

Assessment Review Board
Commission de révision de
l'évaluation foncière



ISSUE DATE: October 29, 2014

FILE NO.: WR 125855

Assessed Person(s): Vijay Jain and Anand Jain
Appellant(s): Anand Jain
Respondent(s): The Municipal Property Assessment Corporation (MPAC), Region 15
Respondent(s): City of Mississauga
Property Location(s): 2408 Jarvis Street
Municipality(ies): City of Mississauga
Roll Number(s): 2105-060-132-02211-0000
Appeal Number(s): 2936037
Taxation Year(s): 2012
Hearing Event No.: 563363
Legislative Authority: Section 40 of the *Assessment Act*, R.S.O. 1990, c. A.31, as amended

APPEARANCES:

<u>Parties</u>	<u>Counsel/Representative*</u>
Anand Jain	R. Baranowsky*
MPAC	R. Leroux
City of Mississauga	No one appeared

HEARING EVENT INFORMATION:

Hearing: Held in Mississauga, Ontario, on June 3, 2014

DECISION OF THE BOARD DELIVERED BY IVAN OLIVEIRA

INTRODUCTION

[1] The subject property is a detached two-storey, single family residence built in 1982. The total building area is 5,343 square feet and the basement area is 2,671 square feet of which 2,124 square feet are finished. The effective site area is 16,117.20 square feet or an effective frontage and depth of 54.72 x 148.61 feet. There is an attached car garage. The condition of the property is average and the quality class of construction is 7.0. The subject property is located in south Mississauga on a cul-de-sac on Jarvis Street and is influenced by the Credit River. MPAC's valuation model applies a 3% premium for abutting green space and a 6% premium for waterfront-river/other watercourse. The subject property is assessed at \$1,286,000 as of January 1, 2008 for the 2012 taxation year.

ISSUE

[2] Roger Leroux, appearing on behalf of MPAC takes the position that the subject property's assessment which was determined using the direct sales comparison approach to value falls below the subject property's current value. Mr. Leroux submits that the midpoint of the sales of the comparable properties indicated that the subject property should be valued at \$1,359,921. Mr. Leroux further submits that if the Board finds that an equity adjustment is warranted than such adjustment should be applied to the suggested current value of \$1,359,921. MPAC did not issue a notice seeking a higher assessment.

[3] Robert Baranowski, the representative for the appellant, takes an opposing view. He takes issue with the effective site area because of restrictions imposed by the Credit Valley Conservation Authority ("CVCA"), the green space (+3%), the river/other watercourse (+6%) premiums plus a multiple adjustment of +3% as found in the property assessment details ("PAD"). Mr. Baranowski further submits that not only the

assessment of the subject property requires correction but also that an equity adjustment is warranted.

[4] The issue is whether the subject property is assessed at current value and is equitable with the assessments of similar lands in the vicinity.

DECISION

[5] The Board finds the current value of subject property to be \$1,208,000 for the 2012 taxation year.

[6] The Board finds that to make the assessment of the subject property equitable with that of similar lands in the vicinity it is necessary to reduce the assessment below its current value from \$1,208,000 to \$1,123,000.

[7] The Board reduces the subject property's assessment from \$1,286,000 to \$1,123,000 for the 2012 taxation year.

REASON FOR DECISION

Relevant Legislation

[8] For the 2009 and subsequent taxation years, in determining the value at which land shall be assessed, the Board must have regard to the following provisions of the *Assessment Act* ("Act"):

[9] 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.

"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.

[10] Subsection 19.2(1)2 of the Act states:

19.2(1) Valuation days. – Subject to subsection (5)¹, the day as of which land is valued for a taxation year is determined as follows:

2. For the period consisting of the four taxation years from 2009 to 2012, land is valued as of January 1, 2008.

[11] Subsection 44.(3) states:

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; and
- (b) 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.

[12] Subsection 40.(17) states:

40.(17) Burden of proof. – For 2009 and subsequent taxation years, where value is a ground of appeal, the burden of proof as to the correctness of the current value of the land rests with the assessment corporation.

[13] Subsection 40.(19) states:

40.(19) Board to make determination. – After hearing the evidence and the submissions of the parties, the Board shall determine the matter.

