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McKim 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, 2011 and 2012 on premises known municipally as River's Bend Lane

Alan Meredith McKim Yvonne Lise McKim, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the Town of Oakville, Respondents

Ontario Assessment Review Board

C. Marques Member

Heard: May 2, 2012

Judgment: October 17, 2012

Docket: WR 114590

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

C. Mattat, C. Safranka, for Municipal Property Assessment Corporation

S. Price, for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Similar real property in vicinity

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 — Vacant property

Statutes considered:

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

s. 1(1) "current value" — considered

s. 19(1) — considered

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

s. 40(17) — considered

s. 40(19) — considered

s. 40(26) — considered

s. 44(3) — considered

C. Marques Member:

Issue

1 The subject property is a vacant lot that abuts Bronte Creek, described as M9 Lot 68, located on River's Bend Lane in the Town of Oakville (in the Municipal Property Assessment Corporation's [MPAC's]) A25 homogeneous neighbourhood. The lot has a frontage of 120 feet by a depth of 220 feet, and a site area of 1.35 acres. The effective lot size is only 0.5 acres because of the river bank.

2 The main issue is whether the subject property has been correctly assessed at \$791,000 for the 2010 and 2011 taxation years. Ms. Safranka, on behalf of MPAC, indicated that the property has been valued using the sales comparison approach. She submitted the sales of four comparable properties which sold in the open market, in arm's length transactions. Ms. Safranka argued that the property is correctly assessed at \$791,000 and requested that the Assessment Review Board (Board) confirm the assessment as returned.

3 Mr. **Baranowski**, appearing as representative for the appellant, submitted that the assessment as returned is too high and suggested at the beginning that a current value of \$23,000 would be correct; later he revised this opinion to a value between \$400,000 and \$500,000.

4 The Board must determine the current value of the property and must also determine whether the assessment is equitable, having reference to the assessments of similar lands in the vicinity.

Decision

5 The Board finds that the correct current value of the subject property is \$762,000. The Board also finds that the current value, as determined above is equitable, having reference to the assessments of similar lands in the vicinity, and no further reduction is necessary.

6 The Board reduces the assessment as returned from \$791,000 to \$762,000 for taxation years 2010, 2011 and 2012.

Reasons for Decision

Legislation

7 For the 2010 and 2011 taxation years, in determining the value at which land shall be assessed, the Board must consider the following provisions of the *Assessment Act* (Act):

8 Section 1 of the Act defines "current value" as follows:

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"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.

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.

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

19.2(1) Valuation days. — Subject to subsection (5)^[FN1], 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) of the Act 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) of the Act 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) of the Act states:

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

Current value

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

15 Ms. Safranka, in support of the assessment as returned, presented Exhibit 1 consisting of an MPAC report which included:

- Current value study with the subject property and four comparable sales;
- Time adjustment factors table;
- Sales for price changes over time schedule.

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16 Details of each property on Current Value Study are summarized in Table 1:

Table 1

Address	Assessment (\$)	Sale Date	Sale/time adjusted sale (\$)	Building Size (sq. ft.)	Lot Size/ effective lot size (acres)	Year Built
Subject Property	791,000	No Sale	No Sale	Vacant land	1.35/0.50	n/a
2520 River's Bend	802,000	Aug. 2007	730,000/747,000	Sold as vacant	1.46/.49	n/a
2376 Belyea Street	425,000	Apr. 2007	380,000/397,000	Sold as vacant	0.26/0.28	n/a
253 Jones Street	365,000	Jul. 2007	390,000/403,000	Sold as vacant	0.15/0.15	n/a
2478 Meadow Crescent	386,000	Mar. 2008	385,000/380,000	Sold as vacant	0.23/0.19	n/a

17 Ms. Safranka stated that the four suggested comparables are considered by MPAC to be similar to the subject property on the basis of location and submits that the direct sale comparison approach accurately reflects the value of the property. She gave details on MPAC's analysis of sales in the neighbourhood of the subject between December 2006 and December 2008, and stated that the area experienced an overall increase of 12.71 per cent growth in real estate prices. Time adjustment factors for each month during the study period were provided together with the data for the 161 sales analyzed. She submitted that the best comparable is Sale 1 because it is the sale of an adjacent lot. Ms. Safranka also testified that the sales of the four suggested comparables resulted on an average value of \$6,705.25 per front foot which supports the assessment as returned at \$791,000 as being reflective of current value.

18 Mr. **Baranowski** criticized MPAC's model and methods, and stressed that they do not produce correct current values. He submitted three properties without sales in Exhibit 2. This evidence is of no assistance to the Board in attempting to determine the correct current value as of the legislated valuation day, January 1, 2008.

19 Sales 2, 3 and 4 in MPAC's Current Value Study, (Appendix A, Exhibit 1) are rejected because they have significantly smaller lot sizes with much smaller frontages. Sale 1 is adjacent to the subject property, it is almost identical in lot size to the subject property, and the time adjusted sale of \$747,000 reflects a value of \$1,524,489.70 per effective acre. This value per acre applied to the subject property (effective lot size) results in a value of $(\$1,524,489.70 \times 0.50)$ \$762,000 (rounded).

Equity analysis

20 The Board finds that the assessment as returned is equitable having reference to the value at which similar lands in the vicinity are assessed and no adjustment is necessary to achieve equity.

21 MPAC conducted a study of 161 sales of residential properties in the vicinity of the subject between June 2006 and December 2008. An assessment to sale ratio (ASR) analyses shows ASRs in the range of 0.78 to 1.26, with a median ASR of 0.99. This median ASR is well within the acceptable range as determined by the International Association of Assessing Officers (IAAO) which maintains that a median ASR within the range of 0.95 to 1.05 indicates that assessments in the area are equitable. As the median ASR is close to 1, no adjustment for equity is required.

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22 The assessment is reduced from \$791,000 to \$762,000 for 2010 and 2011 taxation years.

[FN1](#) Subsection 5 permits the Minister to prescribe a different valuation day. A different day has not been prescribed.

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