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Collier 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
2932 Rainbow Crescent

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

Ontario Assessment Review Board

P. Andrews Member

Heard: February 7, 2012

Judgment: March 22, 2012

Docket: WR 114006

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

C. Mattat, 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

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s. 19(1) — referred to

s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

P. Andrews Member:

1 These appeals came before the Assessment Review Board on February 7, 2012 in the City of Mississauga.

Issue

2 The subject property, 2932 Rainbow Crescent, is a two-storey detached house on an effective lot of 12,196 square feet with an effective frontage of 45.72 feet and an effective depth of 136.65 feet. The house was constructed in 1978, renovated in 1989 and has an effective year built of 1981. The Municipal Property Assessment Corporation (MPAC) classifies its quality level as a 6.5. It has three bedrooms and a total building area of 1,951 square feet plus a 1,170 square foot unfinished basement. In addition, it has a 512 square foot detached garage, also constructed in 1978, and an outdoor pool constructed in 1992. The subject property is assessed at \$616,000 for the 2009, 2010, and 2011 taxation years.

3 Ms. Christeen Mattat, appearing on behalf of MPAC, called one witness: Mr. Roger Leroux.

4 Mr. Leroux stated that the subject property had been assessed based on the evidence of the sales of comparable properties in the vicinity. In evidence, Mr. Leroux provided the sales of six suggested comparable properties.

5 Mr. Robert **Baranowski**, appearing on behalf of the assessed person Mr. Stephen Collier, provided the sale of one suggested comparable property, 2914 Rainbow Crescent, which sold in July 2005 for \$495,000 or \$242 per square foot of building total area. Applying the \$242 per square foot value to the building total area of the subject property, 1,951 square feet, Mr. **Baranowski** derives a suggested value for the subject property of \$472,000.

6 The Board must determine both the correct current value for the subject property and whether the assessment of the subject property is equitable with the assessments of similar properties in the vicinity of the subject property.

Decision

7 For the reasons stated below, and as directed by subsection 44.(3)(a) of the *Assessment Act*, R.S.O. 1990, A.31 as amended (*Act*), the Board finds that the current value of the subject property, as at the valuation day January 1, 2008 is \$519,000.

8 Further the Board finds that there is no evidence before it leading to the conclusion that the current value of the subject property, as determined above, requires a further adjustment in accordance with subsection 44.(3)(b) of the *Act*.

9 Accordingly, the assessment of the subject property as at January 1, 2008 for the 2009, 2010 and 2011 taxation years is reduced from \$616,000 to \$519,000.

Reasons for Decision

10 The initial task for the Board is to determine the current value of the subject property as required by subsection 44.(3)(a) of the *Act*:

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

11 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.

12 Section 1 of the *Act* defines current value as:

"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.

13 The best test of current value is an arm's length and market-tested sale of the subject property on the valuation day, January 1, 2008 or close to it. If, as in this case, no such transaction took place, the next best measure of current value is arm's length and market-tested sales of comparable properties in the same vicinity and market on or close to the valuation day. This measure acts as a benchmark and a gauge of the accuracy for the assessed value of the subject and comparable properties.

14 To enable an estimate of value for the subject property to be derived from a comparable property there must be sufficient elements of similarity, in terms of physical factors such as total building area, land area, land frontage, age of construction, physical condition, etc.; and in terms of neighborhood characteristics such as access to amenities, type and nature of housing etc., so as to enable a direct comparison to be made between the comparable property and the subject property.

15 Mr. Leroux provided the Board with sales of six properties which he suggests are the most similar properties to the subject property in the vicinity of the subject property. The properties were constructed between 1977 and 1979; have total building areas of between 1,756 square feet and 2,119 square feet, have effective lot areas of between 5,996 square feet and 7,913 square feet, and are assessed at values of between \$445,000 and \$608,000. The properties sold between January 2007 and September 2008 at values of between \$480,000 and \$572,000.

16 Mr. Leroux suggested that the sale values of his suggested comparable properties require adjustment so that they have the same features and are the same state and condition as the subject property. Mr. Leroux refers to Exhibit 1 (Appendix A) - Current Value Study which shows Adjustments to Subject Percentages, which MPAC has calculated as the "appropriate" percentage change to the actual sale value of a suggested comparable property to make that suggested comparable property directly comparable to the subject property. The percentage adjustments are between positive 1% and positive 38%. The adjustments are calculated by deducting the assessment as returned for the subject property from the assessment as returned for the suggested comparable property and expressing the answer as a percentage of the assessment as returned for the suggested comparable property.

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17 Mr. **Baranowski** challenges how the adjustments in Appendix A can be relied upon given that an error in either the assessment as returned of the subject property or in the assessments as returned of the suggested comparable properties would draw into question the validity of the calculation. Further, Mr. **Baranowski** questions how a table that presumes, as a starting position, that the current value of the subject property is correct, can be useful in answering the question at issue. Namely: What is the correct current value of the subject property?

18 The Board agrees with Mr. **Baranowski** and places no weight on the evidence of Mr. Leroux as to the "Adjustment to Subject Percentages" and the "Adjusted Sale Amounts" (between \$588,000 and \$722,000) shown of the Current Value Study - Exhibit 1 Appendix A.

19 As stated above, the Board prefers the evidence of arm's length and market-tested sales of comparable properties. Mr. Leroux provided the sales of six suggested comparable properties, and Mr. **Baranowski** provided the sale of one suggested comparable property.

