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Kiss 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 8316 Tenth Line

Irene Kiss, Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the
Town of Halton Hills, Respondents

Ontario Assessment Review Board

R. Corcelli Member

Heard: April 8, 2010

Judgment: July 16, 2010

Docket: WR 86965

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Counsel: P. Alves, G. Baxaert, P. Leronx, for Municipal Property Assessment Corporation

No one 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

Statutes considered:

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

Generally — referred to

s. 19(1) — referred to

s. 19(5.2) [en. 1997, c. 5, s. 12] — referred to

s. 19(5.2.1) [en. 2005, c. 28, Sched. A, s. 2] — referred to

s. 40(26)(b) — referred to

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s. 44(3) — referred to

s. 44(3)(b) — referred to

Regulations considered:

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

General, O. Reg. 282/98

Generally — referred to

s. 32(1) — referred to

s. 32.1 [en. O. Reg. 656/05] — referred to

R. Corcelli Member:

1 These appeals came before the Assessment Review Board on April 8, 2010 in the Town of Halton Hills.

Issue

2 The issue is: What is the correct and equitable assessed value of the subject property for the 2009 and 2010 taxation years?

3 Mr. **Baranowski**, on behalf of his client Ms. Kiss, argues that by using the Municipal Property Assessment Corporation's (MPAC) example for establishing value of combined residential/managed forest property, he calculates a value of the property of \$1,048,000.

4 Mr. Alves, on behalf of MPAC, argues that the values of the three comparable properties presented by his witness, all of which had recent sales, support the assessed value of the subject property as determined by MPAC. He further states that the methodology as prescribed in Ontario legislation was used to establish the value of the managed forest portion of the property.

Decision

5 The Board reduces the assessment of the subject property for the 2009 and 2010 taxation years from \$1,189,800 to \$1,188,894, apportioned as follows:

Residential	\$1,067,000
Managed Forest	\$ 121,894
Total	\$1,188,894

Reasons for Decision

Property Description

6 The subject property is located at 8316 Tenth Line, in the Town of Halton Hills and is a single family, detached

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dwelling, built in 1990 and located on a 50.21 acre property. Of this acreage 25.02 acres is classified as residential and 25.19 acres is classified as managed forest. The two-storey dwelling comprises 4,872 square feet of area on two floors; has four bedrooms, two and a half bathrooms, a fireplace and an unfinished basement area of 2,761 square feet. The finished areas enjoy a quality code of 7.5. The property has an attached garage as well as an outdoor and indoor swimming pool. The property is assessed at \$1,189,800 as of the valuation day, January 1, 2008, apportioned as:

RT - \$1,067,600

MF - \$ 122,200

Total \$1,189,800

MPAC's Evidence and Arguments

7 Mr. Alves, appearing as the advocate for MPAC's position, calls Mr. Glen Beyaert of MPAC as an expert witness in the area of valuation of managed forest properties for MPAC and presents his *curriculum vitae* as an exhibit.

8 Mr. **Baranowski** objects to the Board qualifying Mr. Beyaert as an expert witness as he was not made aware of either the fact that Mr. Beyaert would appear as an expert witness in the production of documentary evidence nor was the *curriculum vitae* with his qualifications contained in the production, contrary to the Board's Rules of Practice and Procedure, Rule 48. He also argues that the witness may not be able to testify in an unbiased manner due to his lengthy employment with MPAC and, further, that he was not prepared with case law to support his position on Mr. Beyaert's expert testimony.

9 The Board hears argument from both parties on the issue of whether or not Mr. Beyaert should be qualified as an expert witness with regard to valuation of managed forest properties and whether his *curriculum vitae* is admissible as evidence with regard to his qualifications.

10 Although Mr. Bayaert may be qualified to give evidence on the subject of valuation of managed forest properties as an employee of MPAC, the Board must consider the fact that neither he, nor Mr. **Baranowski** for that matter, is able to testify in an unbiased manner. The Board can only apply weight to the evidence after hearing all of the evidence from both parties. Consequently, Mr. Beyaert's evidence will be allowed; his evidence will speak for itself and the Board will assign due weight accordingly.

11 The Board notes that this is not a highly complex issue and the Board does not require expert witness testimony upon which to rely in forming its decision. The fact that the Board hears evidence from experienced witnesses does not mean that it will give more weight to that evidence than any other evidence presented from either party.

12 The Board rules that Mr. Bayaert's contested *curriculum vitae* is not admissible at this hearing as it was not disclosed to the appellant 21 days prior to the hearing contrary to Rule 48 in the Board's Rules of Practice and Procedure.

13 On reconvening of the full hearing, Mr. Alves calls Mr. Beyaert to explain the process of valuation of managed forest properties and he refers to Ontario legislation and regulations in Exhibit #1, Tab 2, page 4.

