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Masini 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

And In the Matter of these complaints with respect to taxation years 2006 and 2007 on premises known municipally as 1264 Lake Shore Road West

Michel Dominique Masini (Assessed Person / Complainant) and The Municipal Property Assessment Corporation Region No. 15 and the Town of Oakville (Respondents)

**Ontario Assessment Review Board**

A. Castel Member, and A. LaRegina Member

Heard: October 24, 2007

Judgment: November 9, 2007

Docket: WR 64201

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Counsel: M. Masini, R. **Baranowski** (Agent) for Assessed Person / Complainant

P. Alves for Municipal Property Assessment Corporation

S. Price for Municipality

Subject: Public; Tax — Miscellaneous; Property

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. 1 "current value" — considered

s. 19(1) — considered

s. 19.1 [en. 1997, c. 5, s. 13] — referred to

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s. 19.1(1) [en. 1997, c. 5, s. 13] — considered

s. 19.2(1) [en. 1997, c. 5, s. 13] — considered

s. 19.2(1) ¶ 1 [en. 2004, c. 7, s. 3(1)] — considered

s. 19.2(1) ¶ 2 [en. 2004, c. 7, s. 3(1)] — considered

s. 19.2(1) ¶ 3 [en. 2004, c. 7, s. 3(1)] — considered

s. 40(11) — considered

s. 44(2) — considered

***A. Castel Member, and A. LaRegina Member:***

1 These complaints came before the Assessment Review Board on October 24, 2007 in the Town of Oakville.

**Issue**

2 The issue before the Board for determination is whether the assessment for the subject property for the 2006 and 2007 taxation years is correct.

**Decision**

3 The decision of the Board is to reduce the assessment from \$1,314,000 to \$1,274,000 (rounded) for the 2006 and 2007 taxation years.

**Reasons for Decision**

**Subject Property**

4 The subject property, constructed in 2003, is a 3,430 square foot, single-family dwelling located at 1264 Lakeshore Road West in the Town of Oakville. The waterfront lot is .26 acres. The basement is 1,888 square feet of which 1,130 square feet are finished. The structure is equipped with one fireplace and a two-car attached garage.

5 For the 2006 and 2007 taxation years the assessment, based on the sales approach to valuation, was returned at \$1,314,000. This value includes a reduction of 11% for medium traffic.

**Complainant's Case**

6 Mr. **Baranowski** argued on the basis of the value ascribed to the property, the intensive traffic on Lakeshore Road West as well as the size of the lot. He introduced six properties to serve as comparables with sales that occurred in 2004, 2005 and one in 2006. Based on the average time adjusted sales value per square foot of \$296, he arrived at an assessment value of \$1,015,000 (rounded) for the subject property.

**MPAC's Case**

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7 The assessor, Mr. Alves, submitted a report with four properties as suggested comparables with sales that occurred in the required period. He argued that the average sales value per square foot is \$510.50 whilst the subject assessed value per square foot is lower at \$383.09. He asked that the assessment be confirmed.

### Comments from the Municipal Representative

8 Ms. Price disagreed with the time adjustment used by the agent and pointed out that the increase from 2003 to 2005 is for all types of properties, not similar properties in the vicinity. Ms. Price also questioned the agent on the traffic on Lakeshore Road. Mr. **Baranowski** conceded that he had no studies to reflect traffic patterns but insisted that Lakeshore Road had been widened to accommodate the intense daily traffic.

### Legislation

9 The Board must have regard to section 1 and subsections 19(1), 19.1(1), 19.2(1), 40(11) and 44(2) of the *Assessment Act (Act)* when determining whether or not the assessment under appeal is correct.

10 Section 1 of the *Act* defines current value as follows:

"**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.

11 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.

12 Subsection 19(1) of the *Act* states:

**19.1(1) Assessment, single years and averages.** — Subject to subsections (2) and (3), land shall be assessed for a taxation year at the current value of the land for the taxation year.

13 Subsection 19.2(1) of the *Act* provides:

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

1. For the 2006, 2007 and 2008 taxation years, land is valued as of January 1, 2005.
2. For the period consisting of the four taxation years from 2009 to 2012, land is valued as of January 1, 2008.
3. For each subsequent period consisting of four consecutive taxation years, land is valued as of January 1 of the year preceding the first of those four taxation years.

14 Subsection 40(11) of the *Act* states:

**40(11) Board to make determination** — After hearing the evidence and the submissions of the parties, the Board shall determine the matter and, in complaints involving current value, shall determine the amount of the assessment as necessary to reflect corrections to the current value.

15 Subsection 44(2) of the *Act* states:

**44(2) Reference to similar lands in the vicinity.** — In determining the value at which any land shall be assessed, reference shall be had to the value at which similar lands in the vicinity are assessed.

### **Board's Deliberations**

(1) The *Assessment Act* relies on current value as the basis for assessed 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.

(2) The best evidence the Board can receive of current value is sales data on the subject property or similar properties in the vicinity near the valuation date. For the 2006 and 2007 taxation years, properties are valued as at January 1, 2005.

(3) Subsection 19(1) and 19.1 of the *Act* are paramount to subsection 44(2). Subsection 44(2), while mandatory, does not establish a test of equity. If sales data is not available, subsection 44(2) permits the Board to consider the value at which similar lands in the vicinity are assessed as evidence of current value.

(4) Mr. **Baranowski** raised the issue of the size of the lot and its narrow frontage. The Board had no evidence before it to show that this has a negative effect on value.

(5) The agent also referred to the heavy traffic on Lakeshore Road. The Board noted that an allowance of 11% was provided and the assessor pointed out that traffic patterns are set by policy. "Heavy" is afforded to streets that feed off a major highway. "Medium" traffic, as in this case, is for connecting streets.

(6) The Board examined the properties submitted by Mr. **Baranowski** (Exhibit 2). The Board finds that only one property located at 1520 Bayview Road is waterfront. The other five properties are not waterfront and, therefore, not similar properties as required by legislation.

(7) Of the four suggested comparables submitted by the assessor (Exhibit 6), two are bungalows and, therefore, not suitable. The remaining lakefront dwellings consist of the property also provided by the agent located at 1520 Bayview Road and a property situated at 5 Third Line.

(8) This leaves before the Board two waterfront properties for consideration. Clearly, they are not similar to the subject. They differ considerably in terms of age, lot size, as well as size of dwellings. The only similarity is that they are lakefront. They did, however, sell in 2004. Both have an assessment to sales ratio of 1.03, which is an indication that assessments are in excess of sale amounts. The Board will use this ratio to arrive at a value for the subject property of \$1,274,000 (rounded).

(9) The decision of the Board, therefore, is to reduce the assessment from \$1,314,000 to \$1,274,000 for the 2006 and 2007 taxation years.

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