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Caparrotta 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 year 2008 on premises known municipally as 15 Stanley Carberry

Raffaele Caparrotta, Teresa Caparrotta, Deborah Caparrotta (Assessed Persons / Complainants) and The Municipal Property Assessment Corporation, Region No. 15 and the City of Brampton (Respondents)

Ontario Assessment Review Board

A. LaRegina Member

Heard: June 3, 2008

Judgment: August 22, 2008

Docket: WR 69014

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Counsel: R. **Baranowski** for Assessed Persons / Complainants

J. Cole for Municipal Property Assessment Corporation

A. Karreman for Municipality

Subject: Public; Tax — Miscellaneous; Property

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" — considered

s. 19(1) — considered

s. 19.1 [en. 1997, c. 5, s. 13] — referred to

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- s. 19.1(1) [en. 1997, c. 5, s. 13] — considered
- s. 19.2(1) [en. 1997, c. 5, s. 13] — considered
- s. 19.2(1) ¶ 1 [en. 2004, c. 7, s. 3(1)] — considered
- s. 40(11) — considered
- s. 44(2) — considered

A. LaRegina Member:

1 This complaint came before the Assessment Review Board on June 3, 2008 in the City of Brampton.

Issue

2 The issue before the Board for determination is whether the assessment for the subject property for the 2008 taxation year of \$629,000 is correct.

Decision

3 The decision of the Board is to reduce the assessment of \$629,000 to 595,000 for the 2008 taxation year.

Reasons for Decision

Subject Property

4 The subject property, constructed in 1987, is a 2,936 square foot, single-family dwelling located at 15 Stanley Carberry Drive in the City of Brampton. This residence is made up of 1,468 square feet on the first floor, 1,468 square feet on the second floor and 1,754 square feet in the basement of which 624 square feet is finished space. The effective lot size is 2.6 acres.

5 For the 2008 taxation year the assessment, based on the sales approach to valuation, was returned at \$629,000.

Complainants' Case

6 Mr. **Baranowski** indicates that the assessment on the subject property is too high. Mr. **Baranowski** presents six comparable properties and compares the sales value per square foot and the time adjusted sales value per square foot based on each property. The comparables are as follows:

Address	Value	Square Feet	Sale	Price	Adj. Pr	Lot
6 Julian Court	\$615,000	3,304	2005/06	\$665,000	\$625,000	2.57
1 Dalla Riva Court	\$602,000	3,192	2005/08	\$670,000	\$616,000	2.05
10 Grafton Crescent	\$638,000	3,442	2005/03	\$625,000	\$606,000	1.96
7 Glenbrook Boulevard	\$575,000	3,094	2004/01	\$545,000	\$604,000	2.0
3 Ray Avenue	\$668,000	3,582	2004/11	\$630,000	\$636,000	2.05

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10 Saint Lukes Court	\$651,000	3,284	2005/07	\$670,000	\$623,000	1.97
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7 Note — 1 Dalla Riva Court has a pool and 10 Grafton Crescent was a power of sale.

8 Mr. **Baranowski** indicated that all the above properties are good comparables, they are of the same quality level and all in the same vicinity. He went on to determine that the average sale price per square foot for the above six properties is \$192 based on the sale price and \$186 based on the adjusted sale price. He concluded that based on the adjusted sale price the value of the subject property should be returned at \$546,000. Mr. **Baranowski** also indicated that a portion of the property is also affected by conservation lands and that portion should be valued as marginal lands. He indicated that in the back section of the property the land was very low and a dyke had to be built in order to keep the water from flooding the back corner of the lot. He did admit that the lot had never been flooded to his knowledge.

Municipal Property Assessment Corporation's (MPAC's) Case

9 The assessor, Mr. Cole presents three suggested comparable properties all located within the same homogeneous area as the subject property.

Address	Current Value	Building Area	Sale Price	Sale Date
52 Michelangelo Boulevard	\$612,000	2,930	\$850,000	2005/05
20 Evergreen Avenue	\$617,000	3,000	\$620,588	2004/06
40 Michelangelo Boulevard	\$566,000	2,852	\$685,000	2005/12

10 Mr. Cole indicates that all three are good comparisons and that the average of the above sales per square foot value is \$245. Therefore, based on the fact that the assessed value per square foot for the subject is \$214, Mr. Cole recommends to confirm the assessment at \$629,000.

