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579458 Ontario Ltd. 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 2010, 2011 and 2012 on premises known municipally as 3401
Wolfedale Road

579458 Ontario Ltd. Cooksville Auto Parts, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

D. Weagant Member

Heard: April 22, 2013

Judgment: July 18, 2013

Docket: WR 119133

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

C. Mattat, L. Fernandes, 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 — Industrial

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" — considered

s. 19(1) — considered

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

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s. 19.2(5) [en. 2004, c. 7, s. 3(2)] — considered

s. 40(17) — considered

s. 40(19) — considered

s. 44(3) — considered

s. 44(3)(a) — considered

s. 44(3)(b) — considered

D. Weagant Member:

1 These appeals came before the Assessment Review Board ("Board") on April 22, 2013 in the City of Mississauga.

Issue

2 3401 Wolfedale Road is an industrial property that is currently operating as an automobile salvage yard. The 13,398 square foot building is described as having three distinct parts. The first being a two-storey office/meeting space that fronts onto Wolfedale Road. Attached to that portion is a three-bay shop that is used to dismantle parts from cars. Attached to the shop is an additional building area used to store parts for re-sale. The remainder of the land portion of the property is used for storage of car bodies that have had their parts removed from them. This property shares these characteristics with a number of properties in the neighbourhood which includes properties on Wolfedale Road and Mavis Road.

3 The subject property is in the Commercial Tax Class and comprises an area of 1.55 acres.

4 The Municipal Property Assessment Corporation ("MPAC") has assessed the property and has determined a current value of \$1,846,000 for the taxation years 2010, 2011 and 2012. Upon inspection in July of 2012, MPAC revised their current value and recommends a reduced current value of \$1,825,000 to reflect mechanical and interior finishes that are not supported by the higher assessment.

5 The Appellant seeks a further reduction in current value for the taxation years under appeal. They believe a current value of \$1,259,000 is correct.

6 The Board must determine the correct current value of the subject property and whether the assessment so determined 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 s. 44.(3)(a) of the Act, the Board finds that the current value of the subject property, as at the valuation day January 1, 2008, is \$1,825,000.

8 Further the Board finds that for the purposes of equity in accordance with s. 44.(3)(b) of the Act, the current value as determined above is reduced to \$1,679,000 to make it equitable with similar properties in the vicinity.

9 The assessment for the subject property is reduced from \$1,846,000 to \$1,679,000 for the 2010, 2011 and 2012

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taxation years.

Reasons for Decision

Legislation

10 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.

11 Section (19).1 of the Act states:

19.(1) Assessment based on current value. — The assessment of land shall be based on its current value.

12 Section 19.2(1) of the Act states:

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.

13 Section 44.(3) of the Act states:

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,

(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.

14 Section 40.(17) of the Act states:

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.

15 Section 40.(19) of the Act states:

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

What is the Current Value of the Subject Property?

16 MPAC, represented by Laine Fernandes, provided Exhibit 1 which is a valuation study, with attachments, for the subject property. The intended purpose of Exhibit 1 is to explain the method and approach to the valuation of the subject property and to provide some detail as to how the subject property is valued, in comparison with other, similar properties in the vicinity.

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17 Ms. Fernandes indicated that MPAC uses the Multiple Regression Analysis method of valuation for this type of property when a sale of the subject property at or near the valuation day is not available. This method makes use of sales of comparable properties to determine the current value of the subject property.

18 The Board heard that the valuation study was prepared after MPAC received the Statement of Issues submitted by the Appellant, and that it was completed after an inspection of the property had occurred. The study includes sales and property descriptions for three other properties that MPAC sees as comparable to the subject property.

19 These comparable properties were used to assist MPAC in arriving at a current value for the property under appeal. The property descriptions and information are summarized in Table A.

Table A

	Subject Property	7420 Bren Road	3607 Wolfedale Road	135 Watline Road
Site Area	1.55 Acres	1.49 acres	1.57 acres	1.21 acres
Building Area	13,398 sq. ft.	11,850 sq. ft.	7,641 sq. ft.	12,440 sq. ft.
Sale Date	N/A	03/2008	07/2008	11/2007
Sale Price	N/A	\$2,750,000	\$1,610,000	\$1,825,000
Jan 1/08 CVA	\$1,846,000	\$1,720,000	\$1,422,000	\$1,700,000
Sale Price per sq. ft.		\$232.07	\$210.70	\$146.70
TAF		0.991	0.976	1.005
Time Adjusted Sale Price		\$2,725,250	\$1,572,000	\$1,834,125
Time Adjusted sale Price per sq. ft.		\$229.98	\$205.86	\$147.44
Assessment to Sale Ratio (ASR)		0.63	0.90	0.93

20 Ms. Fernandes explained that the three comparable properties were chosen owing to their similarity to the subject with respect to their development, size and the proximity of the sales dates for the three properties in Table A to the valuation day of January 1, 2008. MPAC relies on sales of other properties to provide a context for the valuation of other similar properties where those properties have not sold at or near the valuation day.

