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Haze v. Municipal Property Assessment Corp., Region No. 19

In the Matter of Section 40 of the Assessment Act, R.S.O. 1990, c. A.31, as amended

And In the Matter of appeals with respect to taxation years 2009 and 2010 on premises known municipally as
509 Roymor Crescent

Luke Peter Haze, Cynthia Lousie Haze (Assessed Persons / Appellants) and The Municipal Property Assessment
Corporation, Region No. 19 and the City of Hamilton (Respondents)

Ontario Assessment Review Board

P. Stillman Member

Heard: March 24, 2010

Judgment: September 10, 2010

Docket: WR 87615

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

J. Downey 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 — Basis for reduction — Miscellaneous

Statutes considered:

Assessment Act, R.S.O. 1990, c. A.31

s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

P. Stillman Member:

1 These appeals came before the Assessment Review Board on March 24, 2010 in the City of Hamilton.

Background

2 The subject property includes a single family, two-storey detached home, built in 1983 containing a building area of 275 square feet, an attached garage and an in-ground pool. The current value assessment returned was \$387,000 reflecting a value as of January 1, 2008.

3 The Board is required by the *Assessment Act* to do two things:

1. Subsection 44.(3)(a) requires the Board to *determine the current value of the land*.

2. Subsection 44.(3)(b) requires the Board to *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*.

4 Mr. Downey, testifying on behalf of the Municipal Property Assessment Corporation (MPAC), produced a Level Study showing a ratio of assessments to sales of a collection of properties, but during cross-examination agreed that the Level Study was not relevant to the issues before the Board.

5 Although he also stated there were no sales of two-storey homes during the relevant time period within the same homogeneous neighbourhood as the subject, he tendered a Property Report showing three sales of similar properties within the overall vicinity of the subject as follows:

(a) The first comparable was located at 574 Tuscarora Drive, which sold in July of 2008 for a price of \$359,000 and had an assessment returned in the amount of \$342,000.

(b) The second comparable was located at 582 Tomahawk Crescent, which sold in November of 2007 for a price of \$355,000 and had an assessment returned in the amount of \$364,000.

(c) The third comparable was located at 709 Hiawatha Boulevard, which sold in July of 2008 for a price of \$388,888 and had an assessment returned in the amount of \$379,000.

6 Mr. Downey's Property Report contained certain time adjustment calculations for the sales, but he testified that he did not know what factors were used for those time adjustments, nor whether those adjustments were correct.

7 He noted that the assessment to sale ratios (ASR) for those three properties were 0.95, 1.03 and 0.97, respectively, for an average assessment to sale ratio of 0.98. The sales for the three subject properties reflected an assessment per square foot of \$214.91, \$194.70 and \$174.38, respectively, with an average of \$194.68 per square foot. The assessment per square foot for the subject property as returned was \$186.50. Mr. Downey had personally inspected the subject property in November 2009.

8 MPAC also presented a Property Report showing assessments of properties located on the same side of the street, and built by the same builder as the subject, and all being two-storey homes. The assessments per square foot for those three properties being \$204.83, \$187.72 and \$189.72 for an average assessment per square

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foot of \$194.05, compared to the assessment per square foot ratio for the subject property of \$186.50.

9 During cross-examination, Mr. Downey was asked why the quality of construction classification used in calculating the assessment of the subject property was 6.5 and not 6.0. He had no documentation to answer that question but noted that all of his comparables were calculated based on a 6.5 level construction. He was asked what current value assessment might be revealed by using a quality of construction category 6.0 for the subject rather than a 6.5, but Mr. Downey was unable to say. He did not know whether the adjustment would or would not be more than \$50,000. He acknowledged that the subject property backed onto the busy 403 Highway, but testified that the subject had been given a \$23,817 adjustment to reflect that circumstance. He admitted he was not familiar with certain GRAD policies, did not know what formula he had used or what the breakdown was of the adjustments on his property report but simply noted it was a "function of subtracting and adding". He noted that the ASRs are indicators of whether the particular property is under-assessed or over-assessed and it was for the purpose those statistics were tendered.

10 Mr. **Baranowski**, appearing on behalf of the appellant, testified on behalf of the appellants without objection. Mr. **Baranowski** referred to the assessments of three properties namely at 42 Sable Drive, 28 Sable Drive and 12 Sable Drive, respectively, which also abut the 403 Highway. He noted those three properties are assessed at \$391,000, \$342,000 and \$381,000, respectively, reflecting an assessment per square foot of \$151.00, \$147.00 and \$156.00, averaging \$151.00 per square foot. Mr. **Baranowski** also produced a letter he received as the appellants' representative from MPAC dated June 1, 2009, and written by Ian G. Zhiha, being the Customer Service Manager. Mr. Zhiha stated in that letter "based on the analysis completed by James Downey, we believe our estimate of your property's value of \$0.00 is reflective of the local market as of January 1, 2008". While that value is obviously a typing error, it was tendered by Mr. **Baranowski** in an attempt to demonstrate a poor approach being taken by MPAC with regard to the assessment placed upon his client's property. Mr. **Baranowski** also pointed out that the subject property contained a construction error causing the floor in the master bedroom to slope unlike any comparables, but did not tender any evidence as to the effect of that circumstance upon value. He produced evidence of four listings on properties located at 38 Sable Drive, 68 Thoroughbred Boulevard, 34 Surrey Drive and 623 Tomahawk Crescent listed at values of \$289,444, \$329,000, \$359,900 and \$309,900, respectively, with all such listing prices being less than the current value assessment returned for the subject property.

