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Bernardo 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 and 2011 on premises known municipally as 1292
Catchacoma Court

Robert Bernardo, Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and
the City of Mississauga, Respondents

Ontario Assessment Review Board

J. Laws Member

Heard: March 21, 2011

Judgment: August 4, 2011

Docket: WR 105515

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Counsel: R. **Baranowski**, for Assesses Person / Appellant

D. Declerc, P. Alves, 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" — referred to

s. 19(1) — referred to

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

s. 40(17) — referred to

s. 40(19) — referred to

s. 44(3) — referred to

J. Laws Member:

1 These appeals came before the Assessment Review Board on March 21, 2011 in the City of Mississauga.

Issue

2 Whether the assessment of the subject property for the 2009, 2010 and 2011 taxation years at \$831,000 is correct and whether it is equitable with the assessment of similar lands in the vicinity.

Decision

3 The Board finds that the current value of the subject property as of the valuation day of January 1, 2008 is \$903,000.

4 The Board finds that to make the assessment of the subject property equitable with that of similar lands in the vicinity, it is necessary to reduce the assessment below the current value from \$903,000 to \$849,000.

5 The Board notes that this value is at a higher level than the assessment as returned on the roll for the subject property. No party has given notice of a request for an increase in the assessment of the subject property. Accordingly, for the 2009, 2010 and 2011 taxation years, the assessment of the subject property as at the valuation day, January 1, 2008, is confirmed at \$831,000.

Reasons for Decision

Background:

6 The subject property, located on a cul-de-sac at 1292 Catchacoma Court in the City of Mississauga, has an effective lot size of 11,761 square feet with 73.5 effective feet of frontage and 123.16 effective feet of depth. There is a 2,669 square foot, two-storey house with an attached garage and an unfinished basement. The house was built in 1987.

7 The lot abuts a place of worship which the Municipal Property Assessment Corporation (MPAC) does not consider to affect the value of the property.

8 It is assessed in the amount of \$831,000 for the 2009, 2010 and 2011 taxation years.

The Municipal Property Assessment Corporation's (MPAC) Position:

9 MPAC's position is that the subject assessment is at its current value and that the assessment is supported by the sales of four properties which are summarized in Table 1. The sales were time adjusted to the valuation date of January 1, 2008 and range from \$783,585 to \$1,041,632. These amounts were further adjusted for the physical difference between the subject property and the suggested comparables resulting in a range of adjusted sale amounts from \$825,000

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to \$1,036,000. Ms. Declerc, MPAC's representative, contends that the fact that the subject assessment falls within this range indicates that \$831,000 is the correct current value.

10 To demonstrate the equity of the assessment, Ms. Declerc provided two equity studies, derived from 85 sales (Appendix C of Exhibit #3) and 50 sales (Appendix D of Exhibit #3), both displaying a median assessment to sale ratio (ASR) of 0.98.

The Appellant's Position:

11 The appellant's position is that the current value should be \$717,000 based on the September 2009 sale of 1405 Tecumseh Park Drive and that the current value should be reduced to \$669,000 based on the assessed value per square foot of 1405 Tecumseh Park Drive, 1411 Tecumseh Park Drive and 1406 Chriseden Drive.

12 Mr. **Baranowski** of After Tax Paralegal Services, representing the appellant, argues that a place of worship (the church) is a commercial property and because the rear of the subject property abuts the church's parking lot, the current value should be reduced by 4%. Mr. **Baranowski** produced MPAC's 2008 Base Year Final Model — Regression Output, Market Area — South Mississauga (Exhibit #9) in which MPAC allocates a 4% reduction to a property that 'abuts commercial'.

13 He also argues that MPAC's two equity studies, Appendices C and D of Exhibit #3, cannot be relied upon to determine equity because:

- Not one property in either study had an ASR of 1.00
- 65% or 55 of the 85 properties in Appendix C have ASR's outside of MPAC's 'acceptable' ASR range of 0.95 to 1.05
- 70% or 35 of the 50 properties in Appendix D have ASR's outside of MPAC's 'acceptable' ASR range of 0.95 to 1.05.

14 Mr. **Baranowski** made a number of arguments challenging MPAC's computerized model for assessing properties. The Board notes his concerns however the Board's task in this appeal is not to determine whether MPAC's model is accurate but to determine the subject property's correct current value.

The Legislation:

15 In determining the value at which land shall be assessed, the Board must have regard to the following provisions of the *Assessment Act (Act)*:

16 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.

17 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.

18 Subsection 19.2(1)2 of the *Act* provides:

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.

19 In determining the value at which any land shall be assessed, subsection 44.(3)(a) and (b) of the *Act* requires the Board to do two things:

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.

20 Subsection 40.(17) of the *Act* provides:

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.

21 Subsection 40.(19) of the *Act* provides:

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

Current Value:

22 The parties presented five suggested comparables with sales which are summarized in Table 1. All but 1405 Tecumseh Park Drive were presented by MPAC.

