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Blaszczyk 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 and 2011 on premises known municipally as 831 Canyon Street

Jerzy Blaszczyk Anna Blaszczyk, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

**Ontario Assessment Review Board**

I. Oliveira Member

Heard: February 7, 2011

Judgment: February 7, 2011

Docket: WR 102818

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

P. Alves, R. Leroux, 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 comparative property

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

s. 19(1) — considered

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

s. 40(17) — considered

s. 40(19) — considered

s. 40(26)(b) — considered

s. 44(3) — considered

s. 44(3)(a) — considered

s. 44(3)(b) — considered

### ***I. Oliveira Member:***

1 These appeals came before the Assessment Review Board on February 7, 2011 in the City of Mississauga. An oral decision was given following the hearing. Written reasons for the decision were requested by the appellants.

### **Issue**

2 The issue before the Board for determination is whether the assessment for the subject property of \$986,000 for the 2009, 2010 and 2011 taxation years is at current value and whether the assessment is equitable with the assessment of similar lands in the vicinity.

3 The Municipal Property Assessment Corporation (MPAC) submits that the subject property's assessment is established using the direct sales comparison approach to value. MPAC takes the position that the assessment of \$986,000 is at current value and is fair and equitable.

4 Mr. **Baranowski**, representative for the appellants, is of the opinion that the assessment as returned on the roll is not at current value. He proposes different approaches to value with emphasis on the assessments of properties on the same street as the subject.

### **Decision**

5 The Board finds the current value of the subject property to be \$913,000 for the 2009, 2010 and 2011 taxation years.

6 The Board finds that based on the evidence provided in the equity studies presented by MPAC and the appellants, the assessed value of \$913,000 requires no further adjustment to make the assessment equitable with the assessments of similar lands in the vicinity.

7 The Board reduces the subject property's assessment from \$986,000 to \$913,000 for the 2009, 2010 and 2011 taxation years.

### **Reasons for Decision**

#### ***The Subject Property***

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8 The subject property is a detached single family dwelling, municipally known as 831 Canyon Street, in the City of Mississauga, in the homogeneous neighbourhood A83, a subdivision called Mineola/Watercolours. The two storey structure, built in 2004, has a total building area of 3,303 square feet and an unfinished basement area of 1,585 square feet. There is an attached two car garage of 499 square feet. The effective site area is 7,440 square feet or an effective frontage and depth of 62 × 120 feet. The property abuts a utility box. MPAC states that there is no adjustment for this variable.

### ***Relevant Legislation***

9 For the 2009 taxation year, in determining the value at which land shall be assessed, the Board must have regard to the following provisions of the *Assessment Act (Act)*:

10 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.

11 Section 1 of the *Act* states:

**"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 19.2(1)2 of the *Act* states:

**19.2(1) Valuation days.** — Subject to subsection (5)<sup>[FN1]</sup>, 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.

13 Subsection 44.(3) 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.

14 Subsection 40.(17) 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.

15 Subsection 40.(19) states:

**40.(19) Board to make determination.** — After hearing the evidence and the submissions of the parties, the Board shall determine the matter.

16 Subsection 40.(26)(b) states:

**40.(26) Deemed appeals, 2009 and subsequent years.** — For 2009 and subsequent taxation years, an appellant shall be deemed to have brought the same appeal in respect of a property,

(b) in relation to the assessment, including assessments under sections 32, 33 and 34, for a subsequent taxation year to which the same general reassessment applies, if the appeal is not finally disposed of before March 31 of the subsequent taxation year or, if an assessment has been made under section 32, 33 or 34, before the 90th day after the notice of assessment was mailed.

### *Determination of Current Value*

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

### *MPAC's Evidence and Arguments*

18 Mr. Alves began by introducing Mr. Leroux (a senior assessor) as a valuation review specialist officer and presented Mr. Leroux's curriculum vitae. Mr. Leroux was MPAC's witness with respect to current value and equity analysis.

19 In support of the assessment as returned, MPAC entered into evidence Exhibit #2, titled "Current Value and Equity Analysis," which includes, in addition to the Property Profile (together with a photograph of the subject property), a location map, a diagram of the subject's lot and a Current Value Study (containing three properties), appendixes showing "Sales for Price Changes Over Time" and two "Equity Analysis Studies."

20 Mr. Leroux, stated that the best way to determine the subject property's 2008 current value is to review the selling prices of other properties that are in the same market as the subject property. In his words:

Most of these properties will not be identical to the Subject Property. Therefore, their selling prices will need to be adjusted to reflect the differences.

21 In addition to the physical differences, Mr. Leroux stated that sales have to be adjusted for differences in market conditions between the sale date and the valuation day. Sales were reviewed for the period from January 2007 to December 2008. His analysis indicated that house prices increased approximately 16.9% over this time frame in the subject property's neighbourhood.

22 Time adjustment factors were applied by MPAC to all sales to ensure that the sales reflected market conditions as of January 1, 2008. Time adjustments were determined by comparing the sales prices and 2008 current value assessments for 116 sales of residential properties in the area over the sales period. A list of the 116 sales used in this study is included in the report.

