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Municipal Property Assessment Corp., Region No. 19 v. Fraccaro

In the matter of Section 40 of the Assessment Act, R.S.O. 1990, c. A.31, as amended, and in the matter of a motion regarding appeal with respect to taxation year 2012 on premises known municipally as 211 Colleen Crescent.

Municipal Property Assessment Corporation Region No. 19, Moving Party and Patricia Fraccaro and the City of Hamilton, Respondents

Ontario Assessment Review Board

J. Laws Member

Heard: April 12, 2013

Judgment: July 31, 2013

Docket: DM 119237

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Counsel: W. Somerville, for Moving Party

R. **Baranowski**, for Respondent / Appellant

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 — Miscellaneous

Purpose of municipal assessment board was to determine current value of property and to have regard to assessments of similar lands in vicinity; that determination could be made without inspection of subject property.

Cases considered by J. Laws 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.) — considered

Municipal Property Assessment Corp., Region No. 15 v. Campbell (2011), 2011 CarswellOnt 8770, 69 O.M.B.R. 483 (Ont. Assess. Review Bd.) — considered

Municipal Property Assessment Corp., Region No. 18 v. Andrulis (2011), 2011 CarswellOnt 9204, 69

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[O.M.B.R. 448](#) (Ont. Assess. Review Bd.) — considered

Municipal Property Assessment Corp., Region 15 v. Czarnik (2013), [2013 CarswellOnt 3878](#) (Ont. Assess. Review Bd.) — considered

Statutes considered:

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

Generally — referred to

s. 10 — considered

s. 10(1) — considered

s. 39.1(5) [en. 1997, c. 5, s. 25] — considered

Rules considered:

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

R. 56 — considered

R. 56(1)(e) — referred to

MOTION brought by municipal property assessment corporation for order for inspection of subject property

J. Laws Member:

DISPOSITION OF MOTION OF THE ASSESSMENT REVIEW BOARD delivered by:

J. Laws

1 This motion came before the Assessment Review Board ("Board") on April 12, 2013 in the City of Hamilton.

Motion

2 This motion, brought by the Municipal Property Assessment Corporation ("MPAC") for an Order for the inspection of the subject property, 211 Colleen Crescent, in the City of Hamilton on the grounds that:

a. MPAC has requested an inspection of the subject property with specific reasons and the Appellant has refused to allow MPAC to inspect the property.

b. An inspection is required to verify the size of the subject property as it relates to the tax year under appeal.

3 MPAC relied on Rule 56.(1)(e) of the Board's Rules of Practice and Procedure ("Rules").

4 The Appellant's representative, Robert **Baranowski** of After-Tax Paralegal Services, opposes MPAC's

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motion for an inspection.

5 The subject property has an assessed value of \$1,683,000 for the January 1, 2008 valuation date. The taxation year under appeal is 2012.

Disposition of Motion

6 The motion is dismissed.

Reasons for Disposition of Motion

7 MPAC's representative, William Somerville, submits that MPAC received no supporting evidence from the Appellant during the Request for Reconsideration ("RFR") process, only a statement that the assessment was too high. In preparation for the hearing, through its own investigation, MPAC discovered a discrepancy in the building size. In order to determine which data is correct, MPAC staff requested an inspection of the property but the request was denied.

8 The discrepancy, described by MPAC's representative Jason Wilson, is that the assessment as returned reflects a total building area of slightly under 6,800 square feet and there appears to be an additional 300-400 square feet unaccounted for on the second floor.

9 Mr. Somerville argues that MPAC cannot adequately prepare for the hearing without identifying comparable properties and it cannot identify comparable properties until it has the correct data for the subject property. He argues that the Appellant failed to comply with s. 39.1(5) of the Act because no reasons or facts were included with the RFR.

10 Section 39.1(5) of the Act provides:

39.1(5) Contents of the request. - The request must set out the basis for the person's request and all relevant facts.

11 Mr. Somerville states that, regardless of the findings made during the inspection, MPAC undertakes not to seek a higher assessment or higher tax rate property class.

