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Merson 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, 2010, 2011 and 2012 on premises known municipally as 186 Blyth Crescent

Wendy Jean Merson, Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the Town of Oakville, Respondents

Ontario Assessment Review Board

V. Stabile Member

Heard: May 1, 2012

Judgment: August 31, 2012

Docket: WR 114683

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

J. Fantetti, J. Kocijowsky, for Municipal Property Assessment Corporation

S. Price, 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. 1(1) "current value" — considered

s. 10 — considered

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s. 19(1) — considered

s. 40(26) — considered

s. 44(3)(a) — considered

V. Stabile Member:

Issue

1 The subject property, 186 Blyth Crescent is a single family detached, two-storey residential home, built in 1973. The property consists of 3,344 square feet of living area on the main and second floor. The basement is unfinished. It has an attached two-car garage. It also has a pool built in 1981. The home is situated on an irregular lot with an effective area of 16,117.20 square feet. The property was assessed at \$1,052,000 for the 2009, 2010 and 2011 taxation years and at \$1,042,000 for the 2012 taxation year. The Municipal Property Assessment Corporation (MPAC) recommends an assessment of \$1,042,000 for all four taxation years.

2 The MPAC proposes using the direct sales comparison approach and submitted the sale of six properties considered by MPAC to be similar to and in the vicinity of the subject property. Based on the sales of these properties, time adjusted to the legislated valuation day, January 1, 2008, MPAC has established a range of values for the subject property between \$993,000 and \$1,414,000; thus, supporting its position that the subject property is correctly assessed.

3 Relying on a median Assessment to Sales Ratio (ASR) of 0.98 from a study of 72 sales of similar properties, MPAC takes the position that similar properties in the vicinity have been assessed at their current value, thus no equity adjustment is required.

4 In support of MPAC's position, the Municipality proposed two additional properties in the vicinity.

5 Mr. **Baranowski**, representing the appellant, proposes six different comparable properties. The appellant proposes a current value for the subject property ranging from \$792,000 to \$862,000.

6 Mr. **Baranowski** submits that the current value should be further reduced to \$736,000 to achieve equity.

7 Additionally, Mr. **Baranowski** takes issue with the effective lot size of the subject property, stating that the documents produced contain different statistics thus leading to conflicting results. Moreover, he complains that MPAC has failed to produce particulars of properties considered by it and subsequently discarded (outliers) for its equity studies, thus leading to unreliable results.

8 The issues to be determined, therefore, are:

- What is the effective lot size of the subject property?
- What is the correct current value as of the legislated valuation day, January 1, 2008?
- Is the current value equitable when compared with the assessments of similar land in the vicinity?

Decision

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9 The Assessment Review Board (Board) finds that:

1. The effective lot size of the subject property is 15,000 square feet.
2. The current value of the subject property is \$1,014,400.
3. The current value, as determined above is equitable and no further adjustment is necessary to achieve equity.

10 The assessment is reduced from \$1,052,000 to \$1,014,400 for the 2009, 2010 and 2011 taxation years. The assessment is reduced from \$1,042,000 to \$1,014,000 for the 2012 taxation year.

Reasons for Decision

MPAC's evidence

11 Mr. Fantetti, appearing as advocate for MPAC, called Mr. Kocijowsky to testify on how the current value of \$1,052,000 was determined. Mr. Kocijowsky is a Property Valuation Analyst with MPAC.

12 At the outset of his testimony, Mr. Kocijowsky testified that he had consulted with the Municipality in respect of the lot size. As a result of information received from the Municipality, he recommended a reduction in the effective lot size of the subject property of 402.20 square feet to 15,715 square feet. Based on the recommended reduction he recommended a reduction in the current value assessment of \$10,000 to \$1,042,000. This represented a value of approximately \$25.00 per square foot of land.

