

2011 CarswellOnt 7850,

2011 CarswellOnt 7850

Czajka v. Mississauga (City)

In the matter of Subsection 357.(7) of the Municipal Act, S.O. 2001, c. 25, as amended

In the matter of an appeal with respect to taxation year 2009 on premises known municipally as 767 Queensway West

Halina Czajka, Assessed Person/Appellant and The City of Mississauga, Respondent

**Ontario Assessment Review Board**

I.A. Birnie Member, T. Skanes Member

Heard: March 1-10, 2011

Judgment: August 11, 2011

Docket: WR 104465

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

P. Kitney, for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Tax collection and enforcement — Remedies available to taxpayer — Method of recovery — Reduction

**Statutes considered:**

*Municipal Act, 2001*, S.O. 2001, c. 25

Generally — referred to

s. 357(1)(d)(i) — considered

s. 357(3) — considered

s. 357(5) — considered

s. 357(6) — considered

s. 357(7) — considered

2011 CarswellOnt 7850,

s. 357(9) — considered

s. 357(10) — considered

s. 357(17) — considered

#### **Decision of the Board:**

1 This appeal came before the Assessment Review Board on March 1, 2011, in the City of Mississauga and on March 10, 2011, by Telephone Conference Call.

#### **Issue**

2 Has the correct reduction in taxes for the 2009 taxation year been granted to the appellant by the municipality, pursuant to subsection 357.(1)(d)(i) of the *Municipal Act*, S.O. 2001, c.25, as amended (*Act*), on account of the subject home being razed by fire?

#### **Decision**

3 The Board finds that the reduction in taxes for the 2009 taxation year granted to the appellant by the municipality, pursuant to subsection 357.(1)(d)(i) of the *Act*, on account of the subject home being razed by fire, should be increased from \$688.71 to \$1,992.38.

#### **Reasons for Decision**

##### *Description*

4 The subject property is located at 767 Queensway West, in the City of Mississauga. It is assessed for the 2009 taxation year at \$435,700, with \$228,000 on the building and \$207,700 on the land. The classification breakdown is \$113,600 in the commercial property class and \$322,100 in the residential property class. The home at the subject property, a single-storey ranch-style home with attached garage, was razed by fire on May 17, 2009.

##### *Legislation*

5 In determining whether the correct reduction in taxes has been granted to the appellant by the municipality, the Board must have regard to the following provisions of the *Act*:

6 Subsection 357.(1)(d)(i) of the *Act* provides:

**357.(1) Cancellation, reduction, refund of taxes.** — Upon application to the treasurer of a local municipality made in accordance with this section, the local municipality may cancel, reduce or refund all or part of taxes levied on land in the year in respect of which the application is made if,

(d) during the year or during the preceding year after the return of the assessment roll, a building on the land,

(i) was razed by fire, demolition or otherwise...

7 Subsection 357.(3) of the *Act* provides:

2011 CarswellOnt 7850,

**357.(3) Timing.** — An application under this section must be filed with the treasurer on or before February 28 of the year following the year in respect of which the application is made.

8 Subsection 357.(5) of the *Act* provides:

**357.(5) Meeting.** — On or before September 30 of the year following the year in respect of which the application is made, council shall,

- (a) hold a meeting at which the applicants may make representations to council;
- (b) notify the applicants of the meeting by mail sent at least 14 days before the meeting; and
- (c) make its decision.

9 Subsection 357.(6) of the *Act* provides:

**357.(6) Notice.** — Within 14 days after making its decision, council shall notify the applicants of the decision and specify the last day for appealing the decision.

10 Subsection 357.(7) of the *Act* provides:

**357.(7) Appeal.** — Within 35 days after council makes its decision, an applicant may appeal the decision of council to the Assessment Review Board by filing a notice of appeal with the registrar of the board.

11 Subsection 357.(9) of the *Act* provides:

**357.(9) Notice.** — The Assessment Review Board shall notify the appellants and the treasurer of the municipality of the hearing by mail sent at least 14 days before the hearing.

12 Subsection 357.(10) of the *Act* provides:

**357.(10) Decision.** — The Assessment Review Board shall hear the appeal and may make any decision that council could have made.

13 Subsection 357.(17) of the *Act* provides:

**357.(17) Decision final.** — A decision of the Assessment Review Board is final.

#### ***Case for the Appellant***

14 The appellant's representative, Robert **Baranowski**, gave evidence that the appellant's home was razed by fire on May 17, 2009, and an application was made to the treasurer of the municipality for a reduction of the 2009 taxes for the period from May 17, 2009 to December 31, 2009, pursuant to subsection 357.(1)(d)(i) of the *Act*.

15 On September 29, 2010, the council of the municipality held a meeting and granted a reduction of \$688.71.

16 The appellant is not satisfied with the amount of the reduction and has appealed the decision of council to the Board, pursuant to subsection 357.(7) of the *Act*.