¹ Subsection 5 permits the Minister to prescribe a different valuation day. A different day has not been prescribed.

[14] Subsection 40.(26)(b) states:

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.

Background

[15] This matter came before the Board on January 22, 2014 (Hearing No. 552102). At the commencement of the hearing Mr. Baranowsky submitted that there are a number of issues surrounding the subject property's lot which MPAC had not addressed either because they were not aware of the issues or because they refused to recognize the restrictions imposed on the lot by the CVCA. After a short recess and in view of the fact that MPAC seemed to be "unaware" or "unwilling" to discuss the issues, the Board adjourned these appeals and requested that MPAC investigate the following: a) CVCA restrictions imposed on the subject property; b) to determine the square footage of usable land; and c) calculate the distance from the top of the bank to the river and to determine if that portion of the lot is usable.

Determination of Current Value

[16] Section 44.(3)(a) of the Act requires the Board to determine the current value of the property.

MPAC's Evidence and Arguments

[17] Christian Stoeken, a property valuation analyst with MPAC, appeared as MPAC's witness.

[18] Mr. Stoeken testified that the best way to determine the subject property's 2008 current value is to review the price of sold properties that are in the same market as the subject. MPAC arrives at its estimate of the current value using computer assisted mass appraisal techniques that analyses the sale of all residential properties in the market area in which the subject property is located. He adds that most of these properties will not be identical to the subject property and, therefore, their selling prices will have to be adjusted accordingly.

[19] In addition to the physical differences, Mr. Stoeken's evidence is that sales have to be adjusted for differences in market conditions between the sale date and the valuation day. He testified that sales were reviewed for the period of January 2007 and December 2008 and time adjustment factors were applied to all of the sales to ensure that the sales reflect market conditions as of January 1, 2008. Time adjustment factors were determined by comparing sales prices and 2008 current value assessments for 240 sales of residential properties in the area over the sales period.

[20] To establish the correct value of the subject property, Mr. Stoeken presents two sales of properties (Appendix A of Exhibit 1) which are in the same proximity of the subject property. These sales references are single family detached dwellings which are also influenced by being in the proximity of the Credit River.

[21] Sale A – 2412 Old Carriage Road (inferior) is located to the east of the subject property along the river, near the Mississauga Golf and Country Club. This property has an effective frontage lot area smaller than the subject property by approximately 25%.

The structure is smaller by 2,462 square feet but is classified slightly higher than the subject at 7.5 (vs 7.0). The vast majority of key references provide the observation that this is an inferior property. This property sold in May 2007 for \$835,000 and the time adjusted sale price is \$860,988.

[22] Sale B – 2409 Jarvis Street (superior) is located directly next door to the subject property, it also in the cul-de-sac and shares the same river influences as the subject property. This property has a lot area significantly larger than the subject property by 25,264.8 square feet and the structure is classified slightly higher than the subject property at 7.5. The structure is slightly newer, however substantially smaller than the subject property. This property sold for \$1,900,000 in June 2008 and the time adjusted sale price is \$1,858,854.

[23] Mr. Stoeken submits that given the aforementioned sales evidence, the mid-point of the time adjusted sales is \$1,359,921 for a property influenced by the Credit River, within these boundary references occurring mid-January 2008. It is MPAC's position that the current value of the subject property falls within the range defined by the sales analysis and that the current value of \$1,286,000 for the subject property is reasonable and is therefore "correct" in context of s. 40(17) of the Act.

[24] Mr. Stoeken informed the Board that as a result of the issues previously raised (Hearing No. 552102 – January 22, 2014) with respect to the subject property's lot, the subject property was visited on February 19, 2014. The following evidence, in part, is the as a result of such visit:

- the lot area is calculated at 1,754 square meters (18,879.90 square feet) by Geowarehouse;
- the subject property's site area according to MPAC's records (2006) was 18,730.80 square feet – later amended to 16,117.20 square feet;