13 Mr. Kocijowsky testified that the subject property was valued using the direct comparison approach. In Exhibit 1, he submits a current value study of six residential properties, five of which are in the same A95 homogeneous neighbourhood as the subject property, which sold on the open market between April 2007 and July 2008. The sixth property was from homogeneous neighbourhood A85 and also sold in April 2007. Prices are adjusted to account for differences between the sold property and the subject property and prices are also time adjusted to January 1, 2008.

14 Time adjustments are based upon MPAC's analysis of price changes over time based upon 188 sales and are supported in Exhibit 1. Based upon the open market sales, adjusted as above, Mr. Kocijowsky submits a range of values between \$993,000 and \$1,414,000 and concluded that the recommended assessment of \$1,042,000, which falls within this range, reflects current value.

15 With respect to the issue of equity, the assessor presented, also in Exhibit 1, two studies. The first study was of 114 residential properties of the same general nature or character and in the vicinity which sold between January 2007 and December 2008. The study compared the assessed values as returned to time adjusted sale prices and resulted in ASRs ranging from 0.77 to 1.19, with a median ASR of 0.99. The second study was of 72 residential properties, two-storey only, in the vicinity which sold between January 2007 and December 2008. This study resulted in ASRs ranging from 0.77 to 1.16 with a median ASR of 0.98. Relying on these studies, Mr. Kocijowsky stated that equity had been achieved in that similar properties in the vicinity have been assessed at their current value. Thus, no adjustment was required to the current value of the subject property, as recommended by him at \$1,042,000.

16 Included in Exhibit 1, was a narrative report signed by Mr. Kocijowsky, however he made no reference

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to it in his oral testimony.

17 On cross-examination, Mr. Kocijowsky acknowledged that:

- There are five general principles of comparability: location; age; quality of construction; size of lot and size of structure;
- There are four types of renovations normally designated by MPAC, being A, B, C and D. A represents the least extensive renovation and D represents the most extensive, generally referring to a "total gut job";
- Of the six comparable properties proposed by MPAC, three had been extensively renovated with a category of D and a fourth with a category of C;
- All of the values of comparable properties had been adjusted for differences with the subject property. However Mr. Kocijowsky was unable to provide particulars as to how the adjustments had been determined, other than a 2 per cent for a corner lot for 2101 Blyth and 8 per cent for medium traffic pattern for 2100 Blyth;
- The subject property is not in a "cookie cutter subdivision";
- The area has changed over time;
- He had not been apprised of the requests by Mr. **Baranowski** for MPAC to identify the "outliers";
- For purposes of his two studies presented the excluded "outliers" had not been identified;
- Of the 72 properties considered in the second study, only five had an ASR of 1.0. That was only 7 per cent of the total. The rest are either over assessed or under assessed;
- One of the proposed comparable properties, 2100 Blyth with an ASR of 0.743 had not been included in the equity studies;
- Taking the four properties from Blyth Crescent in Study #2 would render an average ASR of 0.91, thereby indicating that those properties, on the same street as the subject are under assessed by approximately 9 per cent. Adding the ASR of 2100 Blyth would render the same result;
- As to the effective lot size of the subject property, the assessor confirmed that he relied upon the property profile forming part of Exhibit 1 which shows an effective frontage of 100.00 feet and an effective depth of 150.00 feet with an effective site area of 16,117.20. He also relied on information received from the Municipality, Exhibit 1(a), being a report from Geowarehouse showing an effective site area for the subject property of 1,459 square meters or 15,704.67 square feet. He acknowledged the existence of a further property profile, Exhibit 7, which shows the frontage being 92.06 feet and a depth of 135.45 feet;
- The Property Assessment Details (PAD) report, Exhibit 6, shows a value for the lot, based on 16,117.20 square feet, at \$542,962.00 or \$33.69 per square foot.

Evidence of the Municipality

18 Ms. Price expressed an intention to introduce evidence that the subject property had been renovated. No

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such evidence had been disclosed and no notice of such intention had been given prior to the hearing or at any time during the course of the appeal, including mediation and further telephone conferences with a Vice Chair of the Board.