23 MPAC presented three selected properties as being good indicators of the subject's value. Particulars of these properties are summarized in Table 1.

**Table 1**

<b>Address</b>	<b>Sale Amount Sale Date</b>	<b>Time Adjusted Sale</b>	<b>Effective Front/ Depth</b>	<b>Effective Site Area/Sq.Ft.</b>	<b>Total Building Area/Sq.Ft</b>
<b>Subject</b>			<b>62 × 120</b>	<b>7,440.00</b>	<b>3,303</b>

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856 Canyon	\$952,571 09/2008	\$893,153	49 × 123	6,027.00	3,098
725 Canyon	\$1,125,000 12/2008	\$1,030,059	76 × 125	9,500.00	3,143
1183 Sienna	\$954,000 06/2007	\$999,506	76 × 125	7,524.87	3,258

24 These properties are of the same vintage and have attached garages. Number 725 Canyon Street is a corner lot property for which there is an allowance of 3% and 1183 Sienna Street has an outdoor pool which is assessed at \$23,000. The adjustments to the subject property are 6%, 1% and -6% respectively. The adjusted sales amount (time adjusted sale + adjustments to the subject) are respectively \$949,000, \$1,038,000 and \$937,000.

25 Mr. Leroux stated that the property characteristics of the sold properties have been analysed to determine what adjustments, if any, are required to adjust their time adjusted sale prices so they have the same features and are the same state and condition as the subject property. For example, sale #3 is considered superior to the subject property and requires a downward adjustment to its time adjusted sale price.

26 Sales #1 and #2 are considered inferior to the subject property and require upward adjustments to their time adjusted sales.

27 It is MPAC's position that a range of value has been established for the subject property between \$937,000 and \$1,038,000. The subject property has been valued at \$986,000. Mr. Leroux concludes that the subject property's value is correct because it is within the range of adjusted sale prices.

28 With respect to the question of whether the subject property has been equitably assessed, Mr. Leroux submits that in order to test equity, one must:

- Determine the vicinity
- Determine a sufficient number of similar properties
- Compare the assessed value to their current value as represented by their time adjusted sale price.

29 For this purpose, the subject property's vicinity is:

- North — Queen Elizabeth Way
- East - Hurontario
- South — Rail Way Line
- West — Woodeden Rd.

30 The neighbourhood is called Mineola/Watercolours.

31 To be 'similar', Mr. Leroux submits that for purposes of ensuring equity, properties do not need to be identical or substantially identical (as they do for valuation purposes). For equity purposes, properties need to be of the same general nature or character.

32 There were 116 sales of residential properties in this vicinity between January 2007 and December 2008 that are

typical arm's length transactions between willing buyers and sellers. There are a sufficient number to allow the determination of whether properties in the vicinity are assessed at, or close to, their current values.

33 Mr. Leroux went on to say that an acceptable median assessment to sales ratio (ASR) should fall between .95 and 1.05. A median ASR outside of this range shows that equity has not been achieved because similar properties have not been assessed at their current values. He stated:

If the median ASR is below this range, the Assessment Act requires a downward adjustment to the Subject Property's current value in order to achieve equity. In these circumstances, the assessment is calculated by multiplying the median ASR by the current value i.e:

$$\text{Assessment} = \text{Current Value} \times \text{Median ASR}$$

34 The sales in the vicinity show ASR's ranging from a low of 0.74 to a high of 1.27 with a median ASR of 0.99. A second study was further carried out using only sales of similar homes to the subject property from January 2007 to December 2008. This study, using 66 sales, produced ASRs ranging from 0.77 to 1.21 with a median ASR of 1.00.

35 From these analyses, Mr. Leroux stated that he is satisfied that similar properties in the vicinity have been assessed at their current values and, therefore, concluded that the subject property is assessed based on its current value and that no equity adjustment is required.

### *Appellant's Evidence and Arguments*

36 Mr. **Baranowski**, in support of his case, entered into evidence several exhibits. Exhibit #6 "My Neighbourhood Properties of Interest" contains three suggested comparable properties. Particulars of these properties are summarized in Table 2.

**Table 2**

Address	Assessment	Sale Amount/ Sale Date	Effective Front/ Depth	Effective Site Area/Sq.Ft.	Total Building Area/Sq.Ft.	ASR
<b>Subject</b>	<b>\$986,000</b>	<b>N/A</b>	<b>62' × 120'</b>	<b>7,440</b>	<b>3,303</b>	
554 Canyon	\$1,077,000	\$925,000 07/2007	60' × 125'	8,530.19	3,707	1.16
596 Hancock	\$758,000	N/A	50' × 118.11'	5,693.45	2,955	
749 Canyon	\$1,020,000	\$925,000 02/2009	60' × 125'	7,500	3,508	1.10

37 Mr. **Baranowski** stated that, in order to determine a fair and equitable value for the subject property he would present three different scenarios/approaches.

