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Dale 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 and 2010 on premises known municipally as 1305
Whiteoaks Avenue

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

Ontario Assessment Review Board

F. Saponara Member

Heard: September 27, 2010

Judgment: December 10, 2010

Docket: WR 97465

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Counsel: R. **Baranowski**, for Assessed Person / 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 subject 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. 40(26) — referred to

s. 40(26)(b) — referred to

s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

F. Saponara Member:

1 These appeals came before the Assessment Review Board on September 27, 2010 in the City of Mississauga.

Issue

2 The subject property, 1305 Whiteoaks Avenue is a residential property, consisting of a two-storey single detached dwelling, with a two-car attached garage and a total area of 2,987 square feet. The home was built in 1952 and renovated in 1970. The home is situated on a lot measuring 100 by 271.33 feet and has no basement.

3 The property is located in the Lorne Park area of the municipality and as of January 1, 2008, has been assessed at \$1,171,000.

4 The main issue for the Board's determination is whether the assessment as returned on the subject property for the 2009 and 2010 taxation years is the current value as of January 1, 2008, and whether such value is equitable with the assessment of similar lands in the vicinity.

5 Mr. Leroux, appearing as a witness for the Municipal Property Assessment Corporation (MPAC), states that the subject property has been valued using MPAC's mass appraisal modeling system. As evidence that the current value as determined by the system is correct, Mr. Leroux submits three comparable properties, all located in the vicinity of the subject property. All three properties had been sold on the open market at prices ranging from \$788,000 to \$1,100,000 during the period of November 2006 to May 2008. After adjusting for price level changes and differences in characteristics between the proposed comparable properties and the subject property, it is the assessor's position that the subject property is correctly assessed at \$1,171,000.

6 Mr. **Baranowski**, as the appellant's representative, disagrees with the assessor and argues that the subject property's assessment is incorrect. He argues that the assessor's proposed comparable properties are not similar to the subject property and that the various adjustments made to the sale amounts of the proposed comparables are unsubstantiated.

7 It is the appellant's position that the correct value of the subject property is \$1,008,000. According to the appellant, this valuation is based on the sale price of the subject property in January 2010 for \$1,065,000, time adjusted by a factor of 5.29%.

8 The Board must decide whether the subject property has been assessed at an appropriate current value and whether the assessment of the subject property is equitable with the assessments of similar properties in the vicinity of the subject property.

Decision

9 For the reasons stated below, and as directed by subsection 44.(3)(a) of the *Assessment Act*, R.S.O. 1990, c.A.31, as amended, (*the Act*), the Board determines that the current value of the subject property for the 2009 and 2010 taxation years is \$1,065,000. Further, the Board finds that this assessment of the subject property is equitable with that of similar lands in the vicinity and that a reduction of the assessment is not warranted.

10 As the returned assessment is higher than the current value determined by the Board, the assessment of \$1,171,000 for the 2009 and 2010 taxation years is hereby reduced to \$1,065,000.

Reasons for Decision

11 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* ...*the Board shall...determine the current value of the land...* Subsection 19.(1) of the *Act* states that...*The assessment of land shall be based on its current value...* and section 1 of the *Act* current value is defined as...*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...* 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.

12 In the case at hand, there has been a sale of the subject property. The sale took place in January 2010 for \$1,065,000.

13 The Board must weigh the validity of the sale evidence of the subject property, recognizing that it took place two years after the valuation date, against the next best measure of current value evidence, provided by the arm's length and market tested sales of comparable properties in the vicinity, on or close to the valuation day.

14 The assessor has proposed three comparable properties and the appellant has proposed one comparable property. Of the four proposed comparable properties, three properties have been sold on the open market at prices ranging from \$788,000 to \$1,100,000, during the period of November 2006 to May 2008.

15 Based on an examination of the features of the proposed comparable properties, the Board finds that the properties proposed by the parties are not sufficiently similar to provide a valid indication of the subject property's current value, for the following reasons:

1227 Clarkson Road North

16 The size of this property is 55 per cent smaller than the subject property. In addition, it has a basement area of 1,410 square feet, whereas the subject property has no basement. The property is also subject to traffic nuisance whereas the subject property is not.

1597 Birchwood Drive

17 The lot size is 13 per cent larger than the subject property. The home on the property was renovated in the year 2000 whereas the subject property's last renovation took place 30 years earlier. Unlike the subject property, it has a basement, is a corner property and is not a two-storey.

