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1441997 Ontario Inc. v. Municipal Property Assessment Corp., Region No. 27

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 and 2010 on premises known municipally as 2940 Elsmere Avenue and 2950 Elsmere Avenue

1441997 Ontario Inc. Robert **Baranowski**, Assessed Person/Appellants and The Municipal Property Assessment Corporation, Region No. 27 and the City of Windsor, Respondents

Ontario Assessment Review Board

I.A. Birnie Member

Heard: August 22, 2011

Judgment: December 21, 2011

Docket: WR 113068

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Counsel: R. Andrzejewski, for Assessed Person / Appellants

P. Legge, for Municipal Property Assessment Corporation

R. Murdoch, for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Market value — Income capitalization

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

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s. 40(17) — referred to

s. 40(19) — referred to

s. 44(3) — referred to

s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

I.A. Birnie Member:

1 These appeals came before the Assessment Review Board on August 22, 2011 in the City of Windsor. The Board reserved its decision.

Issue

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1. Has the subject property known municipally as 2940 Elsmere Avenue (Roll No. 3739-070-070-07500-0000) been correctly and equitably assessed at \$1,266,000 for taxation years 2009 and 2010?

2. Has the subject property known municipally as 2950 Elsmere Avenue (Roll No. 3739-070-070-07600-0000) been correctly and equitably assessed at \$1,272,000 for taxation years 2009 and 2010?

Decision

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1. In respect to the subject property at 2940 Elsmere Avenue, the Board:

(a) Determines the current value to be \$1,142,000.

(b) Finds that no adjustment is required to make the assessment equitable with the assessments of similar properties in the vicinity.

(c) Reduces the assessment for taxation years 2009 and 2010 from \$1,266,000 to \$1,142,000.

2. In respect to the subject property at 2950 Elsmere Avenue, the Board:

(a) Determines the current value to be \$1,140,000.

(b) Finds that no adjustment is required to make the assessment equitable with the assessments of similar properties in the vicinity.

(c) Reduces the assessment for taxation years 2009 and 2010 from \$1,272,000 to \$1,140,000.

Reasons for Decision

Appeals Heard Together

4 On consent of the parties, the appeals in respect to both subject properties were heard together.

Descriptions

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1. The subject property at 2940 Elsmere Avenue (2940 Elsmere) is a 26-unit walk-up multi-residential apartment building, built in 1990, with 14 one-bedroom units and 12 two-bedroom units. It is assessed by the Gross Income Approach at \$1,266,000 for taxation years 2009 and 2010.

2. The subject property at 2950 Elsmere Avenue (2950 Elsmere) is a 26-unit walk-up multi-residential apartment building, built in 1991, with 14 one-bedroom units and 12 two-bedroom units. It is assessed by the Gross Income Approach at \$1,272,000 for taxation years 2009 and 2010.

Recommendations

6 At the outset of the hearing, Mr. Paul Legge, who acted as advocate for the Municipal Property Assessment Corporation (MPAC), recommended that the assessment of 2940 Elsmere be reduced from \$1,266,000 to \$1,237,000 and that the assessment of 2950 Elsmere be reduced from \$1,272,000 to \$1,237,000, but these recommendations were not acceptable to the appellants.

Legislation

7 For the 2009 and 2010 taxation years, in determining the value at which land shall be assessed, the Board must have regard to the following provisions of the *Assessment Act*, R.S.O. 1990, c. A. 31, as amended (Act):

8 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.

9 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.

10 Subsection 19.2(1)2 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.

11 Subsection 44.(3) states:

(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

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(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.

12 Subsection 40.(17) 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.

13 Subsection 40.(19) states:

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

Case for MPAC

14 Louis Biscaro, a Senior Valuation Analyst with MPAC, gave evidence on behalf of MPAC and presented MPAC's Assessment Report in respect of each of the two subject properties.

