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2063038 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

And In the Matter of a complaint with respect to taxation years 2007 and 2008 on premises known municipally as 615
Secretariat Court

2063038 Ontario Limited (Assessed Person / Complainant) and The Municipal Property Assessment Corporation, Region
No. 15 and the City of Mississauga (Respondents)

Ontario Assessment Review Board

I. Oliveira Member

Heard: December 11, 2008

Judgment: June 17, 2009

Docket: WR 73813

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

I. Thow for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Property subject to assessment — Real property — Buildings — Miscellaneous

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Market value — Selling price of comparative property

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

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

s. 44(2) — referred to

Regulations considered:

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

General, O. Reg. 282/98

Generally — referred to

s. 5(1) — referred to

s. 6(1) ¶ 1 — referred to

I. Oliveira Member:

1 These complaints came before the Assessment Review Board on December 11, 2008 in the City of Mississauga.

Issue

2 The subject property is classified in the industrial property class. The issue before the Board for determination is not only whether the current value is incorrect but also if the subject property is classified in the correct property class. Mr. **Baranowski**, representative for the complainant, takes issue with the assessed value and the property class. He takes the position that the assessment is too high when compared to other properties and further takes issue with the subject property's classification and proposes the assessment be apportioned between the industrial and commercial property classes.

3 The Municipal Property Assessment Corporation (MPAC) takes the position that not only is the assessed value correct but also that the *Assessment Act*, R.S.O. 1990, c.A.31, as amended, as well as Ontario Regulation 282/98 make no allowance for two property classes for an individual company occupying space in a building.

4 Based on the direct sales comparison approach, MPAC recommends an assessment reduction and takes the position that the property's classification is correct, as returned.

Decision

5 The Board reduces the assessment of \$1,735,000 to \$1,601,000 as recommended by the assessor and confirms the subject property's classification in the Industrial Property Class.

Reasons for Decision

The Law

6 In making a decision in this matter, the Board is governed by section 1 and subsections 19(1), 19.2(1), and 44(2) of the *Assessment Act (Act)*.

7 Section 1 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.

8 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.

9 Subsection 19.2(1)1 states:

19.2(1) Valuation days. - Subject to subsection (5),

the day as of which land is valued for a taxation year is determined as follows:

1. For the 2006, 2007 and 2008 taxation years, land is valued as of January 1, 2005.

10 Subsection 44(2) states:

44(2) Reference to similar lands in the vicinity.

-For taxation years before 2009, 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.

Background

11 Mr. Thow, the assessor, described the subject property as being located at 615 Secretariat Court (east of Kennedy Road and north of Derry Road East), in the City of Mississauga, and consisting of industrially zoned land improved by a warehouse industrial building. The 16,680 square foot structure was built in 2006. The warehouse area has an exterior height of 24 feet. The site comprises 0.860 acres.

12 The property was valued by way of the sales comparison approach for the 2006, 2007 and 2008 taxation years using multiple regression analysis. For the 2006, 2007 and 2008 taxation years, the subject property was returned in the industrial property class (IT).

The Complainant's Evidence and Arguments

13 Mr. **Baranowski**, representative for the complainant, at the commencement of the hearing stated that he takes issue not only with the January 1, 2005 CVA, but also the property's classification.

14 Mr. **Baranowski** testified that the subject's "new building with a total area of 16,680 square feet was constructed in 2005 and finished in 2006 for commercial and industrial use of Micro Consulting Inc." He further stated that the consulting part of the business uses a total of 2,600 square feet (1,400 square feet of the second floor office, 1,000 square feet of the first floor office and 200 square feet in the mezzanine) which equates to approximately 15% of the total building area. Therefore, Mr. **Baranowski** proposes that an apportionment between the industrial and commercial property classes is warranted.

15 Mr. **Baranowski** further stated that there are also "two registered easements affecting the market value of the subject property".

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16 He testified that MPAC's rate applied to the area of the subject property at \$104.00 per square foot is excessive and proposes a revised rate of \$83.00 based on the sale of 11 comparable properties.

17 The total building areas of Mr. **Baranowski** suggested comparable properties range from 13,392 square feet for the smallest to 23,347 square feet for the largest. The site areas are from 0.69 acres to 1.37 acres. These 11 properties sold between February of 2004 and December of 2006 with sales prices from \$1,133,000 for the lowest to \$1,950,000 for the highest.

18 After some discussion between the parties, Mr. **Baranowski** revised the sales prices of his suggested comparable properties by removing time adjustments and arrived at an average sale price of \$90.10 per square foot.

19 He submits that the total current value assessment should be changed to \$1,500,000 rounded (\$90.10 square feet \times 16,680 square feet = \$1,502,868), apportioned as follows:

Industrial (IT)	\$1,284,000
Commercial (CT)	214,600
Total Value	\$1,500,000

MPAC's Evidence and Arguments

20 Mr. Thow tendered into evidence five suggested comparable properties with total building areas from 13,296 square feet for the smallest to 20,015 square feet for the largest. The site areas are from 0.67 acres to 1.25 acres. These properties sold between April 2004 and March 2005 with sales prices in the range of \$1,275,000 for the lowest to \$1,890,000 for the highest.