21 The Board heard that the sale values of comparable properties are adjusted by applying a Time Adjustment Factor ("TAF") that takes into account changes in sale prices over time. This TAF is applied to sale values so they can be compared directly to other sale values and a sale on the valuation day. For instance, the sale for comparable 3 occurred in 2007. To equate this sale price with one on the valuation day, the sale price is increased slightly, while the sale prices for comparables 1 and 2 are reduced slightly as those sales occurred in 2008, after the valuation day. The TAF for the three comparable sales range from 0.976 to 1.005, with a median and average of 0.991.

22 Ms. Fernandes also provided evidence with respect to the relationship between sale prices and current value for the three comparable properties used in her analysis and report. According to Ms. Fernandes, the comparable properties used indicate that similar properties to the subject are regularly "under-assessed" with respect to the sale prices that have occurred.

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23 The relationship between the assessed value and the sale price is known as the Assessment to Sale Ratio ("ASR"). The ASR can be used to compare either the actual sale price or the time adjusted sale price. Where the assessed value and the sale value differ, the ASR is a further method used by MPAC to compare properties for the purpose of valuation. The ASR for the three comparable time adjusted sales vary from 0.63 to 0.92, meaning that the current value assessment for these properties are below their time adjusted sale prices.

24 The Appellant, represented by Robert **Baranowski**, takes issue with the way MPAC arrived at current value for the property at Wolfedale Road. In particular, he has concerns about the use of the terms "current value" and "assessed value" which are used in MPAC's evidence as synonyms.

25 In addition, Mr. **Baranowski** believes that the comparables provided by MPAC do not in fact support a current value of \$1,825,000, but more appropriately support a current value of between \$1,417,000 and \$1,481,000.

26 Mr. **Baranowski's** case was based on the comparables provided by MPAC. He disregarded comparables 1 and 3 and focused on comparable 2, 3607 Wolfedale Road as being the most appropriate comparable for determining current value. Mr. **Baranowski** provided photographic evidence of the subject property and comparable 2 and pointed out their differences. In his view, the two uses are dissimilar, but for the purposes of valuation, he considers the two properties to be similarly valued.

27 The subject property has a site area of 1.55 acres, while comparable 2 include a land area of 1.57 acres. The building areas on the properties are different (13,398 sq. ft. vs. 7,641 sq. ft.). Mr. **Baranowski** offered his opinion that the two buildings, while being of different sizes are of similar value as the per square foot cost of the subject property (the larger of the two buildings) would be lower, given its building characteristics, and the comparable, being a cold storage building, would have a comparably higher per square foot building cost.

28 Mr. **Baranowski** did not provide any documentary evidence with respect to these building costs, but in his observations pointed out that the building values of comparable 2 and the subject property are different in nature and thus difficult to compare for valuation purposes.

29 Nevertheless, it is Mr. **Baranowski's** submission that the correct current value for the subject should be equivalent to comparable 2, 3607 Wolfedale Road and that this value ought to be \$1,610,000, identical to the comparable.

The Board's Deliberations

Determination of Current Value

30 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 similar 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 of the assessed value of the subject property and comparable properties.

31 In determining the current value, the Board has all the powers that the assessor had in making the assessment. However, the assessor could have regard to his / her previous experience and other factors, whereas the Board must act judicially and decide on the basis of the evidence before it.

32 For a property to be comparable to the subject for the purposes of deriving current value, there must be sufficient elements of similarity in terms of physical characteristics, such as building area, land area, age and characteristics of con-

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struction and condition. Further, the neighbourhood characteristics, such as access to transportation, municipal services and the nature and type of nearby and surrounding development must be sufficiently similar to draw comparisons between comparable properties and the subject property.

33 Components or characteristics of comparable properties and the subject can vary to a certain degree if these variables can be accounted for in the method of comparison, and these differences are provided for when the current values are compared.

34 For the purposes of determining current value, the parties need not convince the Board of the exact dollar value of the subject property's current value. It is recognized that there is no way of determining that dollar value in the absence of a sale at or near the valuation day that meets the definition of s. 1 of the Act. Rather, the parties must provide evidence to the Board of a reasonable current value that can be applied to the subject property.

