

2011 CarswellOnt 3456, 69 O.M.B.R. 63

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Gierczak 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 2010 and 2011 on premises known municipally as 147 Springview Drive (Plan M1076 Lot 76)

Henryk Gierczak Maria Witko, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Brampton, Respondents

**Ontario Assessment Review Board**

F. Saponara Member, V. Stabile Member

Heard: March 8, 2011

Judgment: May 18, 2011

Docket: WR 104717

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

R. Leroux, P. Alves, for Municipal Property Assessment Corporation

A. Karreman, for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Valuation — Uniformity, equity and equality — Miscellaneous

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Market value — Selling price of comparative property

**Cases considered:**

*Bayview Summit Development Ltd. v. Ontario (Assessment Review Board)* (1998), 1998 CarswellOnt 511, (sub nom. *Bayview Summit Development Ltd. v. Regional Assessment Commissioner, Region No. 14*) 107 O.A.C. 302, (sub nom. *Bayview Summit Development Ltd. v. Ontario (Regional Assessment Commissioner, Region No. 14)*) 36 O.M.B.R. 161 (Ont. Div. Ct.) — considered

**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

s. 44(3) — referred to

s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

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

1 These appeals came before the Assessment Review Board on March 8, 2011 in the City of Brampton.

#### **Issue**

2 The subject property, 147 Springview Drive, is a single storey residential home, built in 1996. The property consists of 847 square feet of living area on the main floor and a finished basement area of 697 square feet. It also has an attached garage having an area of 480 square feet. The home is situated on a lot with an effective area of 3,670.71 square feet.

3 The property has been assessed at \$300,000. Prior to the hearing the Municipal Property Assessment Corporation (MPAC) revised the lot size from 5,005 square feet to 3,60.71 square feet and as a result, MPAC recommends that the property be assessed at \$290,000.

4 Mr. Alves, appearing on behalf of the Municipal Property Assessment Corporation (MPAC), called on Mr. Roger Leroux to give evidence on how the recommended current value assessment of \$290,000 was determined. Mr. Leroux is a Valuation Review Specialist for residential properties. He has been employed with MPAC since 1986 after having graduated from St. Lawrence College with a diploma in Assessment Administration. Mr. Leroux was not called as an expert witness.

5 Mr. Leroux states that the subject property has been valued using the MPAC sales comparison method. In evidence, he submitted the sale of six comparable properties all located in the vicinity of the subject property. These properties had been sold on the open market at prices ranging from \$303,000 to \$340,000 during the period of April 2007 to October 2008. Based on the sales of these properties and a study of the sales of 52 properties in the vicinity of the subject property, it is the assessor's position that the subject property's correct assessment is \$290,000.

6 Mr. Baranowski advocating on behalf of the appellant, disagrees with the assessor's determination and argues that the subject property's assessment is incorrect for the following main reasons:

1. The assessor's proposed adjustment in the value of the subject property of \$10,000 for a 36 per cent reduction in the lot area does not adequately compensate for this material change in the property's features;
2. The best evidence of the subject property's current value is given by the sales of the comparable properties located on the same street as the subject property;

3. The assessor's methodology for determining whether the subject property assessment is equitable with the assessments of similar properties in the vicinity is flawed.

7 Mr. **Baranowski** submits that based on the sale and assessment evidence of the three comparable properties proposed by the appellant, the subject property's correct assessment is \$239,000.

8 The Board must determine the current value of the property and whether the assessment of the subject property should be reduced below its current value to make it 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 2010 and 2011 taxation years is \$295,603. Further, as directed by subsection 44.(3)(b) of *the Act*, the Board finds that an assessment of the subject property at its current value is not equitable with that of similar lands in the vicinity and that a reduction in the assessment below current value is required. Therefore, the Board reduced the assessment of the subject property for the 2010 and 2011 taxation years from \$300,000 to \$287,000.

