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Atia 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 appeals with respect to taxation years 2009, 2010, 2011 and 2012 on premises known municipally as 1537 Hollywell Avenue

Mounir Atia, Janet Atia, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

**Ontario Assessment Review Board**

V. Stabile Member

Heard: November 21, 2012

Judgment: February 13, 2013

Docket: WR 117738

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

R. Leroux, C.P. Stoeken, 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 — Residential

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Similar real property in vicinity

**Statutes considered:**

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

Generally — referred to

s. 1(1) "current value" — considered

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s. 19(1) — considered

s. 44(3)(a) — considered

#### ***V. Stable Member:***

1 These appeals came before the Assessment Review Board ("Board") on November 21, 2012 in the City of Mississauga.

#### **Issue**

2 The subject property, 1537 Hollywell Avenue is a single-family detached, two-storey residential home, built in 1986. The property consists of 3,844 square feet of living area on the main and second floor. The basement is unfinished. It also has an attached two-car garage. There is an issue in respect to the effective site area of the lot. The property profile presented by the MPAC shows a site area of 10,689.87 square feet and an effective site area of 12,196.80 square feet. The Appellant states that the figures presented do not make logical sense. If anything, they should be reversed as the effective site area can never be greater than the actual site area. Further, the property profile describes the subject property as a single-family detached (not on water), yet the property has been assessed at \$835,000, which includes a premium of 6% asserting that the property is on waterfront-river/other watercourse. Both parties proposed using the direct sales comparison approach to value.

3 The issues to be determined, therefore, are:

- What is the correct current value for the subject property as of January 1, 2008; and
- Whether the assessment of the subject property is equitable with the assessment of similar properties in the vicinity of the subject property.

#### **Decision**

4 The Board finds:

- That the current value of the subject property is \$784,900.
- That the current value, as determined above is inequitable and that a further adjustment to \$31,396.00 is necessary to achieve equity.

5 The assessment is reduced from \$835,000 to \$753,500 for the 2009, 2010, 2011 and 2012 taxation years.

#### **Reasons for Decision**

##### ***Hearing Structure***

6 At the opening of the hearing, I was informed that Mr. Leroux and Mr. **Baranowski** had agreed on a different format as to how evidence was going to be presented. Normally, MPAC presents its evidence in respect to current value and equity. MPAC has the primary onus of proof in respect to the correctness of current value. The onus shifts to the Appellant in respect to the issue of equity. Notwithstanding the onus provisions, MPAC normally presents all of its evidence, including its position in respect to equity. Thereafter, the assessor is subject to

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cross-examination by the Appellant. Once completed, the Appellant presents his/her/its evidence on both current value and equity. Thereafter, the Appellant is subject to cross-examination by MPAC.

7 By agreement, the parties decided that MPAC would present its evidence on current value and remain silent on equity. The assessor would then be cross-examined. Thereafter the Appellant would present evidence on current value and equity and thereafter be cross-examined by MPAC.

8 To preserve the integrity of the agreement, MPAC removed Appendices C and D from its narrative report filed as Exhibit 1. Although the report contained MPAC's position on equity, that portion would not be referred to until MPAC's cross-examination on the issue. Further, I was not to take notice of that portion of the report until referred to by MPAC.

9 Thus the hearing proceeded.

### *MPAC's Evidence*

10 Mr. Leroux, appearing as advocate for MPAC, called Christian P. Stoeken to testify on how the current value of \$835,000 was determined. Mr. Stoeken is a Property Valuation Analyst for residential and farm properties with MPAC.

11 Mr. Stoeken testified that the subject property was valued using the direct comparison approach. In Exhibit 1, he submitted a current value study of two residential properties, both in the same C57 homogeneous neighbourhood as the subject property, which sold on the open market on February 2007 and August 2008, respectively. Prices were adjusted to account for differences between the sold property and the subject property and prices were also time adjusted to January 1, 2008. Time adjustments were based upon MPAC's analysis of price changes over time based upon its analysis of 211 sales from January 2007 to December 2008, a period of 24 months and supported in Exhibit 1. Based upon the open market sales, adjusted as above, Mr. Stoeken submitted a range of values between \$782,000 and \$956,000 and concluded that the assessment of \$835,000, which falls within this range, reflects current value.

12 As to the lot area, Mr. Stoeken stated that the lot is irregular and proposed that the 12,196.80 square feet be considered the effective site area, upon which the property had been assessed.

13 He stated that there is a river at the rear of the subject property. There is land behind the subject property, indeed there are two strips of land between the rear of the subject property and the river bank, each with separate roll numbers; however it is not built up. The rear of the subject property is approximately 150 feet away from the river bank. Under the circumstances, in his view, the subject property should be considered waterfront. Therefore, the added premium of 6% was justified.

14 The two comparable properties proposed by MPAC also had a premium of 5% for being on waterfront, but were no closer to the river than the subject property.

15 As to the other features of the comparable properties, Mr. Stoeken stated that the first comparable, 6084 St. Ives Way had a smaller lot size, one less bedroom, smaller building size by 216 square feet and had 1,500 square feet of finished basement. That property was assessed at 750,000 but sold on February 2007 for \$680,000 or \$702,519 time adjusted.

16 MPAC determined that property to be inferior to the subject property. All of the differences required an

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upward adjustment of 11%.

17 The second comparable property, 1694 Sir Monty's Drive was deemed to be slightly superior to the subject property. The total building area was slightly greater by 21 square feet. The lot was smaller. It had 955 square feet of finished basement. Further, it had an outdoor pool. That property sold in August 2008 for \$1,015,000 or \$990,990 time adjusted. It had been assessed at \$865,000.