19 Mr. **Baranowski** objected to the proposed testimony, arguing that although MPAC and any authorized person would have a right of access to the subject property under section 10 of the *Assessment Act* (Act), that right would not be available during the course of the hearing itself.

20 The Board noted that the disclosure provisions of Rule 48 of the Rules of the Board had not been complied with. After due consideration, the proposed evidence/testimony was not permitted.

21 Ms. Price confirmed that she had provided to the assessor the Geowarehouse report, Exhibit 1(a). She stated however, that Geowarehouse reports are only a tool for measuring a lot area and are not exact.

22 In support of MPAC's position in respect to current value, she submitted the sale of two comparable properties (Exhibit 2) considered by the Municipality to be similar to and in the vicinity of the subject property. These two properties sold in March 2008 and September 2008.

23 The sales had not been time adjusted and no adjustments had been made for differences with the subject property.

24 On cross-examination, Ms. Price acknowledged that:

- From the documents produced, there was confusion as to the effective lot size of the subject property;
- Better details as to the effective lot size could have been ascertained by reviewing the official survey of the subject property. That, however, was not done;
- The structure of one of the comparable properties proposed, 161 Pinehurst Drive, is 12 per cent larger than the subject property whereas the other comparable, 258 Gatestone Avenue is approximately 35 per cent smaller.

Appellant's evidence

25 Mr. **Baranowski** began by stating that he was not prepared to accept MPAC's proposed assessed value, without a reduction in the effective lot size and a corresponding reduction in value using the same ratio proposed by the assessor, at \$25.00 per square foot. He would then focus his argument on the issue of equity only.

26 The available documents (Exhibits 1, 1(a), 2, 6 and 7) were reviewed. The parties agreed that one square meter was equal to 10.764 square feet. That notwithstanding, no agreement was reached, thus it was left to the Board to determine the effective lot size and the corresponding value.

27 Mr. **Baranowski** agreed that for residential homes, the direct sales approach is a good method of determining current value. He proposed six properties, all on Castle Crescent, two streets away from the subject property. Two of the properties sold in August and September 2008. Another sold in February 2010. The rest have no sales history.

28 In the absence of comparable sale data, the appellant proposed to determine current value for the subject

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property by using the value per square foot of the assessed value of comparable properties.

29 Mr. **Baranowski** stated that the three comparable properties presented by him, with a sales history, result in an average of \$237 per square foot, based on their assessed values, thus resulting in a current value of the subject property of \$792,000, rounded, since the subject property has a total building size of 3,344 square feet.

30 Further, he stated that using the assessed values of the three properties with no sales history result in an average of \$258 per square foot, thus resulting in a current value for the subject property of \$862,000, rounded.

31 With respect to the issue of equity, Mr. **Baranowski** urges the Board to find an ASR of 0.91 using four properties presented by MPAC in its equity study of 72 properties as well as one additional property (2100 Blyth) used in its list of comparable properties but deleted for purposes of its equity study.

32 The suggested selected properties are all on the same street as the subject property and have ASRs of 0.90, 0.94, 0.98, 1.0 and 0.743, thus resulting in an average ASR of 0.91. Further, he submits that using the five of the six comparable properties proposed by MPAC in the same A95 homogeneous neighbourhood and rejecting the last property in the A85 homogeneous neighbourhood, results in an average ASR of 0.94.

33 On this basis, Mr. **Baranowski** submits that there ought to be an adjustment to current value of 6 per cent to 9 per cent to achieve equity.

Analysis

34 The initial task for the Board is to determine the current value of the subject property as required by subsection 44.(3)(a) of the Act "*...the Board shall...determine the current value of the land...*" Subsection 19.(1) of the Act states that "*...The assessment of land shall be based on its current value...*" and section 1 of the Act current value is defined as "*...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...*"

35 The parties agree that the sales comparison approach is appropriate to the subject property. 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 day, January 1, 2008.