35 In this case, Ms. Fernandes has provided a "current value study" using three comparable properties with sales in proximity to the valuation day. This study outlines the method of valuation of the subject property, using the data of the three comparable properties, to derive a current value of the subject property. MPAC does not apply one specific set of data from one comparable to arrive at a current value for 3601 Wolfedale Road. Instead, they consider the findings of the three properties as a whole and come up with a current value for the subject property that compares reasonably to the three properties used for comparison.

36 MPAC notes that the per square foot of building area value of the subject property using the returned value is approximately \$136 for the subject property. This represents a value lower than any of the comparable properties.

37 MPAC further uses that data of the three comparables to arrive at a CV of \$1,846,000, being the returned value for the 2010, 2011 and 2012 tax years. In response to the appeal and upon further inspection, this current value assessment was reduced to \$1,825,000.

38 Mr. **Baranowski** was not able to persuade the Board either through documentary evidence, or through cross-examination of Ms. Fernandes, that the current value of the subject site is different from the findings of MPAC's study.

39 Mr. **Baranowski**, citing MPAC's evidence, argued that the comparable at 3607 Wolfedale Road was the most comparable of the three and that the other two should be disregarded because their land area and building areas are too dissimilar from the subject property. After establishing that use is an important factor in determining current value, he then argued that, although the use of the buildings at the subject property and at comparable 2 are very different, they have the same current value. Further, he suggested that although the sizes of the two buildings are very different, their value ought to be close to the same because the larger building (that of the subject property) is of less expensive construction methods and materials.

40 The Board has no evidence, other than the subject property and contradictory opinion of Mr. **Baranowski**, of the differences in per square foot value of the buildings on the subject and comparable 2, and disregards this argument in the decision.

41 The Board prefers the evidence of MPAC, and notes that the subject property, having a larger building, has a higher current value than the three comparables that have sales data within seven months of the valuation day. Further, these sales were time adjusted to allow direct comparison. The TAF was not refuted by the Appellant, and is a normal step used by MPAC in property valuation.

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42 The subject property also has a lot area that is larger than the two comparables with the highest current values; indicating that the current value presented by MPAC is reasonable.

43 Further, MPAC's comparison reveals that the current value for the subject property is equal to that of comparable 3, 136 Watline Road, which is a property with a smaller building and a lot area of approximately 78% of that of the subject lands.

44 The Board finds that MPAC has taken a conservative, measured and reasonable approach to determining current value of the subject lands.

Is a further reduction in Current Value required for the Subject Property to be assessed equitably with Similar Lands in the Vicinity?

45 The median sale value per square foot of the comparables generates a comparable value for the subject of \$2,758,000. At no time did MPAC suggest that this ought to be the current value for the subject property, but offered as a comparison statistic that indicates, as all of the comparables are, that properties of this type and associated properties that have sold at or near the valuation day are under-assessed.

46 They also note that the January 1, 2008 CVA for the three comparables are between 0.63 and 0.93, indicating that the assessed values of comparable properties are lower than what would be supported strictly by sale prices.

47 It is this under-assessment that is the focus of Mr. **Baranowski's** evidence and submissions at the hearing. Through cross-examination of Ms. Fernandes, the Board heard that her equity analysis that is part of her value study indicates that, among 210 similar properties sold during 2007 and 2008 in the vicinity of the subject property, the ASR is 0.92.

48 Mr. **Baranowski** argues that the ASR as indicated is appropriate, but that rather than applying to the current value determined by MPAC in their recommendation, it should apply to a lower current value; one that he suggests is \$1,610,000, equivalent to the property at 3607 Wolfedale Road.

49 The Board does not agree with Mr. **Baranowski**. The evidence presented does not support a current value of \$1,610,000 for the subject property. The Board prefers MPAC's documentary evidence, above to determine current value for the subject property.

50 Accordingly, the Board applies the ASR of 0.92, which is agreed to by the parties, to the current value of \$1,825,000 as determined above and reduces it to \$1,679,000 to make it equitable with similar properties in the vicinity.

Decision

51 For the reasons stated above and as directed by s. 44.(3)(a) of the Act, the Board finds that the current value of the subject property, as at the valuation day January 1, 2008, is \$1,825,000.

52 Further the Board finds that for the purposes of equity in accordance with s. 44.(3)(b) of the Act, the current value as determined above is reduced to \$1,679,000 to make it equitable with similar properties in the vicinity.

53 The assessment for the subject property is reduced from \$1,846,000 to \$1,679,000 for the 2010, 2011 and 2012 taxation years.

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

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