- the subject property is irregular shaped, narrow to the front, broad at the rear (pie shaped) and is adjacent to the Credit River;
- the CVCA was consulted in February 2014, it was determined that the whole of the subject property (and all other properties surrounding the subject) is in fact entirely within a CVCA regulated area and is traversed by the valley slope and includes a portion of the floodplain associated with this watercourse;
- the CVCA agent also delineated an approximate “top of the bank” reference... there are no numerical references as to the total area of this lot, nor any suggested apportionment of lands surrounding the top of bank reference;
- the subject property contains a portion of an area designated Peel Core Greenlands... and it also falls within an Environmentally Significant Area (“ESA”) and contain a portion of an Area of Natural and Scientific Interest (“ANSI”);
- from the rear fence, the subject property’s topography changes dramatically, in the form of a steep slope to the shoreline.

[25] MPAC’s takes the position that if some of the above facts affect the subject property they also affect the value of the properties used as comparables because they are located and influenced by the proximity to the Credit River.

[26] In closing, Mr. Leroux submits that subject property’s assessment of \$1,286,000 in direct comparison to the mid-point sale price (\$1,359,921) of MPAC’s comparable sales indicate that the subject property’s assessment is, for that matter, under assessed. He further submits that notwithstanding the assessment as returned, the current value of the subject property should be \$1,359,000.

Appellant's Evidence and Arguments

[27] Mr. Baranowski submits that there are a number of issues which MPAC refused to take into account when determining the subject property's current value assessment such as:

- the effective site area should reflect the lot's impairment because of flood zone restrictions imposed by the CVCA;
- the 3% premium for abutting green space and the 6% premium for the river front seems to penalize the subject property in that it should be only one premium applied;
- there is also a "multiple adjustments" applied to the subject property of 3% as per the PAD which MPAC has not been able to explain.

[28] Mr. Baranowski, presents into evidence the following Exhibits: Exhibit 3, a copy of MPAC's Exhibit 2 (unedited); Exhibit 4, a copy of the plan of subdivision; Exhibits 5,6 and 7 are CVCA maps highlighting the Slope Hazard Component, the Peel Greenlands and the EAS for the subject property.

[29] Mr. Baranowski submits that the CVCA maps are a clear indication that the subject property is affected in several aspects and this has not been taken into account by MPAC. Mr. Baranowski also submits that Exhibit 3 shows the same "facts" as provided by MPAC in Exhibit 2, with the exception that there are comments on this document that MPAC may have not intended to disclose. Mr. Baranowski reiterates the fact that MPAC states that "the subject property (and other surrounding properties) on the river are in fact entirely within a CVCA regulated area".

[30] Mr. Baranowski calls the Board's attention to some of MPAC's comments on the "facts" contained in Exhibit 2 which he submits leads one to believe that MPAC's intention of covering up or hiding pertinent information is quite clear: Some of those comments are: ... "not asked by the board take it out for now"; ... "no other information to suggest a different lot size. (get rid of the "lack of evidence bit"); ... "this part is also argumentative. Just take it out."

[31] Mr. Baranowski presents into evidence Exhibit 9, PAD for the subject property and MPAC's two suggested comparable properties. Mr. Baranowski calculates the value per square foot for the land value and submits that the subject property should receive an adjustment for the subject property's lot impairments. He further argues that the subject property does not abut green space, but rather another house as shown on the street map acquired from the City of Mississauga (part of Exhibit 10). Mr. Baranowski also proposes, in view that MPAC cannot explain what the "Multiple Adjustments" are, that the 3% premium be deducted from the subject property's assessment. His calculations are as follows:

2012 returned assessment	-	\$1,286,000
Minus 3% (green space) and		
Minus 3% (multiple adjustments)	<u> </u>	<u>77,160</u>
		\$1,208,840
Reduction for the land value	<u> </u>	<u>150,000</u>
2012 suggested current value		\$1,058,840

Case Law

[32] In his summation, Mr. Leroux made submissions for the Board's consideration and cited case law. The Board found the case below to be the most relevant one cited by MPAC. .

1. *Feldman v. Municipal Property Assessment Corp., Region No. 09 [2014] O. A.R.B. No. 228*, (Board File No. 124126 a decision by J. Wyger dated April 9, 2014, which addresses the effective size of the lot. Notwithstanding the rear part of lot being too steep, the Board found that the entire site area of the subject property should be used for comparison purposes.

