

2012 CarswellOnt 9093,

2012 CarswellOnt 9093

Anand 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 2009, 2010, 2011 and 2012 on premises known municipally as 1257 Greenoaks Drive

Karen Marie Anand Navin Anand, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

C. Marques Member

Heard: February 15, 2012

Judgment: July 13, 2012

Docket: ID 114583

© Thomson Reuters Canada Limited or its Licensors (excluding individual court documents). All rights reserved.

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

J. Fantetti, D. Declerc, for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Zoning — Zoning by-laws — Restrictive land uses — Conservation

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

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

2012 CarswellOnt 9093,

s. 40(17) — considered

s. 40(19) — considered

s. 44(3) — considered

s. 44(3)(a) — considered

s. 44(3)(b) — considered

C. Marques Member:

Issue

1 The subject property, with an assessment returned at \$2,086,000, is a detached single family dwelling, located at 1257 Greenoaks Drive in the City of Mississauga (the Municipal Property Assessment Corporation's (MPAC) A91 homogeneous neighbourhood — Exhibit 1). The dwelling, built in 1964 and renovated in 2006 with a D renovation code, has an effective year built of 1994 and a quality rating of 8. The total building area is 4,657 square feet. There is a basement area of 2,489 square feet of which 1,692 square feet is finished. There is an outdoor pool that MPAC values at \$23,040, and an attached three-car garage. The lot has a frontage of 77.21 feet by a depth of 228.92 feet, and an actual site area of 17,674.91 square feet. MPAC records indicate that the property has an effective site area of 22,651.2 square feet.

2 Mr. **Baranowski**, appearing as a representative for the appellant, disputes the size of the lot. He contends that the actual lot size is (77.21×228.92) 17,674.91 square feet, thus the effective area cannot be larger at 22,651.2 square feet. Furthermore, he claims that the property should benefit from an adjustment for swampy area because of a creek that runs through it, and that the property use is restricted by the Credit Valley Conservation Authority.

3 Ms. Declerc, appearing as a witness for MPAC (Mr. Fantetti appearing as advocate) testified that she walked the property at the time of inspection, but is not aware of a flood plain, and has no knowledge that the property is under the protection of the Credit Valley Conservation Authority.

4 The issue is whether the subject property has been correctly assessed at \$2,086,000 for the 2009, 2010, 2011 and 2012 taxation years. Ms. Declerc testified that the property has been valued using the sales comparison approach. She submitted the sales of three suggested comparable properties which sold in open market, in arm's length transactions, for adjusted sale prices ranging from \$1,745,286 to \$2,477,728. Because the assessment as returned at \$2,086,000 falls within this range, Ms. Declerc argued that the property is correctly assessed and requested that the Board confirm the assessment as returned.

5 Mr. **Baranowski** submits that the assessment as returned is too high, and proposes that a current value of \$1,504,000 would be correct.

6 The Assessment Review Board (Board) must determine if the lot size is correct, and if its use is restricted by the Credit Valley Conservation Authority. The Board must also determine the current value of the property, and whether the assessment is equitable, having reference to the assessments of similar lands in the vicinity.

Interim Decision

7 The Board finds:

1. That the correct lot size is 17,674.91 square feet.
2. That the use of the property is restricted by a stream passing through the property and perhaps by restrictions imposed by the Credit Valley Conservation Authority.
3. MPAC has failed to satisfy the burden of proof required by subsection 40.(17) of the *Assessment Act* (Act). As a result, the Board is unable to determine:
 - a. Either the current value of the subject property as of the legislated valuation day, January 1, 2008, as required by subsection 44.(3) (a) of the Act, or
 - b. Whether the current value is equitable as required by subsection 44.(3) (b) of the Act.

8 MPAC is directed within 90 days of the date of release of this interim decision to:

1. Investigate whether there are restrictions imposed on the use of the subject property by the Credit Valley Conservation Authority.
2. Determine a correct and equitable assessment, having regard to any such restrictions and findings 1 and 2 above, and
3. Propose this new assessment value to the appellants and the municipality.

9 The appellants and the municipality shall have a further 60 days to consider the revised assessment with a view that the parties may resolve the assessment by agreement. In the event that the parties fail to resolve the assessment within 150 days, the Board will reconvene solely for the purpose of determining a correct and equitable assessment.

Reasons for Interim Decision***Legislation***

10 For the 2009, 2010, 2011 and 2012 taxation years, in determining the value at which land shall be assessed, the Board must consider the following provisions of the Act:

11 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.

12 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.

13 Subsection 19.2(1) 2 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.

14 Subsection 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.

15 Subsection 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.

16 Subsection 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.

Lot size

17 The Board finds that the size of the lot is 17,674.91 square feet. The Board agrees with Mr. **Baranowski** that an effective lot size greater than the actual lot size is illogical. No satisfactory explanation was presented by MPAC to support the effective lot size of 22,651 square feet.

Conservation lands

18 The Board finds, on a balance of probabilities, that the value of this property is negatively affected whether or not its use is restricted by the Credit Valley Conservation Authority. It is clear that a stream runs through the property and the logical conclusion is that part of the property is within the flood plain. It is clear that a portion of the property consists of wetland not capable of the normal use attributed to residential land. While the property is about 220 feet deep, the stream/wetland affects an area approximately 50-70 feet across the rear of the property. That area is clearly not useable for normal residential purposes. Having regard to the burden of proof in subsection 40.(17), in absence of evidence to the contrary, and knowing that the stream runs through the subject property, the Board is of the view that MPAC did not make sufficient investigation of the impact on value resulting from the stream.

FN1 Subsection 5 permits the Minister to prescribe a different valuation day. A different day has not been prescribed.

2012 CarswellOnt 9093,

END OF DOCUMENT