15 In regard to both subject properties, Mr. Biscaro stated that, based on the 2008 rent roll, MPAC had re-calculated the assessment as follows:

<i>Unit Type</i>	<i>Number of Units</i>	<i>'Contract Rent'</i>	<i>Adjustment for Heat, Hydro and Water</i>	<i>Gross Rent</i>	<i>Gross Annual Rent</i>
1-Bed	14	\$650.00	\$90.00	\$740.00	\$124,320
2-Bed	12	\$750.00	\$105.00	\$855.00	\$123,120
					\$247,440

16 Gross Potential Income of \$247,440 × GIM of 5.0 = \$1,237,000 (rounded).

17 As sales comparables in respect to both subject properties, Mr. Biscaro presented six walk-up multi-residential apartment buildings in the vicinity, with varying unit mixes, which sold between June 2006 and January 2008.

18 Details of the two subject properties and of the six comparable properties are set out in the following table:

<i>Address</i>	<i>Units</i>	<i>Sale Amount (\$)</i>	<i>Sale Date</i>	<i>CVA Rate Per Unit (\$)</i>	<i>ASR</i>	<i>Indicated GIM</i>
2940 Elsmere (Subject)	26	N/A	N/A	47,577{*}	N/A	N/A
2950 Elsmere (Subject)	26	N/A	N/A	47,577{*}	N/A	N/A
3580 Seminole Street	16	622,500	2008/01	40,875	1.05	4.70
444 Park Street W.	36	1,019,000	2007/12	28,000	0.99	4.63

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430 Giles Blvd. W.	19	840,000	2007/08	42,053	0.95	5.41
8750 Wyandotte Street E.	36	1,330,000	2006/05	41,917	1.13	4.40
8855 Wyandotte Street E.	34	1,100,000	2007/03	40,412	1.25	4.00
2476-2480 Rivard Ave.	12	490,000	2007/11	40,500	.99	5.04

Notes: * Rate per unit based on revised 2008 CVA.

19 Mr. Biscaro pointed out that the GIMs indicated by the sales range from 4.00 to 5.41, with a median of 4.67, and that the subject properties were valued using a GIM of 5.0.

20 He also pointed out that the median ASR was 1.02.

21 In regard to equity, Mr. Biscaro presented an equity study of 25 apartment properties in the City of Windsor which sold between January 2006 and January 2008, with a median Assessment to Sale Ratio (ASR) of 0.98.

22 In his submission, the median ASR of 0.98 shows that no equity adjustment is required as an ASR of 1.00 or close to 1.00 shows that similar properties in the vicinity are being assessed at or close to their current values.

23 Cross-examined, Mr. Biscaro replied:

- That he has been involved with the assessment of multi-residential properties since 2001.
- That he agrees that the GIM was a very important number.
- That he had used 2006 and 2007 sales as comparables because 2008 sales information was not on file.
- That he had used two years' sales to get sufficient sales.

Case for the Appellants

24 The appellants' representative, Roman Andrzejewski, gave evidence and presented the Appellants' Evidence Package in respect to each of the two subject properties.

25 As comparables, Mr. Andrzejewski presented the listings for sale of the following properties in the City of Windsor:

<i>Address</i>	<i>Number of Units</i>	<i>Listing Price (\$)</i>	<i>Listing Price per Unit (\$)</i>
1250-60 Ouellette	34	779,000	22,911
1556 Goyeau	37	895,000	24,189
1191 Lillian	25	1,050,000	42,000
1370 Tecumseh W.	12	427,500	35,625
1563-89 Ontario	16	558,649	34,915

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26 Mr. Andrzejewski stated that the average listing price per unit of these five properties is \$31,928, which applied to the 26 units of each of the subject properties indicates a current value of \$830,128 for each of them. He stated, however, that he is not proposing this valuation, as it is very low.