1298 Ravine Drive

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18 The property is a vacant lot, whereas the subject property has a dwelling.

1549 Birchwood Drive

19 The lot size is 23 per cent larger. The home's total area is 56 per cent larger than the subject property and it has a basement. There is no sale evidence for this property.

20 There are significant differences between the subject property and the comparable properties proposed by the parties. In order to bridge the differences between the features of the subject property and those of the proposed comparable properties, significant adjustments in values are required. Therefore, in seeking a valid indicator of the current value for the subject property, is it more appropriate to make adjustments to the sale prices of the proposed comparable properties for which there is no supporting evidence before the Board as to how they should be quantified, or should the Board rely on the sale evidence of the subject property?

21 It is the Board's view that the sale evidence of the property itself is more reliable. The validity of this evidence, other than the date on which it took place, is undisputed by the parties. The sale took place on the open market in an arm's length transaction and as such, the Board finds that this evidence provides the best indicator of the property's current value.

22 Both the assessor and appellant have used time adjustment factors in their submissions. Hence, there is consensus in principle that the appropriate way to deal with the issue of the timing difference between the sale date and the valuation date of January 1, 2008, is to take into account changes in pricing levels in the area where the property is located.

23 The assessor has submitted evidence on the time adjustment factors for the period of December 2006 to May 2008. The assessor's time adjustment factors are based on 121 sales of properties in the vicinity of the subject property that took place during a 19 month period. According to this evidence, on page 6 of Exhibit 1, the rate of change in prices is 0.90% per month, equating to an overall change in market prices of 16.23% for the period. The assessor's evidence also indicates that prices were rising up to the valuation date of January 1, 2008, but started to drop in January 2008 and continued to decrease up to May 2008. The Board is unable to determine what happened to prices beyond May 2008 using the assessor's methodology, as no analysis was done by the assessor beyond this date.

24 The appellant also proposes that to deal with the timing difference between the sale date of the subject property and the valuation date, a timing adjustment should be made. The appellant proposes to adjust the subject property's sale price by 5.29%. This adjustment factor is based on the information provided by MPAC on the property assessment notice, whereby it is stated that "for the 2009 property tax year, the average phased in assessment of residential properties in your municipality..., changed by 5.29% since the 2008 property tax year."

25 The Board finds the appellant's timing adjustment proposal unacceptable for two reasons. First the 5.29% factor does not cover the two-year period of January 1, 2008 to January 1, 2010. Secondly, this change rate does not cover the total increase in property values, but only the 2009 phased-in portion of the increase.

26 Based on the above findings, the Board concludes that a timing adjustment to take into account changes in pricing levels that may have occurred between the valuation date and the actual sale date of the subject property is warranted; however, there is insufficient evidence upon which to base such adjustment. To extrapolate beyond the evidence submitted by the parties would put the Board in a position to make assumptions that are not

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based on facts.

27 Working with the available evidence, the Board relies on the actual sale price of \$1,065,000, realized on the property, as the best indicator of its current value as of January 1, 2008.

28 Having established the current value of the subject property, the final issue is for the Board to determine whether an adjustment should be made to the current value of the subject property in order to make it equitable to the assessment of similar properties in the vicinity.

29 The *Act* was amended for taxation years beginning with 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 In making such a determination, the Board relies on the assessor's analysis of 16 residential properties sales located in the vicinity of the subject property. This evidence indicates that the median assessment to sales ratio (ASR) for the 16 properties is 1.00. The ASR is determined by dividing the assessed value by the sale price of a property. An ASR of above 1.00 would indicate that similar properties in the vicinity are being over-assessed. An ASR of below 1.00 would indicate that properties are being under-assessed.

31 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 land.*

32 The Board finds that since the median ASR of the properties in the vicinity is equal to 1.00, an equity adjustment would not result in a reduction in the assessment of the subject property, and therefore the Board determines that no adjustment to the current value of the subject property is applicable to make it equitable to the assessment of similar properties in the vicinity.

33 The appellant appealed the assessment for the 2009 taxation year. The general reassessment for the 2009 taxation year applies to the 2010 taxation year. The Board had not disposed of the 2009 appeal before March 31, 2010. Subsection 40.(26) provides that the appellant is deemed to have made the same appeal for the 2010 taxation year. For that reason, this decision applies to both the 2009 and 2010 taxation years.

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.

34 Based on the above findings, the Board reduces the assessment of the subject property from \$1,171,000 to \$1,065,000 for the 2009 and 2010 taxations years.

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