

2010 CarswellOnt 10388,

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Andrejas 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 and 2010 on premises known municipally as 1553 Garnet Avenue

Michael Andrejas Theresa Andrejas, Assessed Persons/Appellants and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

A. LaRegina Member

Heard: October 12, 2010

Judgment: October 12, 2010

Docket: WR 98865

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

M. Covello, P. Alves, for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Valuation — Uniformity, equity and equality — 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

s. 1(1) "current value" — referred to

s. 19(1) — referred to

s. 19.2(1) [en. 1997, c. 5, s. 13] — referred to

2010 CarswellOnt 10388,

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

s. 40(19) — referred to

s. 40(26)(b) — referred to

s. 44(3) — referred to

s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

A. LaRegina Member:

1 These appeals came before the Assessment Review Board on October 12, 2010 in the City of Mississauga. The decision was delivered orally and written reasons were requested by MPAC.

Issue

2 The issue before the Board for determination is whether the assessment for the subject property of \$725,000 for the 2009 and 2010 taxation years is at current value and whether the assessment is equitable with the assessment of similar lands in the vicinity.

Decision

3 The Board finds that the current value of the subject property to be \$725,000 for the 2009 and 2010 taxation years.

4 The Board finds that based on the evidence provided in the Equity Study which demonstrated an ASR of .95 the assessed value of \$725,000 requires a further adjustment to \$688,000 to make the assessment equitable with the assessments of similar lands in the vicinity.

5 The decision of the Board is to reduce the assessment from \$725,000 to \$688,000 for the 2009 and 2010 taxation years.

Reasons for Decision

The Subject Property:

6 The subject property, built in 1975, is a detached single-family one storey bungalow, located at 1553 Garnet Avenue, in the City of Mississauga in homogeneous area A73. This residence is made up of 1,857 square feet of total building area with 1,857 square feet on the first floor, 2,050 square feet in the basement of which 985 square feet is finished space. The subject lot is an irregular corner lot with an effective frontage of 74.8 feet and effective depth of 290.5 feet. The effective lot area is 19,602 square feet. The subject has an attached double garage.

Legislation:

7 The Board must have regard to section 1 and subsections 19.(1), 19.2(1), 40.(19) and 44.(3)(a) and (b) of the *Assessment Act (Act)* when determining whether or not the assessment under appeal is correct.

2010 CarswellOnt 10388,

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.

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.

Subsection 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.

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.

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.

Subsection 40.(26)(b) provides that if an appeal for 2009 is not fully disposed of by March 31, 2010, the appellant is deemed to have made the same appeal for the 2010 taxation year.

Determination of Current Value:

9 Subsection 44.(3)(a) of the *Act* requires the Board to determine the current value of the property.

MPAC's Evidence and Argument:

10 On behalf of MPAC, the assessor, Ms. Covello, introduced six sales of comparable properties all of which were outside the homogeneous area of the subject but still within close proximity. Ms. Covello stated that she attempted to find sales in the same area but because of the irregular lot and the features of the property, she had to widen her search to find comparables that were more similar to the subject property. The six comparables are as follows:

<i>Address</i>	<i>Assessed Value</i>	<i>Building Area (Sq. Ft.)</i>	<i>Lot Size (Sq. Ft.)</i>	<i>Sale Price</i>	<i>ASR</i>	<i>Sale Date</i>	<i>Time Adjusted Sale Amount</i>	<i>Adjust To Subject</i>	<i>Adjusted Sale Amount</i>
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2010 CarswellOnt 10388,

<i>Subject</i>	\$725,000	1,857	19,602						
1553 Gar- net Ave									
839 Calder Road	\$811,000	2,468	10,018	\$835,000	1.03	2008/12	\$786,000	-11%	\$702,000
855 Cald- well Av	\$931,000	1,971	15,681	\$975,000	.97	2008/03	\$962,000	-22%	\$749,000
1277 Birchview Dr	\$1,214,000	2,598	17,424	\$1,275,000	.91	2007/03	\$1,336,000	-40%	\$797,000
1750 Birch- wood Drive	\$840,000	2,166	8,972	\$840,000	.98	2007/08	\$859,000	-14%	\$741,000
2094 Gor- don Dr	\$866,000	2,125	14,810	\$980,000	.86	2007/08	\$1,002,000	-16%	\$838,000
2076 Lynchmere Ave	\$1,031,000	2,188	27,007	\$1,100,000	.91	2007/07	\$1,130,000	-30%	\$794,000
<i>Average</i>					.94				

Ms. Covello's evidence included the sale price of each property as well as the time adjusted sale amount to reflect the January 2008 valuation. The adjustment to the subject represents the total quantified adjustment required to equalize the comparable properties to the subject property. The adjustment is determined by comparing the sum total of the valuation components for the subject property against those of the comparable sold properties. Comparables which are deemed superior to the subject require a negative adjustment while the inferior ones require a positive adjustment. The Adjusted Sale amount range of the comparables was between \$702,000 and \$838,000.