14 The witness leads the Board through the process laid out in Ontario Regulations 656/05 and 282/98 in establishing the assessment of lands in the Managed Forest property class. He states that the subject property qualified for Managed Forest class as it is more than four acres in size and has a current managed forest plan as approved by a forester accredited by either the Ontario Forestry Association or the Ontario Woodlot Association.

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15 With reference to Exhibit #1, Tab 1, page 3 (MPAC Managed Forest Property Profile), the witness shows how, through use of the Ontario regulated methodology, a value for the managed forest portion was calculated to be \$121,894 rounded to \$122,200.

16 During Mr. **Baranowski's** cross-examination of the witness, he notes the unusual up-rounding of the calculated value by \$306 but dismisses it as a trivial error and accepts the MPAC calculation of managed forest value assessment.

17 Mr. Alves then calls Mr. Roger Leroux, MPAC Valuation Analyst for the subject property, to give testimony as to his valuation of the subject property.

18 Mr. Alves presents Mr. Leroux's *curriculum vitae* in order to qualify him as an expert witness to which Mr. **Baranowski** objects on the same basis as he had for Mr. Beyaert.

19 The Board rules in the same way that it had for Mr. Beyaert in the earlier arguments by refusing to qualify Mr. Leroux as an expert witness, but to admit his testimony and give appropriate weight to it, and to not admit his *curriculum vitae* as evidence as it had not been presented in the productions 21 days before the hearing, contrary to ARB Rule 48.

20 Mr. Leroux supports the correctness of the assessment as returned with a statement that the current value was determined by means of MPAC's calculations arising from the managed forest valuation stated by the MPAC witness, Mr. Beyaert (Exhibit #1, Tab 3). Further, to support the correctness of the valuation, he provides evidence of three similar managed forest properties, (Exhibit #1, Tab 4, pages 40 — 42), each being in the vicinity of the subject property.

21 Using an MPAC Property Assessment Detail report, Mr. Leroux's calculations evolve as follows:

2008 Current Value Start Point

Total Structure Assessment	- \$745,022 [from the Property Ass. Detail Report]
Total Land Assessment	- \$646,530 " " " "
Total Current Value Start Point	- \$1,391,552 [rounded from \$1,391,000]

Managed Forest Calculation

Total 2008 Land Value	- \$646,530
Total Site Area in Acres	- 50.21
Managed Forest Acres	- 25.19
Managed Forest Regulated Rate/Acre	- \$4,839
Managed Forest 2008 CV	- \$324,360 [computer model/sales]
Managed Forest Regulated Rate Value	- \$121,894 [122,200 rounded]
Manged Forest Floor Value [31% of MF 2008 CV]	- \$100,551

Residential Value [non MF portion]

Residential Land Acres	- 25.02
Residential Land 2008 Current Value	- \$322,170 [computer model/sales]
Residential Structure(s) Value	- \$745,022

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Total Residential Value - **\$1,067,192** [rounded to \$1,067,600]

Therefore,

2008 Current Value Assessment

Realty Tax Class RU	- \$1,067,600
Realty Class MF	- \$122,200
Total 2008 Current Value Assessment	- \$1,189,800

22 Mr. Leroux refers to three comparable sales in the vicinity to support the correctness of his calculations:

MPAC Comparable Property # 1 at 13884 Tenth Line is a managed forest property with no dwelling structure but has a detached garage and an uninsulated barn. The property contains 69.98 acres of which 11.20 acres is residential class and 58.78 acres is managed forest class. The property sold for \$1,080,000 in May 2008, five months after the valuation day.

MPAC Comparable Property # 2 at 7078 17th Side Road is a managed forest property with a dwelling structure and has both an attached and detached garage and an outdoor pool. The two-storey dwelling comprises 2,854 square feet, has four bedrooms, two and one half bathrooms and a fireplace. The property contains 30.17 acres of which 1.00 acre is residential class and 29.17 acres is managed forest class. The property sold for \$640,000 in August 2007, four months before the valuation day.

MPAC Comparable Property # 3 at 7147 17th Side Road is a managed forest property with no dwelling structure and no secondary structures. The property contains 18.39 acres of which 1.00 acre is residential class and 17.39 acres is managed forest class. The property sold for \$340,000 in May 2007, seven months before the valuation day.

23 The Board is disappointed that no assessment evidence regarding the residential portion was provided for the above comparables by MPAC in order that an assessment to sale ratio (ASR), could be calculated by the Board as a test of whether similar lands in the vicinity are being assessed lower or higher than the subject property.