12 Mr. **Baranowski** argues that:

- To allow the inspection would delay the process,
- The inspection should have been requested for the purpose of the return of the roll or, at the latest, during the RFR process, and
- Inspections are not required in the Board's Direct Hearing Stream.

The Legislation

13 Rule 56.(1)(e) states:

Order for Discovery

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(1) The Board may grant an order for discovery where needed 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.

14 Section 10.(1) of the Act states:

Right of access

10.(1) A person authorized by the assessment corporation, upon producing proper identification, shall at all reasonable times and upon reasonable request be given free access to all land and to all parts of every building, structure, machinery and fixture erected or placed upon, in, over, under or affixed to the land, for the purpose of making a proper assessment thereof.

Analysis

15 The Board denies the motion for inspection.

16 The Board disagrees with Mr. **Baranowski's** arguments.

a. MPAC is requesting an inspection pursuant to Rule 56.(e) and not pursuant to s. 10.(1) of the Act.

b. The Board finds no limitation or restriction of Rule 56 with regard to the Board's Direct Hearing Stream.

c. MPAC's uncontested testimony is that the Appellant provided no reason for the application other than the assessment was too high and included no other facts or supporting evidence. It is unreasonable to assert that MPAC should have requested an inspection during the RFR process when it did not know why the application was made. Further, it is clear that MPAC requested the inspection once the discrepancy was discovered.

d. MPAC is entitled to know the case to which it has to respond and to be afforded a reasonable opportunity to prepare its response. Furthermore, at the commencement of a hearing, the Board's practice is to seek the parties' agreement on the subject property's description, which includes the building size. When no agreement can be reached, particularly for issues such as size, the matters are often adjourned for the purpose of an inspection. The primary purpose of the Act is to get things right. Neither the Board nor MPAC can do so when the basic facts used to determine the correct current value are in dispute or are unknown.

17 The parties submitted a number of Board decisions in support of their arguments. This panel reviewed these decisions but reminds the parties it is not bound by the decisions of other panels at the Board. The Board did not consider the decisions involving s. 10 of the Act because it is not relevant to this matter. In *Municipal Property Assessment Corp., Region 15 v. Czarnik*, [2013] O.A.R.B.D. No. 64 (Ont. Assess. Review Bd.) (Board

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File No. DM 117984) in which an inspection was not permitted, the Member decided that Rule 56 should be used early in the process but provided no basis for this statement. In *Municipal Property Assessment Corp., Region No. 18 v. Andrulis*, [2011] O.A.R.B.D. No. 346, 69 O.M.B.R. 448 (Ont. Assess. Review Bd.) (DM 111465) the Member was not persuaded as to the need for an inspection, that seeking an inspection for "possible alterations or renovations" is akin to a "fishing expedition" which differs from this matter in which MPAC is seeking to determine the correct facts in the preparation of its defence and where no reasons for the appeal have been supplied by the Appellant.

18 In *Municipal Property Assessment Corp., Region No. 15 v. Campbell*, [2011] O.A.R.B.D. No. 339, 69 O.M.B.R. 483 (Ont. Assess. Review Bd.) (WM 105815) the Member determined there "is no provision in Rule 56 limiting the time within which that Motion may be brought".

19 Mr. **Baranowski** also referred to the Manitoba Court of Appeal decision of *Canadian National Railway v. Winnipeg (City) Assessor*, [1997] M.J. No. 362, 118 Man. R. (2d) 142 (Man. C.A.). The Court distinguished between information and documents needed to make the initial assessment and information and documents for the purpose of shoring up an initial assessment on appeal. However, the Court also notes that once an appeal process commences the Board may require "*inter alia* the production of such documents and things as relate to the matters at issue in the application" to enable a tribunal to make its decision based on the best and most relevant information available.

20 The Board's purpose is to determine the current value of the property and to have regard to the assessments of similar lands in the vicinity. The Board is satisfied its determination can be made without an inspection of the subject property. Rule 56.(1)(e) limits the Board in ordering the inspection only where it is needed. The Board is not satisfied that either MPAC or the Board needs to know whether there is an additional 300-400 square feet in a 6,800 square foot building before the Board can make its determinations under the Act.

21 Accordingly, the motion is denied.

Motion dismissed.

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