Table 1

Property Address	Assessment (\$)	Sale (\$)	Effective Frontage and Depth (Sq. Ft.)	Building Size (Sq. Ft.)	Variables	Year Built
11292 Catchacoma Court	831,000	N/A	73 × 123 (11,761)	2,669	Cul-de-sac/dead end	1971
996 Cresthampton Lane	851,000	870,000 (08/2007)	110 × 140 (12,632)	2,438	Cul-de-sac/dead end, pool, finished basement, minor renovation	1973
1082 Caldwell Avenue	835,000	985,000 (07/2007)	75 × 127 (11,325)	2,545	Pool, finished basement	1970
1150 Wildfield	845,000	885,000	80 × 153 (12,196)	2,542	Pool, finished base-	1961

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Crescent		(04/2007)			ment
1149 Springhill Drive	789,000	860,000	100 × 122 (10,018)	2463	Outdoor pool, finished basement, 'B' Renovation
1405 Tecumseh Park Drive	883,000	\$832,000	60 × 140 (8,396)	3,090	Finished basement
		(09/2009)			1974

23 The Board did not rely on MPAC's adjusted sale prices for the determination of current value. On cross-examination MPAC was unable to adequately answer questions regarding the time adjustment calculations and there was some question whether MPAC included adjustments for all of the physical differences between the subject and the suggested comparables.

24 MPAC presented a map in Exhibit #3 indicating the location of their suggested comparables. The parties also agreed to the location of 1405 Tecumseh Park Drive, the appellant's single suggested comparable with a sale, on this map. The only suggested comparable presented by the parties that is, like the subject, located on a cul-de-sac (a dead-end street) is 996 Cresthampton Lane. The remainder of the properties are located on through roads with the exception of 1150 Wildfield Crescent which is, as its name implies, located on a crescent.

25 Of the five suggested comparables with sales, the Board finds that the best evidence of current value is the sale of 996 Cresthampton Lane. It is similar to the subject in lot and house size as well as age. The subject had a 120 square foot addition in 1987 and 996 Cresthampton Lane had a renovation in 2000 resulting in a change of build date from 1970 to 1973. The Board considers both the addition and the renovation to be similar in impact as both were somewhat minor changes. The two properties are dissimilar in that the subject does not have a pool or a partially finished basement however MPAC provided the values of these two features and the Board has incorporated these values in its analysis.

26 The Board does not find the remaining properties directly comparable to the subject. As mentioned above, none are located on a dead-end street. In addition, both 1082 Caldwell Avenue and 1150 Wildfield Crescent have outdoor pools, the values of which were not submitted into evidence and 1405 Tecumseh's sale occurred too far from the valuation date of January 1, 2008 to be relevant. Furthermore, all have partially finished basements, and there is no evidence as to the effect on current values of these finished basements.

27 Based on the testimony and evidence of the parties, the Board reduced the sale price of 996 Cresthampton Lane by the value of the outdoor pool (\$32,400) and partially finished basement (\$4,054) as the subject property has neither of these features. Based on this adjusted sale price, the Board finds that the subject property's current value is \$912,524 ($\$870,000 - (32,400 + 4,054)/2,438$ square feet × 2,669 square feet) or \$913,000 rounded.

28 With regard to the abutting place of worship, the Board does not agree with Mr. **Baranowski** that a 4% reduction is warranted. The Board received no evidence that the appellant suffers from the type of nuisance or noise that one might expect from a commercial property or to the effect, if any, the place of worship has on the current value of the subject property.

Equity:

29 Several appeals by the appellant's representative, After-Tax Paralegal Services, were heard during the three days of hearings, March 21 - 23, 2011, and the equity evidence presented by MPAC and the arguments made by the appellants' representative differed for each appeal.

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30 Mr. **Baranowski** proposes that equity should be determined using the average value per square foot of his three suggested comparables and MPAC proposes that equity should be determined using the median ASR's of its two equity studies.

31 In order to reduce an assessment below current value to make it equitable the Board must be satisfied that similar lands in the vicinity are assessed below their current value.

32 Mr. **Baranowski** seeks to have the assessment reduced to the assessed value per square foot of three suggested comparables. The Board finds that without evidence to show that these assessments are below current value they are of no assistance in determining if the assessment of the subject property required a reduction below current value.

33 Only one of the three properties has a sale and that sale occurred 21 months after the valuation date. The Board finds this sale is too distant from the valuation day of January 1, 2008 to be relevant.

34 The Board also rejects MPAC's two equity studies. Both studies use time adjusted sale prices. Extreme ratios were removed before the determination of the median ASR's which does not provide a complete and accurate depiction of equity. Without knowing the values of the removed ratios, the Board finds these studies to be of little value.

35 Furthermore, MPAC's position is that a median ASR that falls within a range of 0.95 to 1.05 indicates that MPAC's assessment methodology is working well. As an extension of this position, the fact that the majority of ASR's (65% in Appendix C and 70% in Appendix D, which does not include the removed extreme ratios) fall outside of this acceptable range indicates to the Board that MPAC's model is not assessing properties correctly in this vicinity.

36 For this reason, the Board looks to the ASR's within the parties suggested comparables. Of the five sales submitted, four sales occurred close to the valuation date, three before and one after January 1, 2008. These properties are quite similar to the subject in that they are all located in the same homogeneous neighbourhood, are all two storey properties, are somewhat similar in lot and house sizes and are similar in age. The average ASR of these four sales is 0.93, which applied to the current value results in a value of \$849,000 ($\$913,000 \times 0.93$).

37 The Board notes that this value is at a higher level than the assessment as returned on the roll for the subject property. No party has given notice of a request for an increase in the assessment of the subject property. Accordingly, for the 2009, 2010 and 2011 taxation years, the assessment of the subject property as at the valuation day, January 1, 2008, is confirmed at \$831,000.

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

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