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Municipal Property Assessment Corp., Region 15 v. Czarnik

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

In the Matter of a motion with regard to appeals with respect to the assessment for taxation years 2011 and 2012
on premises known municipally as 261 Pinewood Trail

The Municipal Property Assessment Corporation, Region 15, Moving Party and Frederick Herbert Czarnik,
Theresa Stephanie Czarnik and the City of Mississauga, Respondents/Assessed Persons

Ontario Assessment Review Board

V. Stabile Member

Heard: November 26, 2012

Judgment: March 28, 2013

Docket: DM 117984

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Counsel: R. Leroux, for Moving Party

R. **Baranowski**, for Respondents

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Practice and procedure on assessment appeals and objections —
Jurisdiction and power — Board or tribunal

Cases considered by V. Stabile Member:

Canadian National Railway v. Winnipeg (City) Assessor (1997), 118 Man. R. (2d) 142, 149 W.A.C. 142,
1997 CarswellMan 367 (Man. C.A.) — followed

Statutes considered:

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

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Generally — referred to

s. 10 — considered

s. 33 — considered

s. 40 — considered

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22

s. 25 — considered

Rules considered:

Assessment Review Board Rules of Practice and Procedure, A.R.B. Rules

R. 56 — referred to

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Generally — referred to

R. 32 — considered

MOTION brought pursuant to R. 56 of Ontario Assessment Review Board's Rules of Practice and Procedure for inspection of interior of subject property for specific reasons.

V. Stable Member:

1 This motion came before the Assessment Review Board ("Board") on November 26, 2012 in the City of Mississauga.

Motion

2 The motion, pursuant to Rule 56 of the Board's Rules of Practice and Procedure ("Rules"), is for an inspection of the interior of the subject property for specific reasons: "to collect information from building permits taken out on the subject property in 1982 for a detached garage and alterations and to verify the condition and quality as it relates to the 2011 and 2012 appeal (sic)".

Disposition of Motion

3 The Motion is dismissed.

Reasons for Disposition of Motion

4 In support of its motion, the Municipal Property Assessment Corporation ("MPAC") relies upon various rules and legislative provisions.

The Board's Rules

5 Rule 56 states:

56. Order for Discovery: The Board may grant an order for discovery where needed in order for a party to obtain necessary information from another party. This will only be granted where the party has requested the information and it has been refused, or no answer was received. This order must be requested by notice of motion, together with an affidavit, which sets out the efforts made to obtain the desired information, and the reasons why the requested information is needed. The Board may make an order for:

(e) the inspection, photographing and testing of property

NOTE: *Inspection in paragraph (e) above is different from inspection in sections 10 and 11 of the Assessment Act, which refer to an inspection for preparation of the assessment roll.*

Rules of Civil Procedure

6 Rule 32 states:

32. Inspection of Property: The court may make an order for the inspection of real or personal property where it appears to be necessary for the proper determination of an issue in a proceeding.

7 In support of the motion, Roger Leroux a senior case management analyst with MPAC and representing MPAC filed the Affidavit of Jeff Lepp, sworn October 22, 2012. Mr. Lepp, an MPAC valuation analyst for residential properties, is the property assessor assigned to these appeals. He deposes that Mr. Leroux requested an inspection by email dated October 22, 2012.

8 The email, marked as Exhibit "A" to the affidavit, states: "As a result of our preparation for the scheduled appeals mentioned above, MPAC requests an inspection of the property within the next 10 business days. We have found that the detached garage on the property is not assessed and there a (sic) no notes for an alteration as per a building permit taken out for the subject property."

9 The request was denied. Thus MPAC brought this motion, on notice.

10 The property profile as well as the municipal records of a Building Permit issued February 24, 1982 relating to the detached double garage and alterations were also attached as exhibits.

11 Mr. Leroux states that the central issue to be determined is the correct current value of the subject property. Mr. Leroux used the term "market value". He relies on the affidavit of Mr. Lepp and the exhibits attached thereto. He stresses that it is clear from the property profile that a garage has not been noted and there is nothing in respect to renovations/alterations.