11 During cross-examination, Mr. **Baranowski** acknowledged that 42 Sable Drive did not sell until September of 2009. He did not know whether there were any other sales on Sable Drive. He acknowledged that the lots showing his comparables all had a smaller frontage than the subject. He also indicated that upon receiving a letter from MPAC advocating an assessment of \$0.00, he did not think it was an error. It is surprising that a tax consultant would not immediately realize that the letter contained a typographical error but Mr. **Baranowski** testified that such was the case. As previously stated, he ultimately acknowledged that the correspondence was erroneous.

12 With regard to the listings provided, he had made no effort to provide the ultimate sale data for any of those properties.

13 Luke Haze, one of the owners of the subject property, also testified. He stated that the occupants of the subject property experience a lot of noise, dust and fumes. He found that trucks actually shake the house and that signs and light standards are visible from the property. He verified the construction difficulties causing an un-level floor and noted that his premises did not contain any air conditioning although it was assessed as having

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the same. During cross-examination, he acknowledged an absence of any repair cost data and any evidence as to how the difficulties he described impacted on value.

14 Mr. Haze, during his evidence, did start questioning the frontage and size of his lot as described by MPAC's property report. By way of reply, Mr. Downey acknowledged an error in the subject property profile tendered at the hearing. That profile had shown a frontage of 60 feet by a depth of 120 feet which would lead to an effective site area of 7,200 square feet. Mr. Downey corrected the site area to be 9,000 square feet because the lot was actually 150 feet deep. He could not explain the site area shown on the profile of 8,712 square feet which did not have any relationship whatsoever to any of the data otherwise provided. However, he testified that the difference between 7,200 square feet and 9,000 square feet of effective site area would not affect the value in any event. He acknowledged that although the property profile contained a component for air conditioning, the subject property, in fact, did not contain air conditioning and should receive a \$3,000 reduction on that basis.

Decision

15 The assessment shall be reduced as recommended from \$387,000 to \$384,000 (to reflect the air conditioning adjustment) for the taxation years 2009 and 2010.

Reasons for Decision

16 No doubt it is difficult for a taxpayer to have confidence that his property has been assessed at its current value when the assessor erroneously describes the square footage, cannot explain the site area as calculated, included air conditioning that does not exist, cannot explain the difference in the quality construction component in the assessment, cannot provide a breakdown for the adjustments shown on the MPAC property assessment report, cannot provide information as to what factors were used for the time adjustments shown, and given that MPAC had forwarded correspondence advocating a \$0.00 current value. Nevertheless, in determining the current value, the Board prefers the evidence of MPAC as opposed to the evidence provided on behalf of the appellant for the following reasons:

1. MPAC has relied upon actual sales of properties within the vicinity in arriving at the current value.
2. While the appellant did unsuccessfully seek details covering specific calculations reflected in MPAC's presentation, there is no evidence that any attempt had been made prior to the Hearing by way of a written request or motion to obtain that data or to afford MPAC an opportunity to have those details available at the Hearing. Accordingly, little weight can be placed upon Mr. Downey's inability to provide those precise details.
3. The average assessment per square foot of the properties referred to by MPAC was \$194.68 compared to \$186.50 per square foot for the subject.
4. The average assessment per square foot for three homes on the same side of the street, built by the same builder as the subject and all two-storey homes was \$194.05 compared to the \$186.50 for the subject.
5. The appellant made no effort to refer to sales of the properties within the vicinity for which only listings were provided when the sales data could have been easily obtained.
6. The appellant has refused to acknowledge economies of scale by relying upon properties that are not

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constructed with two-storeys and which are much smaller in size than the subject.

7. The appellant failed to acknowledge the obvious by believing in the first instance that a \$0.00 assessment was being advocated by MPAC.

17 Accordingly, the Board finds the current value of the property to be \$384,000 for the 2009 and 2010 taxation years as recommended by MPAC. The reduction in the current value is made to reflect the adjustment for the air conditioning.

18 The Board finds that there is no evidence before it that an assessment at the current value of the property requires a reduction to make it equitable with the assessments of similar lands in the vicinity.

19 The Board orders that the assessment of the property be reduced from \$387,000 to \$384,000 for the 2009 and 2010 taxation years.

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