11 Ms. Covello also introduced the Equity Analysis, appendix D, which concludes the median assessment to sales ratio (ASR) of .95 is based on the sale of 45 single storey properties in the same homogeneous area as the subject, A73, between March 2007 and December 2008. Ms. Covello submits that the results of the Equity Analysis shows that the MPAC valuation model is doing a very good job of determining current value as the median ASR of .95 is within the range of .95 to 1.05 ASR.

12 Ms. Covello states that based on the comparables, her opinion is that the best comparables are numbers 2, 5 and 6 (855 Caldwell Avenue, 2094 Gordon Drive and 2076 Lynchmere Avenue). Ms. Covello stated that the average adjusted selling price of these three comparables is \$1,018,000. The average of the three lot sizes is 19,166 square feet as compared to the subject's 16,902. The average of the three in terms of building area is 2,094 square feet compared to 1,857 for the subject. Based on these criteria, Ms. Covello suggests that on average these are the best comparables to the subject property.

MPAC's Summation

13 Mr. Alves, on behalf of MPAC, summarized his argument by stating that if the Board accepts the average adjusted selling price of the three best comparables as presented by Ms. Covello to be the current value of the subject property and adjust downward for equity by 5%, this would yield a value of \$967,000 ($\$1,018,000 \times .95$) for the subject property.

2010 CarswellOnt 10388,

Based on this analysis, Mr. Alves requests that the Board confirm the assessment of the subject property at \$725,000 as being a fair and equitable assessment.

Appellant's Evidence and Argument:

14 Mr. **Baranowski** began his evidence by stating that he would present four approaches to determine a fair value for the subject property.

Approach #1

15 Mr. **Baranowski** entered into evidence the property assessment notice for the subject property which indicated that the increase between 2005 and 2008 valuation for the subject was 27.2%, while the average for the municipality was 21.2% over the same period. Mr. **Baranowski** claims that if one applies the average municipal increase of 21.2% to the subject property, the assessed value would be \$690,000 and not \$725,000.

Approach #'s 2, 3, 4

16 To support approaches 2, 3 and 4, Mr. **Baranowski** entered two comparables into evidence, 1529 Trotwood Avenue and 1495 Garnet Avenue.

<i>Address</i>	<i>CVA Assessment</i>	<i>Building Area S.F.</i>	<i>Effective Lot Area S.F.</i>	<i>Year Reno/ Code</i>	<i>Year Built</i>	<i>Assess/S.F. \$</i>
1553 Garnet Ave	\$725,000	1,857	19,602		1975	390
1529 Trotwood Ave	\$611,000	2,053	8,628		1985	297
1495 Garnet Ave	\$732,000	2,368	8,734	2005/D	1949	309

Mr. **Baranowski** also indicated that 1495 Garnet Avenue sold in May 2006 for \$660,000. The sale of this property would yield an ASR of 1.11 based on an assessment of \$732,000. Mr. **Baranowski** also indicates that the average sale rate per square foot of space for 1495 Garnet Avenue is \$278.

17 Mr. **Baranowski** claims that as a secondary approach if one was to apply the ASR of 1.11 based on the sale of 1495 Garnet to the subject's assessment of \$725,000, this would result in a current value for the subject of \$653,000.

18 Mr. **Baranowski** introduced a third approach taking the average rate based on the assessment of the two comparables which he presented, 1529 Trotwood Avenue and 1495 Garnet Avenue, which results in an assessed value per square foot of \$303. Applying this rate to the building area of the subject's 1,857 square feet results in an assessed value of \$562,000 for the subject property.

19 Mr. **Baranowski** introduces a fourth approach which applies the sale rate per square foot of building area based on the sale of 1495 Garnet Avenue, which is \$278, to the area of the subject property resulting in a current value of \$516,000.

Appellants' Summation

20 Mr. **Baranowski** summarized his argument by stating that if one takes the average of the four approaches this would result in a value of \$620,000 for the subject property. Mr. **Baranowski** requested that the Board reduce the assessment of the subject from \$725,000 to \$620,000 based on the average of the four approaches.

Board's Analysis and Conclusions:

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1. Subsection 19.(1) provides that current value is the basis for assessed value.
2. The best evidence the Board can receive of current value is sales evidence for the subject property or comparable properties in the vicinity near the valuation day. For the 2009 taxation year, properties are valued as at January 1, 2008.
3. As a result of reviewing the comparables presented by MPAC, the Board clearly understands Ms. Covello's dilemma in not finding good comparables within the same homogeneous area because the subject lot is irregular and the home quite unique. Therefore, the Board accepts Ms. Covello's approach to widen the vicinity in order to find comparable sales which are more similar to the subject property.
4. For the purposes of determining current value, MPAC submitted six sales comparables and Mr. **Baranowski** submitted one sale comparable. The sale dates of the six comparables submitted by MPAC are all in 2007 and 2008 while Mr. **Baranowski's** comparable sale occurred in 2006. Based on the fact that Mr. **Baranowski's** sale occurred in 2006, the Board finds that this is too far removed from the 2008 valuation date and, therefore, will not accept this sale to establish current value. The Board will accept the comparable sales submitted by MPAC to determine the current value of the subject property.
5. As a result of analysing the comparables submitted by MPAC, the Board finds none of the comparables are to be a directly comparable to the subject property for the following reasons;
 - A) Comparable number 1: the lot is 50% smaller and the home is 600 square feet larger than the subject and, therefore, is not directly comparable to the subject.
 - B) While the size of the home and lot are reasonably similar to the subject, Comparable number 2 had extensive renovations done in 2005 and, therefore, cannot be directly compared to the subject property.
 - C) Comparable number 3: the size of the lot is reasonably similar to the subject but the size of the home is substantially larger than the subject and, therefore, is not directly comparable to subject.
 - D) Comparable number 4's lot is less than one half the size of the subject. The home is larger and it has a pool and, therefore, is not directly comparable to the subject.
 - E) Comparable 5 and 6 have had major renovations in 2001 and 2002, respectively, and the lots are substantially smaller or larger than the subject. They are therefore, not directly comparable to the subject.
6. For the above reasons, the Board cannot accept MPAC's recommendation to average the adjusted sales of Comparable numbers 2, 5 and 6 and set the current value of the subject at \$1,018,000. The subject is substantially different than the sales comparables and therefore the Board will defer to the adjusted sale amounts on Appendix A, Current Value Study, as submitted by Ms. Covello which reflect the differences in structure, lot size, age and renova-

tions, etc. Based on the range of the adjusted sale amounts for the comparables which is between \$702,000 and \$838,000, the current value of the subject property at \$725,000 appears to be within range. Furthermore, if one looks at the two properties which are the most similar to the subject based on "adjustment to subject" it is clear that property number 1 and property number 4 are the most comparable because the adjustments are the smallest of all the comparables at only -11% and -14%. The adjusted sale amount for these two comparables is \$702,000 and \$741,000, respectively which further supports a current value of \$725,000 for the subject. Based on this analysis, the Board determines the current value of the subject property at \$725,000 which reflect the assessed value as returned.

7. Mr. **Baranowski** attempted to establish current value in approach number 2 and 4. Approach number 2 was based on applying the ASR of the sale at 1495 Garnet Avenue to the assessment of the subject. The Board will not accept the ASR of one sale to establish current value as one sale does not reflect the sales values for all homes in the vicinity. The greater the sample of sales, the more accurate the ASR will be. In approach number 4, Mr. **Baranowski** applied the sales rate of the same sale, 1495 Garnet Avenue, and applied it to the total building area of the subject property. Once again, the Board does not consider this approach to be a valid approach because the Board does not consider this property to be similar to the subject property. In this case, the comparable lot is less than half of the subject lot and the building area of the comparable is 500 square feet larger than the subject.

8. Therefore, based on the best available evidence, the Board determines the current value of 1553 Garnet Avenue at \$725,000 for the 2009 and 2010 taxation years.

Is the Assessment of the Property Equitable With the Assessment of Similar Properties in the Vicinity?

22 Subsection 44.(3)(b) of the *Act* requires the Board to determine if the assessment of a property at current value is equitable with the assessments of similar lands in the vicinity and to lower the assessment below current value if required to achieve equity.

23 Mr. **Baranowski** introduced approach number 1 which indicated that the increase in assessment for the subject from 2005 to 2008 was 27% while the average increase for the municipality was 21%. The current value of a property is based on the sale value of similar properties in the vicinity and therefore the 2005 assessment has no bearing on the current value of the subject for 2008. The Board will not consider this approach to establish value of the subject property.

24 Mr. **Baranowski** introduced approach number 3 to establish equity. This approach applied the average assessed value per square foot of 1529 Trotwood Avenue and 1495 Garnet Avenue to the subject building area in order to establish the assessed value of the subject property. The Board rejects this approach because the Board does not consider these comparables as being sufficiently similar to the subject property. Both the lot size and total building area are substantially different to the subject and therefore the average assessed value per square foot approach will not accurately reflect the true value of the subject property.

25 The Board accepts the Equity Study presented by MPAC which indicates that in the homogeneous area there were 45 sales which occurred between March 2001 and December 2008 of similar one storey homes which resulted in a median ASR of .95. Based on this analysis, the Board feels that there is a need to make a further 5% adjustment to the current value of the subject property from \$725,000 to \$688,000 to ensure equity with similar lands in the vicinity.

Conclusion:

26 Based on the best available evidence provided to the Board, the assessment of the subject property is reduced from \$725,000 to \$688,000 for the 2009 and 2010 taxation years.

2010 CarswellOnt 10388,

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

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