21 The median (and average) of the sold properties is \$96.00 per square foot and MPAC submits "this median rate of \$96.00/sq. ft. is an appropriate rate to apply to the subject to develop a revised 2005 CVA for this 2007 and 2008 taxation year appeal." Applying this median rate to the building area of the subject property yields a revised value of \$1,601,000.

22 It is, therefore, MPAC's opinion that the CVA as returned for the 2007 and 2008 taxation years should be revised from \$1,735,000 to \$1,601,000 all in the industrial property class.

23 In closing, Mr. Thow testified that the year built of comparable properties is very important in that a newer structure (such as the subject's) is more valuable in the marketplace than 20 year old structures due to maintenance and depreciation issues.

Board's Analysis and Deliberations

24 The *Act* requires the assessment of property to be at its current value. The best evidence of current value is a sale of the subject property during the relevant time period. There is no sale of the subject property to assist the Board.

25 If a property has not sold within the relevant time period, the Board must look to sales of comparable properties to assist in determining if a correction to the current value is required. Sales within 12 months on either side of the valuation date are usually considered as being within the relevant time period. For this reason, the Board is not willing to look at properties which sold in 2006.

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26 The complainant presents evidence with a list of 11 properties which sold between February 2004 and December 2006. Seven of the 11 properties sold within the relevant time period.

27 MPAC presents evidence with the sale of five properties which sold between April 2004 and March of 2005.

28 Both parties tendered into evidence industrial properties which sold within the relevant time period. The question the Board is faced with is which properties are most similar to the subject property? In order to arrive at that decision, the Board must look at the subject's attributes such as age, quality or type of construction and a structure's height and size.

29 The subject's structure was built in 2006 and is of pre-cast construction. The building height is 24 feet.

30 The complainant's suggested comparable properties do not show the year built or the building height. MPAC's evidence shows that these properties "date back to the mid-1980's" and "the average exterior height is 20 feet or only 83% of the subject's building height". The complainant makes no adjustments for height or age in his sales analysis.

31 Mr. **Baranowski** argues that a sale is a sale and in using the sales approach method, age is not a factor. In this regard, the Board's opinion differs from that of the complainant's. The age of the structure is directly related to the sale price and common sense dictates that a newer structure is worth more in that it is not faced with maintenance and depreciation issues as are older structures. The Board is also of the opinion (and accepts the assessor's testimony) that the height of the structure is directly related to the property's values.

32 With respect to the argument of the existence of two registered easements, the Board finds that these easements were not identified or quantified to persuade the Board that the subject's market value is affected by said easements.

33 The Board accepts MPAC's evidence of the sale of five comparable properties as the best evidence of the current value of the subject property. The Board accepts MPAC's recommendation to reduce the assessment from \$1,735,000 to \$1,601,000

34 The complainant further testified that the structure was built for commercial and industrial use and proposes that the consulting part of the business be placed in the commercial property class. Subsection 6(1) of O. Reg. 282/98 provides:

6. (1) The industrial property class consists of the following;

1. Land used for or in connection with,

i. manufacturing, producing or processing anything,

ii research or development in connection with manufacturing, producing or processing anything,

iii. storage, by a manufacturer, producer or processor, of anything used or produced in such manufacturing, production or processing if the storage is at a site where the manufacturing, production or processing takes place, or

iv. retail sales by a manufacturer, producer or processor of anything produced in such manufacturing, production or processing, if the retail sales are at the site where the manufacturing, production or processing takes place but are not on land which section 44 applies. O. Reg. 536/05, s. 2.

35 Section 5 of O. Reg. 282/98 provides:

5. (1) The commercial property class consists of the following:

1. Land and vacant land that is not included in any other property class,
2. A care home, as defined in the *Tenant Protection Act, 1997*, to which that Act does not apply, that is operated with the intention of generating a profit and that does not have seven or more self-contained units.
3. If a portion of land is in the office building property class, any other portion of the land that is not included in any other property class.
4. If a portion of land is in the shopping centre property class, any other portion of the land is not included in any other property class.

36 Evidence shows that the premises is used for the purpose of assembly of parts (electronic circuit boards) and there is no evidence to show that the consulting part of the business is not in connection with the manufacturing, producing or processing which takes place within the premises occupied by Micro Consulting Inc.

37 In the absence of other conclusive evidence, the Board is then left with MPAC's evidence with special emphasis on the suggested comparable properties. Photographic evidence shows that the properties contained on the spreadsheet are the "most" similar to the subject property. The structure on two of these properties was built in the late 1980's and a third one in 1997. With exception of two properties, the height of the structures is 17 and 19 feet. In this regard, the Board accepts MPAC's testimony that the age and lower height is reflected in the sale price and therefore does "benefit the ratepayer".

38 The Board is of the view that it is "caught" in the industrial property class.

39 For the reasons cited above, the Board accepts MPAC's recommendation, which is based on the direct sales comparison approach, and reduces the assessment from \$1,735,000 to \$1,601,000 and confirms the industrial property class for the 2007 and 2008 taxation year.

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