24 In a series of calculations [Exhibit 1, Tab 5, page 44], Mr. Leroux excised the structure value from comparable property #1 and #2 and deduced an average residual land value for all three properties of \$14,758 per acre. When this average was applied to the acreage of the subject property, i.e., 50.21 acres \times \$14,758 = \$740,999 which when added to the combined residential structure value of \$745,021 [\$745,022 in MPAC's calculations above], the analysis produced a total estimated subject property value of \$1,486,020.

25 Mr. Leroux argues that when this value is tested against the actual 2008 returned assessment of \$1,189,800 it proves that the assessment was "fairly given".

26 In Mr. **Baranowski's** cross-examination of Mr. Leroux, he asks where the value for Managed Forest 2008 Current Value comes from to which Mr. Leroux replies, "...raw data input to the computer model and an analysis of sales." Similarly, to the question, where the value for Residential Land 2008 Current Value comes from, he again answers, "...from the computer model" and can provide no evidence to substantiate this claim.

27 Mr. **Baranowski** also asks Mr. Leroux to explain the up-rounding of various figures in his calculations, i.e., (1) Managed Forest Regulated Rate Value up-rounded from \$121,894 to \$122,200, (2) Total Residential Value up-rounded

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from \$1,067,192 to \$1,067,600 and (3) Property Assessment Detail Report total rounded value \$1,391,000 up-rounded to \$1,391,552 and he cannot provide an explanation.

28 In summary, Mr. Alves states that, based on both his witness' evidence, the subject property is correctly assessed according to the roll returned at \$1,089,000.

Appellant's Evidence and Arguments

29 Mr. **Baranowski**, appearing on behalf of his client Ms. Kiss, states that MPAC's evidence is replete with errors, unexplained up-rounding and suppositions uncorroborated by evidence which, he maintains, discredits MPAC's 2008 current value.

30 Mr. **Baranowski** presents very little substantive evidence in Exhibit #3; an MPAC Property Assessment Notice for 2008 for the subject property; a printout of MPAC's Assessment Procedures for Managed Forest Properties in Ontario from its website and a copy of Part V.1 of the *Assessment Act (Act)*, Assessment of Managed Forests Property Class and Related Land.

31 Mr. **Baranowski** relies upon a calculation of the subject property's 2008 current value garnered from MPAC's "Assessment Procedures for Managed Forest Properties in Ontario", specifically Example 4. Mr. **Baranowski** argues that, by using an MPAC calculation example into which are applied MPAC figures and values, he calculates a different 2008 current value.

32 Mr. **Baranowski** presents verbally quoted data, extrapolated from the MPAC Property Assessment Detail report [Exhibit #1, Tab 1, page 3], into the Example 4 calculation template and derives a 2008 total current value of \$1,048,867.

RU -	\$ 985,920
MF -	\$ 62,947
Total	\$1,048,867 or \$1,048,000 [rounded]

33 In cross-examination, Mr. Alves challenged Mr. **Baranowski's** methodology by asking how he could use the land and structure values in the Property Detail Report [which had been calculated to satisfy subsection 32.1(1) of the *Act*, {referred to in Exhibit 1, Tab 3, page 39 as the 2008 Current Value Start Point}], and then extrapolate them again to insert into his calculation of 2008 current value, thus "double dipping".

34 Mr. **Baranowski** replied that he could use those figures as they were MPAC calculated values, tendered in evidence at the hearing.

35 In summary, Mr. **Baranowski** states that the correct 2008 current value of the subject property is \$1,048,000.

Analysis and Conclusions

(A) Value Legislation

36

19.(1) Assessment based on current value. — The assessment of land shall be based on its current value.

19.(5.2) Conservation land, managed forests. — The current value of land that is conservation land as defined in

the regulations or land in the **managed forests** property class shall be based only on the current use of the land and not other uses to which the land could be put.

19.(5.2.1) Current value of managed forests. — Despite subsection (5.2) and any other provision of this Act, the Minister may, by regulation, provide that the current value of land in the **managed forests** property class shall be determined in accordance with the regulations.

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.

37 Ontario Regulation 282/98, as amended, provides as follows:

32.1 (1) The current value of land in the **managed forests** property class shall be determined as follows for the 2009 and subsequent taxation years:

1. Determine the value of the land in accordance with subsection 19(5.2) of the *Act*.
2. Determine the value of the land in accordance with subsection (2).
3. If the value determined under paragraph 1 is less than the value determined under paragraph 2, the current value of the land is the value determined under paragraph 1.
4. If the value determined under paragraph 2 is less than 31 per cent of the value determined under paragraph 1, the current value of the land is the amount calculated by multiplying the value determined under paragraph 1 by 0.31.
5. In any other case, the current value of the land is the value determined under paragraph 2.