### *Scenario #1*

38 Table 2 above shows that 554 Canyon and 749 Canyon sold in 2007 and 2009 for \$249 and \$263 per square foot respectively. Number 596 Hancock is assessed at \$263 per square foot. The average value per square foot of these three properties is \$256. If this value is applied to the subject property's total building area, its assessment would be \$845,000.

**Scenario #2**

39 Using MPAC's comparable properties (856 and 725 Canyon Street and 1183 Sienna Street) and after applying lot size adjustments he arrived at a value per square foot of \$319, \$282 and \$288 respectively. If one adds the sale price per square foot of 554 Canyon the average per square foot value is \$281. If this value is applied to the subject's total building area, the subject's current value would be \$931,000.

**Scenario #3**

40 MPAC's Appendix "C" contains time adjusted sales information on properties which sold on Canyon Street (#677, #554, #856 and #725). Mr. **Baranowski** submits that the time adjusted ASR's (average and median) of the four sales is 1.08 which is a clear indication that properties on the subject's street are over-assessed. Applying this ASR to the subject's assessment of \$986,000 translates into an assessment of \$912,900.

41 It is therefore Mr. **Baranowski's** position that based on the time adjusted ASR's, the subject property's assessment should be adjusted accordingly.

**Board's Deliberations and Conclusions***(a) Determination of Current Value — subsection 44.(3)(a)*

42 Subsection 19.(1) provides that current value is the basis for assessed value.

43 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 date of January 1, 2008. If no transaction has taken place, the Board looks to sales of comparable properties in the vicinity to determine if the sales evidence suggests that the current value requires correction.

44 MPAC presented a current value study with Appendix "A". The three suggested comparable properties sold in 2007 and 2008. These sales are time adjusted to January 1, 2008. MPAC's position is that the subject property's assessment, based on the direct sales comparison approach to value, is at current value.

45 Mr. **Baranowski** presented several current value scenarios for the Board's consideration. In this respect, the Board finds that scenario #1, a combination of sales prices and one assessment amount is not an acceptable approach to determine current value. With respect to scenario #2, the Board concurs with MPAC that the inclusion of 554 Canyon Street in the equation (together with MPAC sales) distorts the average sale price on a per square foot basis. Number 554 Canyon Street, sold in July of 2007 and adjustments for the material differences for the site area and total area have not been made.

46 The Board is left with MPAC's sales evidence and the appellant's scenario #3. MPAC's comparable properties suggest that the subject's assessment based on current value is correct. However, the information contained in Appendix "C" (Time Adjusted ASR's) tells a different story. Mr. **Baranowski** points out the fact that four properties on the same street as the subject sold below their assessments values which shows that MPAC's model is assessing lands on the same street as the subject above their current values.

47 Therefore, based on this evidence, the Board applies the 1.08 ASR to the subject's assessment resulting in a current value for the subject property of \$913,000.

***Is the Assessment of the Property Equitable With the Assessment of Similar Lands in the Vicinity?***

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48 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. The remainder of the evidence provided was all relating to equity.

49 As part of the equity analysis, MPAC presents equity evidence with Appendix "C" showing time adjusted sales of 116 properties, which sold between January 2007 and December 2008 in the homogeneous neighbourhoods known as A83, A82 and A79. The median time adjusted ASR's is .99. There is also Appendix "D" (a second equity analysis study), which shows a median ASR of 1.00 using 66 sales.

50 Mr. **Baranowski** raised the issue of the "outliers" which, if included in these studies would most likely, distort the median ASR. At the same time, he questions the low and the highs of the ASR in both studies.

51 Mr. **Baranowski** provides evidence with time adjusted ASR's of four properties located on Canyon Street. The average and the median is 1.08. Mr. **Baranowski** submits that this proves that the subject property is inequitably assessed.

52 An ASR of less than 1.00 indicates that properties are selling higher than their assessed values. An ASR of more than 1.00 suggests that properties are selling below their assessed values. When the ASR's of similar lands in the vicinity are less than one no reduction to an assessment is required to make it equitable with the assessment of similar lands in the vicinity. To achieve equity in this case the assessment would have to be increased above the property's current value. The *Act* is clear that equity adjustments are only made to reduce assessments below a property's current value.

53 The Board did not find the MPAC equity studies particularly helpful in that there is a gap between the lowest ASR of 0.74 and a high of 1.27 in the first study (116 sales) in the locational neighbourhood A83, A82 and A79, and the ASR range of 0.77 to 1.21 in Appendix "D".

54 If the intent of the equity test is to ensure that the residential tax burden is distributed fairly, then the discrepancy between the low and high end of the ASR's contradicts that notion; it shows that some ratepayers are paying too little while others are paying too much.

55 For the reasons given above the Board finds that no adjustment is required to achieve equity.

### ***Conclusion***

56 Being satisfied that the properties on Canyon Street are assessed above their current values the Board reduces the assessment from \$986,000 to \$913,000 for the 2009, 2010 and 2011 taxation years.

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

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