36 In the absence of a valid sale of the subject property, the next best measure of current value is the arm's length and market tested sales of comparable properties in the same vicinity on or close to the valuation day. This measure acts as a gauge of the accuracy for the assessed value of the subject property as well as the comparable properties.

37 The assessor has proposed six comparable properties. The Municipality has proposed two. The appellant has also proposed six. All of the properties are located in the vicinity. All of the properties proposed by the assessor have been sold on the open market in arm's length transactions.

38 The two properties proposed by the Municipality have not been time adjusted. Further, the sales prices have not been adjusted for differences with the subject property.

39 Only three of the properties proposed by the appellant have been sold on the open market. One of the proposed properties, 155 Castle Crescent, was sold in February 2010. The Board rejects the sale of this property as being too far removed from the valuation day, January 1, 2008. The other sales have not been time adjusted

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and no adjustment indicated for differences with the subject property. Under the circumstances, the Board rejects these sold properties as good comparables.

40 The comparable properties proposed by the assessor are good indicators of the current values of properties in the area and thereby, provide the best evidence of the subject property's current value.

41 The assessor proposes time adjustments to account for changes in price levels between the actual sale date of the comparable properties and the valuation day, January 1, 2008 and supported the time adjustments with a study of area sales resulting in a reasonable time adjustment factor.

42 The Board finds that the time adjustments proposed by MPAC provide a reasonable method of determining current value as of January 1, 2008 and the Board will rely upon these time adjustments.

43 The Board prefers to rely on the actual sales time adjusted, of the comparable properties to derive a value per square foot of building (the common base) and apply that value to the total building area to determine the current value of the subject property.

44 In establishing current value, the Board considers many factors, including location, general character, number of storeys, structure, building size, proximity of sale to valuation day and overall quality rating of the proposed comparable properties to determine whether the properties are sufficiently similar to the subject property to provide a valid indicator of its current value. Generally, these criteria include, but are not limited to, the five principles of comparability agreed to by the parties.

45 The Board has analysed the sales submitted by MPAC and, based upon the time adjusted sale amounts in Exhibit 1, Appendix A, the Board concludes that the market is producing sales of, on average, \$416.87 per square foot. This value, applied to the subject property would produce a current value of \$1,394,000 (rounded). However, three of the comparable properties proposed by MPAC have been extensively renovated and another has been substantially renovated. 180 Blyth has a lot at least 10,000 square feet larger and a structure 600 square feet smaller than the subject property and 2100 Blyth has a structure 1,000 square feet smaller than the subject property. For these reasons the Board, in finding the correct current value will rely upon the assessment as returned by MPAC adjusted for the lot size as found by the Board.

46 The two comparable properties proposed by the Municipality are rejected as the sales have not been time adjusted. Further no adjustments have been made in respect to differences with the subject property.

47 The comparable properties proposed by the appellant are rejected as the two sales in 2008 have not been time adjusted and no adjustments made for differences with the subject property. The sale in 2010 is rejected as being too far removed from the legislated date of January 1, 2008. The rest are rejected as no evidence was presented of sales history for them.

48 The Board rejects the use of current value per square foot as a valid test of equity between properties presented in this appeal and as proposed by Mr. **Baranowski** because his evidence lacks reliable sales evidence for a suitable number of properties in the vicinity.

49 In respect to the effective lot size, the available documents (Exhibits 1, 1(a), 2, 6 and 7) were reviewed. The parties agreed that one square meter is equal to 10.764 square feet.

50 The documents produced lack clarity. The issue could have been clarified prior to the hearing by a com-

prehensive review of the formal survey that Ms. Price suggested was in the possession of the Municipality. In his submissions, on this issue, Mr. **Baranowski** encouraged the Board to invoke the legal principle of *contra preferentem* and thereby interpret the documents in favour of the appellant.