27 Mr. Andrzejewski submitted that, based on the 2008 Rent Roll, the annual gross rents of the two subject properties are as follows:

28 2940 Elsmere

<i>Unit Type</i>	<i>Number of Units</i>	<i>Typical Annual Rent (TAR)</i>	<i>Adjustment for Heat, Hydro and Water</i>	<i>Gross Rents</i>	<i>Annual Gross Rents</i>
1-Bed	14	\$634	\$90	\$724	\$121,632
2-Bed	12	\$748	\$106	\$854	\$122,976
Total					\$244,608

29 2950 Elsmere

<i>Unit Type</i>	<i>Number of Units</i>	<i>Typical Annual Rent (TAR)</i>	<i>Adjustment for Heat, Hydro and Water</i>	<i>Gross Rents</i>	<i>Annual Gross Rents</i>
1-Bed	14	\$631	\$90	\$721	\$121,128
2-Bed	12	\$749	\$106	\$855	\$123,120
Total					\$244,248

30 Applying MPAC's GIM of 5.0 to said annual gross rents, gives a current value of \$1,223,000 (rounded) for 2940 Elsmere and a current value of \$1,221,000 (rounded down) for 2950 Elsmere.

31 He submitted, however, that the GIM should be 4.67, being the median GIM indicated by MPAC's six sales comparables.

32 Applying a GIM of 4.67 to said annual gross rents, gives a current value of \$1,142,000 (rounded) for 2940 Elsmere and a current value of \$1,140,000 (rounded down) for 2950 Elsmere.

33 Cross-examined, Mr. Andrzejewski replied:

- That real estate appraisers look at sales rather than listings.
- That he did not know the rents of his comparables.

Analysis and Conclusion

Listings for Sale

34 The Board places no weight on the listings for sale presented by Mr. Andrzejewski, as listings, without sales, are not reliable evidence of current value.

Gross Annual Rents

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35 The Board prefers Mr. Andrzejewski's calculation of the gross annual rents to MPAC's calculation because the TARs which he has developed for each type of unit at each of the subject properties are closer to the actual average rents than those developed by MPAC.

36 Accordingly, the Board finds the annual gross rent of 2940 Elsmere to be \$244,608 and the annual gross rent of 2950 Elsmere to be \$244,248.

GIM

37 The Board finds the best evidence before it as to the GIM to be used in determining the current values of the subject properties to be the sales evidence submitted by MPAC, namely the six comparable properties with a median indicated GIM of 4.67.

38 The Board notes Mr. Biscaro's evidence that MPAC's GIM was not based on these six sales, but on a great number of sales, but no details of these sales have been presented.

39 Accordingly, the Board, based on the evidence before it, finds the appropriate GIM to be used in the determination of the current values of the two subject properties to be 4.67.

Current Value

40 Applying the GIM of 4.67 to the gross annual rents of \$244,608 for 2940 Elsmere and \$244,248 for 2950 Elsmere gives a current value for 2940 Elsmere of \$1,142,000 (rounded) and a current value for 2950 Elsmere of \$1,140,000 (rounded down).

Equity

41 Having determined current value as required by subsection 44.(3)(a) of the *Act*, the Board is required by subsection 44.(3)(b) to have regard to the assessments of similar properties in the vicinity and to adjust the assessment to make it equitable with their assessments if this would result in a reduction of the assessment.

42 The ASR study presented by MPAC, with a median ASR of 0.98, shows that similar properties in the vicinity are assessed so close to their current values that no equity adjustment is required.

Conclusion

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1. In respect to 2940 Elsmere, the Board:

- (a) Determines the current value to be \$1,142,000.
- (b) Finds that no adjustment is required to make the assessment equitable with the assessments of similar properties in the vicinity.
- (c) Reduces the assessment for taxation years 2009 and 2010 from \$1,266,000 to \$1,142,000.

2. In respect to 2950 Elsmere, the Board:

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- (a) Determines the current value to be \$1,140,000.
- (b) Finds that no adjustment is required to make the assessment equitable with the assessments of similar properties in the vicinity.
- (c) Reduces the assessment for taxation years 2009 and 2010 from \$1,272,000 to \$1,140,000.

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

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