11 Mr. Cole also indicates that if a property or a portion of a property is to be changed to conservation lands the Ministry of Natural Resources must be notified through an application process. The Ministry will then visit the property and determine if any changes should be made. They then notify MPAC of any changes in classification and therefore value.

12 Based on questioning by Mr. **Baranowski** Mr. Cole confirms that 52 Michelangelo has a pool valued at \$10,993 and a tennis court valued at \$10,000. He also confirms that 20 Evergreen also has a pool valued at \$10,993 and a tennis court valued at \$15,600.

Legislation

13 The Board must have regard to section 1 and subsections 19(1), 19.1(1), 19.2(1), 40(11) and 44(2) of the *Assessment Act (Act)* when determining whether or not the assessment under appeal is correct.

14 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.

15 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.

16 Subsection 19.1(1) of the *Act* states:

19.1(1) Assessment, single years and averages. — Subject to subsections (2) and (3), land shall be assessed for a taxation year at the current value of the land for the taxation year.

17 Subsection 19.2(1) of the *Act* 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.

18 Subsection 40(11) of the *Act* states:

40(11) Board to make determination. — After hearing the evidence and the submissions of the parties, the Board shall determine the matter and, in complaints involving current value, shall determine the amount of the assessment as necessary to reflect corrections to the current value.

19 Subsection 44(2) of the *Act* states:

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.

Board's Deliberations

(1) The *Assessment Act* relies on current value as the basis for assessed 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.

(2) The best evidence the Board can receive of current value is sales data on the subject property or similar properties in the vicinity near the valuation date. For the 2006, 2007 and 2008 taxation years, properties are valued as at January 1, 2005.

(3) Subsection 19(1) and 19.1 of the *Act* are paramount to subsection 44(2). Subsection 44(2), while mandatory, does not establish a test of equity. If sales data is not available, subsection 44(2) permits the Board to consider the value at which similar lands in the vicinity are assessed as evidence of current value.

(4) Mr. **Baranowski** raised the fact that part of the property is affected by conservation lands and should be considered marginal lands but did not present any evidence to substantiate or quantify his claim. Therefore, the Board will not make any adjustments or allocations for this argument. There is no evidence or suggestion that a portion of the property is conservation land as defined in the *Act*.

(5) When reviewing the six comparable properties provided by Mr. **Baranowski**, it is clear that only three properties can be considered as reasonable comparisons, they are 6 Julian Court, 7 Glenbrook Boulevard and 10 Saint Lukes Court, only two of which sold within a reasonable should period, 6 Julian Court and 10 Saint Lukes Court. The properties not considered good comparisons are 1 Dalla Riva Court, which has a pool, 10 Grafton sold under a power of

sale and 3 Rae Avenue which is considered larger at 3,582 square feet compared to the subject which is only 2,936 square feet.

(6) Mr. **Baranowski** also presented time adjustments to each of the sales. Due to the lack of evidence to support the time adjustments, the Board will not consider any time adjustments beyond January 1st, 2005. The Board, however, is of the view that a six to seven month should period is appropriate based on Mr. **Baranowski's** evidence that prices increased in the period following January 1, 2005.

(7) Of the three properties presented as comparables by MPAC, it is also quite clear that two of the three properties are not comparable because they have pools and tennis courts. The Board is in agreement with Mr. **Baranowski** that it is not the value allocated by the assessor on a pool or tennis court but it is the overall value a pool and a tennis court bring to the property in the marketplace. Therefore the only property considered comparable to the subject of the three is 40 Michelangelo Boulevard. The sale of this property is not considered by the Board to be within a reasonable shoulder period from the valuation date, having taken place almost one year later as compared to the complainants' sales which are less than seven months from the valuation date. Therefore this also cannot be considered as a good comparable.

(8) When reviewing the information on the two reasonable comparables, which included 6 Julian Drive and 10 Saint Lukes Court, the average sale price per square foot of space for both properties is \$202.64. Applying the average sale price per square foot to the total building area of 2,936 square feet the result is \$594,954. The Board is satisfied that a correction to the current value is required as the evidence is that the subject property is assessed at a higher value per square foot than the average sale price per square foot of the comparable properties.

(9) Based on the best available evidence, the decision of the Board is to reduce the assessment for 15 Stanley Carberry Drive from \$629,000 to \$595,000 for the 2008 taxation year.

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