the market or values on the valuation day in as far as sales in June and August 2009 are too far removed from the valuation day to be indicative of either the market or values on the valuation day.

27 Accordingly, the Board finds that the best evidence of the current value of the subject property is the sale of 1391 Birchview Drive in July 2008 for \$2,150,000 (\$519.32 per square foot) and the sale of 1208 Birchview Drive September 2008 for \$2,000,000 (\$526.45 per square foot). The average sale price of these two properties is \$522.50 per square foot which when applied to the 4,095 square foot building total areas of the subject property, leads to a value of \$2,139,638 rounded to \$2,140,000.

28 The Board finds that the current value of the subject property is \$2,140,000.

29 Mr. **Baranowski** argued that, since the average increase in assessment of other properties in the vicinity of the subject property between the January 1, 2005 and January 1, 2008 valuation days is 23%, the subject property's assessment must be incorrect; having increased by 73% between its date of construction in 2004, when it was assessed at \$1,374,000, and the valuation day - January 1, 2008.

30 It is not the task of the Board, and the Board is wary of such attempts, to reconcile values between valuations days in as far as in attempting to make such a calculation the Board has no basis to determine if the previous current value of a property was correct or incorrect; what characteristics of the market and values have changed or remained the same between valuation days; or whether a percentage increase proposed or actual is appropriate or inappropriate.

31 The Board notes that the subject property sold in September 2005 for \$2,100,000.

32 Subsection 44.(3)(b) of the *Act* states that ... *the Board shall... 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 land.*

33 To demonstrate equity, Ms. Declerc provided two studies of the Assessment to Sales Ratios (ASR) of 134 and 74 residential properties in the vicinity of the subject property. The studies have ranges of individual ASRs from 0.73 to 1.26 and from 0.74 to 1.25 and median ASRs of 0.98 and 0.97. Ms. Declerc suggests that a median ASR of 0.97 or 0.98 is indicative that similar properties in the vicinity of the subject property have been assessed at their current values.

34 The Board agrees with Mr. **Baranowski**. Clearly a range of ASRs between 0.73 and 1.26 or 0.74 and 1.25 do not indicate that similar properties are assessed at their current values. Following generally accepted appraisal principals, it is appropriate to accept that a ratio demonstrated by an ASR that falls within 5% of 1.00 is correct. Only 51 of Ms. Declerc's 130 sales and 26 of 74 sales fall within the ASR range of 0.95 to 1.05 and can therefore be characterized as having been assessed at their current values. However, at the same time, while a median ASR for the properties of 0.97 and 0.98 may indicate that half the sale properties have been under assessed and half the sale properties have been over assessed, in many cases to a very large degree, it does not indicate a systemic under assessment of similar properties in the vicinity of the subject property.

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35 Mr. **Baranowski** suggests that equity may be determined by comparing the assessments per square foot of building total area of similar properties to the subject property. The Board does not find such approach particularly useful in determining equity in as far as when comparing similar properties on the basis of a ratio - such as an ASR - a broad definition of equity (such as all residential or all two-storey residential) is acceptable. However when comparing on the basis of value per square foot, the similar properties used must of necessity be very close in features to, if not virtually identical to, the subject property to avoid distortion in the per square foot value caused by such factors economies of scale and to eliminate unknowns such as the impact on value of differing elements between properties - such as a pool or no pool. Mr. **Baranowski's** suggested similar properties do not meet the more rigorous criteria.

36 The Board finds that there is no evidence before it leading to the conclusion that the current value of the subject property, as determined above, requires a further adjustment in accordance with subsection 44.(3)(b) of the *Act*.

37 Accordingly the assessment of the subject property as at January 1, 2008, for the 2009, 2010 and 2011 taxation years is reduced from \$2,379,000 to \$2,140,000.

#### ***Motion***

38 During the course of the hearing, Mr. **Baranowski** brought a motion that the hearing be adjourned so as to permit the Board to order MPAC to bring a witness capable of answering technical questions as to the workings of the MPAC mass appraisal model.

39 Rule 63 of the Boards Rules of Practice and Procedure state that ... *A motion may be made at an oral hearing only if the need for the motion arises out of events at the hearing....* The Board was satisfied that the motion arose out of events at the hearing, namely the inability of the MPAC witness, Ms. Declerc, to respond to questions from the appellant on the workings of the MPAC appraisal model.

40 Mr. T. Harrison responded to the motion on behalf of MPAC.

41 Mr. **Baranowski** argued that Ms. Declerc by her own admission, was unqualified to answer appropriate questions in his cross-examination arising out of her written evidence. He requested an adjournment and an order to MPAC to provide such a witness.

42 Mr. Harrison responded that Mr. **Baranowski's** request was both impractical and not relevant to the proceedings. He suggests that it is not practical to have witnesses available to answer all questions and further that it was of questionable relevance. He likened the use by MPAC of a mass appraisal model to a watchmaker and a watch. Clearly it is not necessary to have a watchmaker present to determine the time.

43 The Board agrees with MPAC in principle, Rule 3 of the Boards Rules of Practice and Procedure state that... *These rules shall be liberally interpreted to ensure the just, most expeditious and least expensive determination of every proceeding on its merits.* The Board has an anticipation that witnesses be able to explain their evidence at least in terms of the appraisal theory behind the tools they are using. The issue at a residential hearing is in its simplest terms, what is the value of a house? The issue is not how or whether the MPAC multiple regression model works. That can be assessed by whether the model-generated assessments of individual properties are found to be correct when tested against either actual property sales or traditional single property appraisals. That is by the appeal process.

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44 The Board sees an issue when, as in this appeal, MPAC presents evidence to support a single property appraisal that relies on the output of its mass appraisal model. In such cases it is appropriate for cross examination to probe the basis of and valuation assumptions underlying the model as it pertains to the single property appraisal.

45 Each party to an appeal determines how to present its evidence to the Board. The fact that Mr. **Baranowski** was frustrated in his attempts to cross-examine Ms. Declerc on the multiple regression model is not remedied by the Board in the most expeditious and least expensive way by adjournment and a fishing expedition for witnesses, but rather by the Board placing appropriate weight on the unexplained and thus unexamined evidence.

46 The motion for adjournment and an order that MPAC produce a witness able to answer technical questions on the multiple regression mode was denied- the issue goes to the weight to be given to the evidence.

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