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1654235 Ontario Inc. v. Municipal Property Assessment Corp., Region No. 14

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

And In the Matter of complaints with respect to taxation years 2006, 2007 and 2008 on premises known municipally as 10432 Islington Avenue

1654235 Ontario Inc. (Assessed Person / Complainant) and The Municipal Property Assessment Corporation, Region No. 14 and the City of Vaughan (Respondents)

Ontario Assessment Review Board

J. Wyger Member

Judgment: July 18, 2008

Docket: WR 69268A

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Counsel: R. **Baranowski** for Assessed Person / Complainant

D. Mitchell 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 subject property

Statutes considered:

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

s. 1 "current value" — considered

s. 1 "land", "real property" and "real estate" — referred to

s. 19(1) — considered

s. 44(2) — considered

2008 CarswellOnt 4448,

J. Wyger Member:

1 These complaints came before the Assessment Review Board on June 5, 2008 in the City of Vaughan.

Issue

2 Whether the former service station that is the subject of the complaint, is assessed correctly for the 2006, 2007 and 2008 taxation years.

Decision

3 The assessment is reduced from \$943,000 to \$925,000 for the 2006 and 2007 taxation years, apportioned at Commercial from \$295,210 to \$289,000 and Residential from \$647,790 to \$636,000.

Reasons for Decision

The Facts

4 The subject property is a one-half acre parcel on which is situated a 1,536 square foot former service station garage, along with a 2,080 square foot residential dwelling. It is located at 10432 Islington Avenue, in the Village of Kleinberg within the municipality of Vaughan. The property sold in an open market transaction in May of 2005 for the sum of \$925,000. At the time of sale, the service station still had gasoline pumps, underground tanks and hoists in the garage.

The Legislation

5 In forming its decision, the Board is governed by the following provisions of the *Assessment Act (Act)*.

6 Section 1 of the Act defines current value:

"**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.

7 Subsection 19(1) of the Act provides:

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

8 Subsection 44(2) of the Act provides:

44(2) Reference to similar lands in the vicinity. — In determining the value at which any land shall be assessed, reference shall be had to the value at which similar lands in the vicinity are assessed.

Analysis

9 Mr. Robert **Baranowski** represented the owner and presented into evidence the Statement of Issues that he prepared. The key issue involved the sale price of \$925,000. Mr. **Baranowski** alleged that this price was inflated and included consideration totaling \$157,000 for the pumps, tanks and hoists on the property at the time of the sale. Mr. **Baranowski's** analysis deducted this amount from the sale price, and time adjusted the result back to the valuation day in January 2005 by 1% per month. He requested an overall reduction in the CVA to \$729,000.

2008 CarswellOnt 4448,

10 Mr. Don Mitchell appeared as counsel for the Municipal Property Assessment Corporation (MPAC) and questioned the source of Mr. **Baranowski's** information on the allocation of the sale price. Mr. **Baranowski** did not provide a copy of the Agreement of Purchase and Sale, or the LTT Affidavit to support his statement. Mr. **Baranowski** testified that he received the information directly from the owner, Mr. Steve Rossi, yet Mr. Rossi did not appear to testify or provide any documentary evidence that might support the allocation. The only such document was the LTT Affidavit produced by Mr. Mitchell which clearly allocated the entire consideration to land, buildings, fixtures and goodwill, and zero to chattels or items of tangible personal property. The Board finds the sworn statement of Mr. Rossi to be more reliable evidence on this issue than the hearsay statement relayed by Mr. **Baranowski**. Further, it would seem that certainly the pumps and underground storage tanks would qualify as fixtures, and so any consideration for them should not be deducted, since fixtures are properly included in the definition of land.

11 Mr. Robert Grundsten gave evidence for MPAC. He pointed to the 1.02 assessment to sale ratio (ASR) as supporting the value as returned. He suggested the sale price was good evidence for the value, and would not disagree with a reduction to that value; he disagreed that it was necessary to time adjust that value. He testified that the tanks and pumps are part of the land and are properly assessable. The Board finds him a credible expert witness on these matters and accepts his evidence on these issues.

Conclusion

12 The Board finds that the hearsay statement of the owner can be given little weight, and determines that the entire consideration paid was for "land" as defined in the *Act*. The Board therefore finds that the sale price is the best evidence for the current value of that land.

13 Mr. **Baranowski** has failed to meet his onus of showing that the current value assessment should be less than a market price negotiated a few short months past the valuation date. The assessment is reduced to \$925,000; \$289,000 to the Commercial Property Class and \$636,000 to the Residential Property Class.

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