### 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* ...*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.

11 In the case at hand, there was no sale of the subject property on or close to the valuation date of January 1, 2008. In the absence of a valid sale of the subject property, the next best measure of current value is the 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.

12 During cross-examination and in his evidence in-chief, Mr. **Baranowski** advanced a forceful argument that MPAC's proposed reduction of \$10,000, following the reduction in lot size from 5,005 square feet to 3,670 square feet, was simply not reasonable. His rationale is that the reduction in lot size represents a 36% adjustment. He had elicited evidence from Mr. Leroux which is confirmed by his own documents (Property Assessment Details (PAD)) that the lot size component in the multiple regression model has a value \$48,135. The PAD is a document created by MPAC. Based on the lot value of \$48,135, the total assessment for the subject property had been set at \$300,000. MPAC proposed a reduction of \$10,000 strictly on account of the correction in lot size by 36%. Mr. **Baranowski** argues that, as a start, the assessment should be reduced by \$17,329, being 36% of the stated lot value. With such an adjustment, he submits that the assessment of the subject property should therefore be reduced to \$282,671.

13 The Board finds that the evidence presented by both the assessor and appellant on this issue is inadequate to make a proper determination on the adjustment to current value required due to a change in the lot size data. The Board finds that neither the assessor nor appellant has provided an adequate rationale for determining what adjustment, if any, should be made to the value of the subject property due to the change in lot size. In order for the Board to accept this adjust-

ment, the parties would have to demonstrate that the starting value of \$48,135 attributed to the lot component of the property, is its actual current value. Without establishing the accuracy of the base, there is no point in arguing on how much it should be changed by. The Board therefore, finds the arguments on the lot size adjustment, to be irrelevant

14 The relevant evidence submitted by the parties for establishing the current value of the subject property is the sales of comparable properties. As stated above, 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.

15 The parties debated as to the usefulness of the volume of data presented by MPAC in its studies to support its position on current value. Mr. **Baranowski** suggested that 'less is more', particularly when considering similar properties in the vicinity. The Board accepts that MPAC's system of mass appraisal using the Multiple Regression Analysis requires comparisons and data from as many properties as possible. It is generally accepted that the optimum comparables ought not to be less than six (6) properties.

16 There is, however, merit in the argument that when you have more than one comparable similar property on the same street as the subject, there is no need or substantial benefit to expanding the search to the entire homogeneous neighbourhood.

17 The appellant has proposed three comparable properties, while the assessor has proposed six comparable properties, of which one property is proposed by both parties. All of the properties are located in the vicinity of the subject property. Six of the properties submitted by the parties are located on the same street as the subject property. Also, all of the proposed comparable properties have been sold on the open market in arm's length transactions. The Board finds that the sale prices of these eight comparable properties provide the best evidence of the subject property's current value.

18 The Board rejects the appellant's argument that only his proposed three comparable properties should be used by the Board because they are located closer to the subject property. It is the Board's view that all of the proposed properties are sufficiently close to the subject property to give a valid indication of the current value of properties in the area. Provided that the other criteria utilized by the Board, for determining similarity to the subject property are met, the Board is of the view that a bigger sample of properties provides a more accurate indicator of the current value of the subject property.

19 The assessor made a number of adjustments to the recorded sale prices of his proposed comparable properties, as detailed on page 8 of Exhibit 2. The adjustments are made to account for the impact on market value of the different characteristics between the subject property and the proposed comparable properties. For example, the subject property's total area is 847 square feet and if the comparable property's area is 854 square feet, there is a difference of seven square feet, for which an adjustment in value is made in order to bridge this difference.