18 Mr. Stoeken testified that based on the time adjusted sale amounts, the first comparable property had sold at \$193.64 per square foot. The second comparable sold at \$250.44 per square foot once the outdoor pool had been factored out. This resulted in an average of \$222.64 per square foot whereas the subject property was assessed at lightly less. The value of \$222.64, applied to the subject, would result in an assessment of \$853,521.

19 On cross-examination, Mr. Stoeken acknowledged and/or conceded that:

- He had not inspected the subject property and had no information about any inspection at all.
- His testimony was based on a report prepared by Mr. Leroux, the advocate, in his prior capacity.
- The subject property had no air conditioning.
- The subject property did not have a finished basement.
- The subject property did not have an outdoor pool.
- The distance that the subject property was located from the watercourse or river did not justify additional market value.
- He did not know whether the subject property had an uninterrupted view of the river.
- In any event, there should not be a premium for an uninterrupted view.
- There are two properties between the rear of the subject property and the river.
- The subject property does not abut the river.
- Both comparable properties proposed by MPAC have the same 6% premium for being on waterfront although neither is on a waterfront.
- Since neither of the comparable properties is on waterfront, neither is a proper comparable.
- Adjustments proposed on the comparable properties relate to the assessment of the properties and not their respective market value.
- Comparable number one has a finished basement of 1,500 square feet but he has no information as to the quality of the finished basement.
- He had neither inspected nor attended the site of either comparable property, thus was not aware of the quality of the 955 square feet of finished basement and outdoor pool of the second comparable property.
- He was not aware that the second comparable property had a clay roof and substantial landscaping.

- He could not explain why the sale price of comparable number two was approximately 40% higher than comparable number one.
- The time adjusted figures introduced by MPAC are not accurate. There are slight variations. In both cases, the figures presented were higher than the actual calculations would indicate.
- Because of all the differences and discrepancies noted and acknowledged, Mr. Stoeken expressly agreed that neither of the two properties proposed by MPAC were comparable properties.
- In respect to the issue of equity, Mr. Stoeken expressly agreed that both of the comparable properties proposed by MPAC are similar and therefore good evidence as to equity.
- He agreed that the first comparable had an Assessment to Sales Ratio ("ASR") of 1.06 and the second had an ASR of 0.87 with a resulting median of 0.96.

### *Appellant's Evidence*

20 After a few introductory remarks both as to current value and equity, Mr. **Baranowski** decided to rest the Appellant's case on the evidence presented by MPAC and the cross-examination of Mr. Stoeken. Thus he proposed to reduce the assessment by 6%, being premium added for waterfront and a further reduction of 4% to achieve equity.

### *Analysis*

21 The initial task for the Board is to determine the current value of the subject property as required by s. 44.(3)(a) of the Act "...the Board shall...determine the current value of the land..." Section 19.(1) of the Act states that "...The assessment of land shall be based on its current value..." and s. 1 of the Act current value is defined as "...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..."

22 The parties agree that the sales comparison approach is appropriate to the subject property. The best evidence of current value is an arm's length and market tested sale of the subject property on or close to the valuation day, January 1, 2008.

23 In the absence of a valid sale of the subject property, the next best measure of current value is the arm's length and market tested sales of comparable properties in the same vicinity on or close to the valuation day. This measure acts as a gauge of the accuracy for the assessed value of the subject property as well as the comparable properties.

24 The Board prefers to rely on the actual sales time adjusted, of the comparable properties and the common base of the total building area to determine the current value of the subject property.

25 The assessor has proposed two comparable properties located in the vicinity. Both properties proposed by the assessor have been sold on the open market in arm's length transactions.

26 The assessor proposed time adjustments to account for changes in price levels between the actual sale date of the comparable properties and the valuation day, January 1, 2008 and supported the time adjustments with a study of area sales resulting in a reasonable time adjustment factor.

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27 In establishing current value, the Board considers location, general character, number of storeys, structure, building size, proximity of sale date to valuation day and overall quality rating of the proposed comparable properties to determine whether the properties are sufficiently similar to the subject property to provide a valid indicator of its current value.

28 The Board finds that time adjustments generally proposed by MPAC provide a reasonable method of determining current value as of January 1, 2008 and the Board would normally rely upon those time adjustments.

29 Mr. Stoeken conceded during his cross-examination that neither of the two properties proposed by him are good indicators of the current values of properties in the area and thereby do not provide reliable and probative evidence of the subject property's current value.

30 Having no other or better evidence on the issue of current value, the Board must accept MPAC's methodology as the best evidence of the current value of the subject property.

31 Relying on the express testimony of the assessor, the Board is persuaded that there is no basis for an added premium of 6% for waterfront. That is an error which merits correcting. Thus the assessment will be reduced by 6% (\$50,100).

32 The Board therefore finds that the correct current value for the subject property is \$784,900.

33 Having established the current value of the subject property, the final issue for the Board to determine is whether an adjustment should be made to the current value of the subject property in order to make it equitable to the assessment of similar properties in the vicinity.

34 The Act requires the Board to lower an assessment below current value if required to make the assessment equitable with the assessments of similar properties in the vicinity.

35 An ASR of above 1.00 would indicate that similar properties in the vicinity may be over-assessed. An ASR of below 1.00 would indicate that properties may be underassessed.

36 The Board has the average ASR of 0.96 for the two comparable properties proposed by MPAC for purposes of establishing current value.

37 While the Board normally prefers a larger sample, the best evidence presented is the two comparable properties proposed by MPAC and the express testimony of the assessor that both properties are similar to the subject property and therefore good evidence as to equity. The Board relies upon the ASRs of the two comparable properties and finds that the current value as found above is not equitable. The Board will adjust the current value to  $(0.96 \times \$784,900,000)$  \$753,500 (rounded).

38 The assessments are reduced from \$835,000 to \$753,500 for taxation years 2009, 2010, 2011 and 2012.

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