12 He asserts that either one or both could lead to an increased assessment.

13 He confirms that "quality class" has not been raised as an issue.

14 In response, Robert **Baranowski**, representing the Respondents/Assessed Persons, acknowledges that MPAC has a general right of access to the property pursuant to s. 10 of the Act to allow it to make a proper assessment of the property. Notwithstanding that general right, he advances four arguments for the denial of MPAC's request:

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- Timing: the request was made on October 22, 2012, a period just over one month prior to the commencement of the hearing. These appeals are for the years 2011 and 2012. The assessment is as of the January 1, 2008 valuation day. This hearing is in the Direct Hearing Stream. The information in respect to the permit goes back to 1982. No request for an inspection was made by MPAC during the request for reconsideration ("RFR") process. This is a mandatory process under the Act.
- Notice of Higher Assessment/s. 33: Any increased assessment in respect to the garage or alterations would require service of notice of 50 days and an assessment returned under s. 33 would be retrospective for a period of three years and would be subject to an appeal by the assessed person.
- Quality class has not been raised as an issue by the appellant. MPAC agrees with this position. Accordingly, the only reasonable inference one can make from the correspondence received from MPAC is that the request for inspection is simply to "shore up" its position in respect to these appeals.
- Law: MPAC and/or its assessors are not permitted to inspect the subject property for the sole purpose of shoring up its position in respect to these appeals. Section 10 clearly gives MPAC the right of inspection "for the purpose of making a proper assessment thereof" which implies an inspection before the assessment was returned, not prior to and/or during preparation for a hearing.

15 In conclusion, Mr. **Baranowski** suggests that if MPAC wishes to avail itself of the s. 33 provision these appeals should be adjourned to a hearing *de novo*. There was no submission in respect to a hearing *de novo* by Mr. Leroux.

Analysis

The Rules

16 Section 10 does not assist MPAC's argument for an inspection given the very clear caveat that it is not for the preparation of the assessment roll.

17 Rule 56 of the Board's Rules should be used early in an assessment appeal process, not close to the hearing date.

18 Rule 56 is not ambiguous and the tradition of applying for relief under this Rule in a timely fashion is well established. Thus I do not find any need to apply the Rules of Civil Procedure in considering this motion.

Legislation

19 Rule 25 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22 ("*SPPA*") gives the Board authority to make and enforce its own rules. This Board has created its own set of rules which are amended from time to time.

20 Rule 56 addresses issues of disclosure. The disclosure referred to relates to disclosure relevant and necessary for the proper determination of issues raised at the hearing. The appeals under s. 40 of the Act, relate to assessed value which is in issue. In any event, the rule is permissive and not mandatory. I am not persuaded in the circumstances of this motion to exercise my discretion to order an inspection.

21 I agree with Mr. **Baranowski** that the provisions of s. 10 of the Act are to be distinguished from the rem-

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edy being sought in this motion.

The Law

22 I have reviewed the *Canadian National Railway v. Winnipeg (City) Assessor*, [1997] M.J. No. 362, 118 Man. R. (2d) 142, 72 A.C.W.S. (3d) 628 (Man. C.A.); and adopt its general principle as stated by L. Hubbard and J. A. Monnin at paragraphs 17 and 18 thereof, that "an assessor is not entitled to build his record of information and documents for the purpose of shoring up his initial assessment when it is questioned on appeal".

23 I recognize that this decision is from another jurisdiction. However I find it persuasive in its approach, since the onus is on MPAC to establish the correctness of the assessment roll as returned.

24 Prior decisions of this Board indicate that if the appellant raises an issue in respect to quality classification then MPAC should be entitled to an inspection if so requested and if requested on a timely basis. This was clearly expressed by Member Cowan at page 4 of DM111465. In this case, there is no issue of quality class and in my view, the request for inspection was not made in a timely manner.

Conclusion

25 For all the reasons stated above therefore, the motion is denied.

Motion dismissed.

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