17 In support of the appeal, Mr. **Baranowski** presented the Appellant's Evidence Package, containing:

2011 CarswellOnt 7850,

1. A copy of the Application pursuant to subsection 357.(1)(d)(i), dated November 27, 2009.
2. A copy of the Final 2009 Tax Bill for the subject property.
3. Notice of Hearing giving notice that the Application would be heard by council on September 29, 2010 and that a reduction of \$688.71 would be recommended.
4. A copy of an email dated September 20, 2010 from the municipality's Supervisor, Tax Rebates and Appeals stating that the assessment adjustment provided by the Municipal Property Assessment Corporation (MPAC) for the 2009 taxation year effective May 17, 2009 was CT-\$57,633 and RT-\$20,300 because of the damage by fire.
5. A copy of a report from the National Fire Adjustment Co., Inc. of Mississauga estimating the replacement cost of the fire damage at \$464,903.21.
6. Photographs of the fire damage.
7. A copy of an Appraisal Award concluding that the appellant's loss in respect of the building was \$399,740.55.
8. A tax reduction calculation sheet, setting out that the tax reduction for 2009 should be \$3,588.97, calculated as follows:

Date of fire:	May 17, 2009
Date of restoration:	May 15, 2010 (house unusable and not occupied until re-stored)
Period of tax relief in 2009:	May 17, 2009 to December 31, 2009
Number of days for tax relief in 2009:	227
Property Tax paid in 2009:	\$6,138.70
Daily rate of property tax:	\$16.81 (\$6,138.70/365days)
Land value residual:	\$35,959.45 (\$435,700 - \$399,740.55)
Property tax on land value in 2009:	\$365.92 (\$35,959.45 × 0.01017593)
Daily rate of property tax on land:	\$1.00 (\$365.92 / 365 days)
Daily rate of property tax on building:	\$15.81 (\$16.81 - \$1.00)
Amount of property reduction in 2009:	\$3,588.97 (227 days × \$15.81/day)

18 In addition, Mr. **Baranowski** submitted that, as there was no commercial activity at the subject property after the fire, the assessment should be changed to all in the residential property class, and the tax reduction calculated on this basis.

19 Cross-examined, Mr. **Baranowski** stated that no one was present to be examined in regard to the documents presented.

#### ***Case for the Municipality***

20 Pam Kitney, the Municipality's representative, stated that the council's reduction of \$688.71 was based on MPAC's policy of placing a notional value of 50 percent of its assessed value on a building unusable because of fire

2011 CarswellOnt 7850,

damage.

21 As the building on the subject property was assessed at \$228,000, it was treated as having a notional value of \$114,000 and the tax reduction was calculated using this notional value.

22 The Board adjourned the hearing to Telephone Conference Call number 382462 on March 10, 2011 to enable the Municipality to calculate the amount of the reduction based on the building having no value after the fire.

23 When the hearing resumed by Telephone Conference Call on March 10, 2011, Pam Kitney referred to a spreadsheet, which had been served on Mr. **Baranowski** and filed with the Board a few days earlier. It shows the calculation of the reduction of \$688.71 granted by council, and the calculation of a further reduction of \$1,303.67 based on the building having no value after the fire.

24 Mr. **Baranowski** did not dispute the calculation of the further reduction, apart from maintaining that the reductions should be based on the property being classified as all in the residential property class.

### ***Analysis and Conclusion***

25 The Board rejects Mr. **Baranowski's** submission that the amount of the reduction should be \$3,588.97 as it is based on his determination that the value of the land after the fire was only \$35,959.45, calculated by subtracting the replacement cost of the building (\$399,740.55) from the property's total assessment (\$435,700).

26 The Board finds this method of calculating the value of the land to be bizarre as the replacement cost of the building has nothing to do with the value of the land, and finds that Mr. **Baranowski's** valuation of \$35,959.45 bears no resemblance to reality as the land is assessed at \$207,700, and its value would not have been reduced by the fire.

27 The Board also rejects Mr. **Baranowski's** submission that the classification of the property should be changed to all residential as the Board has no jurisdiction to change the classification of property when hearing an appeal pursuant to subsection 357.(7) of the *Act*.

28 Nor can the reduction in the taxes be calculated as if the assessment were all residential, as it has to be calculated on the basis of the existing classification breakdown.

29 As the building was assessed at \$228,000 and the cost of replacement as set out in the Appraisal Award is \$399,740.55, the Board finds that the building had no value in 2009 after the fire.

30 As the Municipality's calculation of additional tax reduction, based on the building having no value after the fire, was not challenged by Mr. **Baranowski** (except for repeating his submissions regarding classification, which the Board has rejected). The Board finds that the tax reduction of \$688.71 granted by the Municipality should be increased by \$1,303.67 to \$1,992.38.

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