20 Conceptually, the assessor's adjustment methodology represents a valid approach for establishing a common valuation base for the properties identified as comparables to the subject property. The problem with the assessor's evidence is that the Board, and by extension the appellant, is unable to examine how the value adjustment attributed to any of the comparable characteristics used in the analysis is arrived and whether, in fact, the adjustment value represents current value, since the calculation is based on a comparison between the assessed values of the properties which are not necessarily the same as current values. For example, for the property located at 155 Springview Drive, the assessor has determined that a total adjustment of 6% reduction should be made to the sale price of this property for all of the differences between this property and the subject property. There is no supporting evidence to allow the Board to determine the validity of the adjustment. Because of the lack of transparency in this evidence, the Board rejects the assessor's proposed differential adjustments and will rely on the actual sales of the properties and the common base of the total build-

ing area to determine a current value indicator for the subject property.

21 The assessor also proposes that the actual sale prices of the proposed comparable properties be time adjusted to account for changes in price levels between the actual sale date of the comparable properties and the valuation date of January 1, 2008. In this regard, Mr. Leroux testified that he had done a sales analysis of 850 properties, as detailed in Appendix B of Exhibit 2. All the sales took place in the neighbourhood of the subject property, between January 2007 and December 2008. The results of this analysis are found on page 16 of Exhibit 2. According to Mr. Leroux, prices were increasing by an average of 0.22% per month over the period under review. It is the assessor's position that this factor should be factored in when considering the sales of the proposed comparable properties.

22 Hearing no objections from the appellant, nor having any alternate evidence on the issue, the Board is satisfied that the real estate market in the area was rising and that the assessor's approach for determining the rate of change for the period under consideration is sound and acceptable to the Board.

23 Returning to the primary evidence for establishing current value, the Board utilizes such criteria as: location, general character, number of storey, structure, building size, proximity of sale date to valuation date, and overall quality rating of the proposed comparable properties, to determine whether the properties are sufficiently similar to the subject property to provide a valid indicator of its current value.

24 By applying the above comparability criteria, the Board finds that the following proposed comparable properties are not valid comparables because they are over 20% larger than the subject property in building size: 155 Springview Drive, 61 Summerfield Crescent., 161 Springview Drive.

25 The Board finds that the following properties meet the comparability criteria and are sufficiently similar to the subject property to provide a valid indicator of the subject property's current value:

<i>Property</i>	<i>Sale Date</i>	<i>Price Level Adjusted Sale Amount \$</i>	<i>Building Area Square feet</i>	<i>Sale Amount/ Square feet \$</i>	<i>Assessment to Sales Ratio</i>
76 Pebblestone	Apr/07	308,720	854	361	.94
45 Springview	Feb/08	310,961	831	374	.94
93 Springview	May/08	306,902	906	339	.96
116 Springview	Oct/08	290,734	906	321	1.03
4 Carabram	Nov/07	306,016	874	350	.99
<i>Average</i>				<i>\$349</i>	<i>.97</i>

26 The average adjusted sale price per square foot of the comparable properties is \$349. By applying this value indicator to the subject property's total area of 847 square feet, the Board finds that the current value of the subject property is \$295,603.

27 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.

28 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.

29 In making such a determination, Mr. **Baranowski** proposes that the Board utilize the average assessment per square foot of his proposed three comparable properties. The current value assessment per square foot of these three properties is \$282 and by applying it to the total area of 847 square feet for the subject property would result in an assessment of \$238,854.

30 Mr. Alves referred the Board to the Divisional Court decision of *Bayview Summit Development Ltd. v. Ontario (Assessment Review Board)*, [1998] O.J. No. 410, 107 O.A.C. 302 (Ont. Div. Ct.) for the proposition that it is an error in law to accept a comparison based on a per square foot basis to satisfy the test of equity pursuant to subsection 44.(3)(b) of the *Act*. That decision was an appeal from a decision of the Ontario Municipal Board, Justice Southey, speaking for the panel, including Chilcott and Pardu JJ, was addressing the third question raised in that appeal: whether the Board erred in law in accepting the assessment per square foot comparison as satisfying the test of equity under the *Act*.

31 The property at issue was an income producing property. Hence, the Court found that the relative value of two income producing properties depends upon the income producing capacity of the two properties. To compare them on any other basis would be an error in law.