51 The documents provided show the following possible results (in square feet):

- 16,117.20 — based on the profile report relied upon by MPAC in Exhibit 1 and the assessment as returned;
- 15,000 — multiplying the effective frontage by the effective depth shown on the profile report in Exhibit 1;
- 15,000 — multiplying the effective frontage by the effective depth shown on the profile report marked as Exhibit 7;
- 12,469.53 — multiplying the actual frontage by the actual depth shown on the profile report marked as Exhibit 7;
- 15,704.67 — converting the area from meters to square feet as shown on the Geowarehouse report marked as Exhibit 1(a);
- 15,715 — as proposed by the assessor, after consultation with the Municipality.

52 On balance, the Board finds that the effective lot size of the subject property is 15,000 square feet. This results in a reduction of 1,117.20 square feet.

53 The ratio of the value per square foot of land based on the PAD report (Exhibit 6), is \$33.69 per square foot. Absent better evidence, the Board accepts this ratio as a reasonable basis to determine the differential value. The Board therefore finds that the assessed value of \$1,052,000 is to be reduced by \$37,600, rounded.

54 Accepting MPAC's approach to value as returned and deducting therefrom the sum of \$37,600 as noted above, the Board finds that the correct current value for the subject property is \$1,014,400.

55 Having established the current value of the subject property, the final issue for the Board to determine is whether an adjustment should be made to the current value of the subject property in order to make it equitable to the assessment of similar properties in the vicinity.

56 The Act requires the Board to lower an assessment below current value if required to make the assessment equitable with the assessments of similar properties in the vicinity.

57 The Board accepts that an ASR of above 1.00 would indicate that similar properties in the vicinity may be over-assessed. An ASR of below 1.00 would indicate that properties may be under-assessed.

58 Mr. **Baranowski** produced three letters, Exhibits 3, 4 and 5, to support his position that MPAC had failed to produce, among other things, "a list and number of all "outliers" as well as its ASR values" from MPAC's equity studies.

59 The lack of disclosure when specifically requested by an appellant, in writing, is not appropriate. The Board notes that in both equity studies presented by MPAC, nearly 50 per cent of the properties listed are either

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under assessed or over-assessed.

60 The Board notes further that one property, 2100 Blyth, although included for purposes of a comparable sale was considered an outlier and therefore not included.

61 Under the circumstances, the Board rejects the use of either of the two equity studies presented by MPAC.

62 The Board has the average ASR of 0.94 for the five comparable properties presented by MPAC for purposes of current value. These properties are all on the same street as the subject property. MPAC has acknowledged that there have been changes in the area and that these properties are not considered normal subdivision properties. The sixth property is rejected as it is in a different homogeneous neighbourhood.

63 Mr. **Baranowski** has agreed that the assessment as returned, adjusted to the correct lot size, reflects the correct current value of the property, yet asks for a reduction to make it equitable with that of similar lands in the vicinity. The Board cannot agree that a reduction is necessary and finds that the current value is equitable.

64 Because the assessment as returned and the assessments for the five comparable properties are all derived from the same MPAC valuation model the Board finds it reasonable, on a balance of probabilities, to presume that the assessment for the subject property has already received the benefit of an under assessment by the valuation model and accordingly no further equitable adjustment is warranted.

65 This conclusion is further supported by the Board's analysis of current value, based upon value per square foot of building which resulted in a value of \$1,394,000 for the subject.

66 The assessments for the 2009, 2010 and 2011 taxation years are reduced from \$1,052,000 to \$1,014,400. The assessment for the 2012 taxation year is reduced from \$1,042,000 to \$1,014,000.

Deemed appeal for 2012

67 An appeal for the 2011 taxation year is presently before the Board. Subsection 40.(26) provides that the appellant is deemed to have made the same appeal for the subsequent taxation year if the appeal is not finally disposed of before March 31 of the subsequent taxation year. The Board has not disposed of the 2011 appeal before March 31, 2012. For that reason, this decision also applies to the 2012 taxation year.

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