20 The Board finds that the sale, in July 2005, of the suggested comparable property, 2914 Rainbow Crescent, provided by Mr. **Baranowski**, is too far removed from the valuation day, January 1, 2008, to be indicative of either the market or values on the valuation day. The Board disregards this sale.

21 The six suggested comparable properties provided by Mr. Leroux are all quite similar to the subject property with a general exception being that the subject property has a site area of 12,196 square feet while the suggested comparable properties range in site area from 5,995 square feet to 7,913 square feet; and the subject property has a site frontage of 45 feet while the suggested comparable properties have site frontages that range from 50 feet to 85 feet.

22 Mr. **Baranowski** argues that, since Mr. Leroux has asserted that his six suggested comparable properties are the most comparable properties to the subject property, the Board should use the average sale value per square foot of building total area of the MPAC-suggested comparable properties, \$262 per square foot, to value the subject property. Accordingly, Mr. **Baranowski** suggests a revised current value for the subject property of \$511,000.

23 While the Board sees merit in the simplicity of Mr. **Baranowski's** approach, at the same time it agrees with the reservation put forward by Mr. Leroux to using such an approach. Mr. Leroux questions whether such a method of comparison properly accounts for the different attributes of each of the suggested properties. Mr. Leroux notes that two of the properties (Properties 1 and 4) abut green space; one of the properties (Property 1) has, as does the subject property, an outdoor pool; one of the properties (Property 2) has a one car rather than a two car garage; one of the properties (Property 5) was recently renovated (in 2005) and has a substantial area of finished basement; and finally, none of the properties has an effective site area close to that of the subject property.

24 The Board notes that two of the suggested comparable properties (Properties 3 and 6, which were selected by Mr. Leroux as those he saw as most similar to the subject property) are very close to the subject property in all attributes except that neither property has a pool, and both properties have smaller lots than the subject property.

25 The Board was provided with no sales evidence that would enable it to determine the impact on value of either a pool or a larger lot size. The Board does note however that the subject property has a smaller lot frontage (45 feet) than either Property 3 (50 feet) or Property 6 (65 feet). Further the Board agrees with Mr. **Baranowski** who challenged the correctness of the site area of the subject property as calculated by MPAC at

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12,196 square feet given that MPAC also state that the effective frontage of the subject property is 45 feet and the effective depth of the subject property is 136 feet; dimensions that would indicate a site are of 6,247 square feet an area quite similar to the site areas of Property 3 (6,125 square feet) and Property 6 (7,731 square feet).

26 Accordingly the Board finds it is reasonable to presume that, on a balance of probabilities, the subject property with an outdoor pool and a larger site area, but with otherwise similar attributes, would not sell for a lesser value than either 2917 Rainbow Crescent (Property 3) or 4063 Farm Cottage Court (Property 6).

27 2917 Rainbow Crescent sold in September 2007 for a time-adjusted sale value of \$499,000, and 4063 Farm Cottage Court sold in June 2007 for a time-adjusted sale value of \$519,000. The Board finds that the best evidence of the current value of the subject property is the sale of 4063 Farm Cottage Road for \$519,000.

28 For the reasons stated above and as directed by subsection 44.(3)(a) of the *Act* the Board finds that the current value of the subject property, as at the valuation day January 1, 2008, is \$519,000.

29 The *Act* was amended for taxation years beginning with to 2009 to require 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.

30 Subsection 44.(3)(b) of the *Act* states that the Board shall:

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.

31 To support the equity of assessment of the subject property, Mr. Leroux provided two studies of the Assessment to Sales Ratios (ASR) of 289 and 153 residential properties in the vicinity of the subject property. The studies have ranges of individual ASRs from 0.77 to 1.22 and from 0.77 to 1.18 and median ASRs of 0.98 and 0.97. Mr. Leroux suggests that a median ASR of 0.98 or 0.97 is indicative that similar properties in the vicinity of the subject property have been equitably assessed at their current values.

32 The Board agrees with Mr. **Baranowski**. Clearly, ranges of ASRs between 0.77 and 1.18 or 1.22 do not indicate that similar properties have been assessed equitably at their current values. Appraisal is not an exact science. Generally accepted appraisal principals accept a degree of latitude being that values are estimated within a tolerance of 5%. Accordingly, a similar leeway is afforded to ratios demonstrated by an ASR being that if such a ratio falls within 5% of 1.00 the assessment can be accepted as being correct. Only 139 of Mr. Leroux's 234 sales and 64 of Mr. Leroux's 153 sales fall within the ASR range of 0.95 to 1.05 and can therefore be characterized as having been assessed at their current values. However, at the same time, while a median ASR for the properties of 0.97 and 0.98 may indicate that up to half the sale properties have been under-assessed and up to half the sale properties have been over-assessed, it does not indicate a systemic underassessment of similar properties in the vicinity of the subject property.

33 Mr. **Baranowski** calculates that the ASR of the six properties suggested by MPAC as most similar to the subject property is 0.96. Accordingly, he suggests that the current value as determined above be reduced by a factor of 0.96 to make it equitable with those properties. The Board does not agree. The Board calculates the ASR as 0.98. For the reasons stated above the Board does not find that an ASR of 0.96 or 0.98 is reflective of inequity in the assessment of the subject property.

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34 Accordingly, the Board finds that there is no evidence before it leading to the conclusion that the current value of the subject property, as determined above, requires a further adjustment in accordance with subsection 44.(3)(b) of the *Act*.

35 The assessment of the subject property as at January 1, 2008, for the 2009, 2010 and 2011 taxation years is reduced from \$616,000 to \$519,000.

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