32 The reason is clear. Properties ought to be compared with like properties and similar methodology in order to preserve the real basis of relative values of those properties.

33 *Summit* is clearly distinguishable from this appeal as the property being the subject of this appeal is not an income producing property.

34 In any event the Divisional Court addressed the issue in *Municipal Property Assessment Corp. v Inmet Mining Corp.*, [2002] O.J. No. 3540. On a Motion for leave to appeal, Madam Justice Pierce held that,

...historically, there are three main methods of valuing property: the sale comparison approach, the cost approach, and the income or direct capitalization of income approach....The Act contains no general provision directing an assessor to use any particular appraisal methodology in the determination of current value....In the absence of specific statutory or regulatory direction in explicit terms, the question of the appropriate appraisal methodology or approach to valuation is a question of fact for the Assessment Review Board.

35 Thus, the Board has discretion as to the methodology it adopts so long as it properly instructs itself on the basis of the relative value.

36 Applying those principles, the Board rejects the use of current value assessment per square foot as a valid test of equity between properties presented in this appeal and as proposed by Mr. **Baranowski**.

37 The main problem with using this indicator is that it does not take into account the relationship between a property's current value and its assessed value. Subsection 44.(3) of the *Assessment Act* requires that the Board first determine the current value of a property and then determine whether the current value (not the assessed value) of the subject property is equitable with the assessments of similar properties. To use the average assessment per square foot assumes that the assessments of similar lands in the vicinity are below their current values. In order to reduce an assessment to make it equitable with the assessments of similar lands in the vicinity the Board must be satisfied that similar lands in the vicinity are assessed below their current values.

38 The Board is of the view that the assessment to sales ratio (ASR) is a better tool for testing equity since the best indicator of current value is the sales amount of a property and this figure is related to the assessed value of a property by

means of the ASR. 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.

39 The Board has two options for determining whether an assessment at the current value for the subject property as determined above, is equitable with the assessments of similar properties in the vicinity.

40 Option one is to utilize the average ASR of the five comparable properties utilized to establish the current value for the subject property. As noted above, the average ASR for the five comparable properties is .97. This indicates that properties in the vicinity are being under assessed by an average of 3%.

41 The other option available to the Board is to make its determination based on the analysis submitted by the assessor which includes a larger number of properties. The assessor's analysis of 52 comparable properties sales, as detailed in Appendix D of Exhibit 2, shows that the ASR for these properties have a range of .90 to 1.17, with a median of 1.00.

42 Mr. Leroux submits that no equity adjustment is warranted given that the median ASR of the similar properties is 1.00. Mr. Leroux further submits that the conclusion of his analysis is in accordance with the Standard on Ratio Studies (IAAO) Chicago.

43 As previously indicated, conceptually the Board prefers a larger sample over smaller a sample. However, in this case, the Board is troubled by the assessor's analysis. Firstly, by the wide range of the ASR and then by the inherent conclusion that of the 52 properties analyzed, half of the properties are under-assessed and the other half are over-assessed. Although the assessor submits that his statistical findings meet the "Standard on Ratio Studies IAAO Chicago", no evidence on the details of this standard were presented to enable the Board to assess the merits of the standard. Neither did the assessor provide further statistical analysis of the data such as the mean and standard deviation to give the Board a better understanding of the analysis.

44 In light of the reservations over the assessor's statistical analysis, the Board prefers to rely on the evidence of the average ASR of the five comparable properties utilized to establish the current value of the property to determine whether such value is equitable with similar properties. As noted above, the evidence before the Board shows that an average ASR of .97 indicates that similar properties are being under-assessed by 3%. Therefore, The Board finds that in order for the subject property current value to be equitable with the assessments of similar properties, a 3% reduction is warranted. By making this reduction, the Board concludes that the subject property's correct assessment for the 2010 and 2011 taxation years is \$286,735, which the Board rounds this value to \$287,000.

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