[33] Mr. Baranowski, in his summations submitted seven cases for the Board's consideration. The Board finds the most relevant to be:

1. *Kaur v. Municipal Property Assessment Corp., Region No. 15 [2012] O. A.R.B. No. 73* (Board File No. 114033), a decision by P. Andrews dated March 19, 2012, which addresses MPAC's position in respect to quality class. Mr. Fanteti, in this case, argues that one of the appellant's properties is comparable to the subject property because it is classified as 6.5 while the subject property's class is 7.0
2. *Oakville (Town) v. Municipal Property Assessment Corp., Region No. 15, [2009] O. A. R. B. D. No. 45* (Board File No. 74415), a decision by B. Cowan, dated April 17, 2009, which also addresses the quality class of construction. Mr. Alves indicates that MPAC has established a quality classification (grade) for each property and Ms. Price submits that properties differing by "½ grade" display a big difference in the market place.

Board's Deliberations*Determination of Current Value – s. 44.(3) (a)*

[34] Section 19.(1) provides that current value is the basis for assessed value.

[35] The best evidence of current value is an arm's length and market tested sale of the subject property on or close to the valuation date of January 1, 2008. If no transaction has taken place, the Board looks to sales of comparable properties in the vicinity to determine if the sales evidence suggests that the current value requires correction.

[36] MPAC presents a current value study with appendix "A" containing two suggested comparable properties which sold May 2007 and June 2008 respectively. These sales have been time adjusted to January 1, 2008. MPAC's position is that the Adjusted Sales Amount for the two properties is \$860,988 and \$1,858,854 and because the subject property assessment falls below this range, it should be valued at \$1,359,921, the midpoint of values.

[37] Mr. Baranowski argues that these properties are not comparable to the subject property because one property is much smaller and the other is extremely larger in site area and both properties have a higher quality class of construction. MPAC submits that $\frac{1}{2}$ class difference "does not really" make a difference in the market place. This, the Board finds, is a somewhat deceiving statement. Board decisions presented by the appellant, clearly show that MPAC has, in some cases, argued that $\frac{1}{2}$ of a grade does have an impact on properties values.

[38] The Board finds that MPAC suggested comparable properties are not "that comparable" and does not accept the notion that a midpoint of values should even be considered. The Board, however, must consider a starting point for the determination of the subject property's current value. Mr. Baranowski, starting with the assessment as returned, proposes the removal of the 3% green space and the "multiple adjustments" of the 3% premiums. The Board agrees. Evidence shows that the subject property does not abut green space and the Board is not satisfied that the "multiple adjustments" premium was explained as found on the PADs of MPAC's suggested comparable properties.

[40] The Board cannot, however, accept Mr. Baranowski's argument that the lot should be reduced in value in accordance with the unusable land (approximately 8,905 square feet) because about 1/3 of the property is on an extremely steep slope. There is evidence of that fact. But there is also the evidence that the rear part of the lot is accessible and a plateau is occupied by outdoor furnishings.

[39] Therefore, based on the above cited reasons, the Board finds the subject property's current value to be \$1,208,000 (rounded).

Is the Assessment of the property Equitable with the Assessment of Similar Lands in the Vicinity?

[40] Section 44.(3)(b) of the Act requires the Board to determine if the assessment of a property at current value is equitable with the assessments of similar lands in the vicinity and to lower the assessment below current value if required to achieve equity.

[41] MPAC presented equity no evidence.

[42] Mr. Baranowski submits that MPAC's two comparable sales contained in appendix "A" show an average ASR of 0.935 and that this ASR should be applied to the suggested current value of \$1,058,840 and proposes that the equity adjustment should result in an assessment for the subject property of \$990,000.

[43] Since the Board found the current value for the subject property to be \$1,208,000, the Board applies the ASR of 0.93 to this value and arrives at a revised amount of \$1,123,000.

CONCLUSION

[44] Accordingly, the Board reduces the assessment of \$1,286,000 to \$1,123,000 for the 2012 taxation year.

"Ivan Oliveira"

IVAN OLIVEIRA
MEMBER

Assessment Review Board

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