32.1 (2) For the purposes of paragraph 2 of subsection (1), the value of land is determined as follows:

1. Determine whether the geographic area in which the land is located is listed in Column 2 of Table 1 to Part IX.1 of the Regulation. If it is, take the step described in paragraph 2. If it is not, take the steps describe in paragraphs 4 and 5.
2. If the geographic area is listed in Column 2 of Table 1, determine whether the land band for the land, as assigned by the assessment corporation, is listed in Column 3 of Table 1 for the applicable geographic area. If it is, take the steps described in paragraphs 3 and 5. If it is not, take the steps described in paragraphs 4 and 5.
3. For land located in a geographic area listed in Column 2 of Table 1 and assigned to a land band listed in Column 3 of Table 1, identify the applicable value per acre of the land as set out in Column 4 of Table 1.
4. For any other land, identify the applicable value per acre of the land as set out in Column 2 of Table 2 to Part IX.1 of this Regulation using the land band assigned to the land by the assessment corporation.

5. The value of the land is calculated by multiplying the applicable value per acre of the land by acreage.

32.1 (3) In this section,

"land band" means a geographic area in which similar farm properties sell for similar prices, as determined by the assessment corporation under subsection 19(5) of the *Act*.

38 Firstly, while the Board has no jurisdiction over Managed Forest classification or value, it appears that MPAC has satisfied the requirements of subsection 32.(1) of the Regulation in its calculation of Managed Forest current value for the subject property of \$121,894, although MPAC inexplicably transferred this value to the Managed Forest Property Profile [the genesis of the final assessment figure], as \$122,200, an error for which it had no explanation.

39 The Board calculates the correct 2008 Managed Forest current value to be \$121,894 as calculated according to the regulation but also comments that the up-roundings which Mr. **Baranowski** categorized as errors are merely the results of computer generated estimates.

40 Secondly, the Board must turn itself toward the calculation of the current value of the residential portion of the subject property.

41 On balance, the Board prefers the evidence of MPAC. Mr. **Baranowski** presented an adequate case for his client but, as the figures and data were all verbal, the conclusions which he reached were difficult to follow.

42 By the same token, the MPAC representatives were, at times, unnecessarily adversarial.

43 The Board finds all of the comparable properties tendered by MPAC to be disparate in almost every characteristic save that they all have a managed forest component. Two have no dwelling structure; one has a dwelling that is half the size of the subject; one has no structures at all; one site area is one-third the size of the subject; two have no hydro connection; two were in an adjacent homogeneous neighbourhood.

44 Yet, as is often the case with rural and waterfront properties, these are the only sales of managed forest properties in the vicinity. Despite their inconsistency, the Board is obliged to use these comparables as the only test of comparable value as they fulfil the measure of being arm's length and market tested sales of comparable properties in the 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.

45 The Board accepts the premise of MPAC in Exhibit #1, Tab 5, page 44 in which it extracts the structure values from each of the three comparable sale properties to arrive at residual land values for each, which average \$14,758 per acre, including both residential and managed forest components.

46 While the Board acknowledges that the comparable properties comprise varying sizes of managed forest woodlots; divergent structures and varying residential lot portions, the Board can only surmise that the market will have recognized the value of a managed forest component in a rural/residential property for both environmental enjoyment and taxation benefits.

47 MPAC then assembles the value of the structural components of the subject property, i.e., the dwelling, the garage, the barn, the indoor pool, the outdoor pool enclosure for a combined structure value of \$745,021. When MPAC applies the above mentioned average price per acre of the comparable sold properties to the total acreage of the subject, it results in a posited land value of [$\$14,758 \times 50.21$ acres] = \$740,999. Adding this land value to the previous structure

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value of \$745,021, it results in a total value to test the assessment of \$1,486,020.

48 The Board finds this calculation to be a fair test of the accuracy of the subject assessment, based on the comparable sales, which was returned at \$1,189,000, a value far lower than that calculated for comparison.

49 The Board finds that the current value of the residential portion of the subject property, as of the valuation day January 1, 2008, is \$1,067,600 or \$1,067,000 [rounded].

(B) Equity

50 The *Act* was amended for taxation years beginning with 2009 to require the Board to lower an assessment, if required, to make the assessment equitable with the assessments of similar properties in the vicinity.

51 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.

52 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*.

53 Accordingly, the assessment of the subject property, as at January 1, 2008, for the 2009 and 2010 taxation years is reduced from \$1,189,800 to \$1,188,894 apportioned as:

RT -	\$1,067,000
MF -	\$ 121,894
Total	\$1,188,894

Deemed Appeal for 2010

54 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 has not disposed of the 2009 appeal before March 31, 2010. Subsection 40.(26)(b) 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.

55 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.

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