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Municipal Property Assessment Corp., Region No. 15 v. Buijs

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 1483
Spring Road

The Municipal Property Assessment Corporation, Region No. 15, Moving Party and Adrian Buijs, and the City
of Mississauga, Respondents

Ontario Assessment Review Board

I.A. Birnie Member

Heard: October 3, 2011

Judgment: February 15, 2012

Docket: DM 113322A

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Counsel: D.G. Mitchell, for Moving Party

R. **Baranowski**, for Appellant, Adrian Buijs

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Valuation — Powers on review or appeal

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Market value — Selling price of comparative 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

Statutes considered:

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

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s. 44(3) — referred to

s. 44(3)(b) — referred to

I.A. Birnie Member:

1 This motion came before the Assessment Review Board on October 3, 2011 in the City of Mississauga. Written Reasons were requested by the Municipal Property Assessment Corporation.

2 *Amended pursuant to Rule 142 of the Assessment Review Board Rules of Practice and Procedure, February 28, 2012.*

Motion

3 The motion before the Board is a motion by the Municipal Property Assessment Corporation (MPAC), pursuant to Rules 146 and 149(c) of the Board's Rules of Practice and Procedure (Rules), for a review of the decision of the Board, as set out in Written Reasons No.99416 released on March 23, 2011, with respect to appeal numbers 2112999 and 2353223, which were heard in the City of Mississauga on November 12, 2010, and for a re-hearing of these appeals before another Member, on the grounds that the Board made errors of law and fact, but for which it would likely have reached a different decision.

Disposition of Motion

4 Upon reading the Motion Record of the Moving Party, MPAC (no material having been filed by the other parties) and hearing the submissions of counsel for MPAC and of the representative for the appellant (no one appearing for the City of Mississauga, although duly served):

1. The Board cancels the decision of the Board, set out in Written Reasons No. 99416, released on March 23, 2011.

2. The Board orders that appeal numbers 2112999 and 2353223 be reheard before a different Member.

Reasons for Disposition of Motion

The Board's Rules of Practice and Procedure

5 In considering this motion for a re-hearing, the Board must have regard to Rules 146 and 149(c) of the Board's Rules.

6 Rule 146 states:

146. Board's Powers on Review The Board may review all or part of a decision, and may confirm, suspend or cancel the decision. It may order a re-hearing before a different Member.

7 Rule 149(c) states:

149. Reasons for Review The Board will hear a motion to review a decision or grant a re-hearing without a motion only if the reasons provided in the request raise an arguable case that the Board,

(c) made an error of law or fact such that the Board would likely have reached a different decision.

Legislation

8 The Board has also had regard to subsection 44.(3) of the *Assessment Act*, R.S.O. 1990, c.A.31, as amended (*Act*), which 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.

Decision by the Presiding Member

9 As set out in his Written Reasons No. 99416, the Presiding Member:

- (a) Determined the current value of the subject property to be \$1,091,000 for taxation years 2009 and 2010.
- (b) Found that an adjustment to \$1,003,000 was required to make the assessment equitable with that of similar lands in the vicinity.
- (c) Reduced the assessment of the subject property for taxation years 2009 and 2010 from \$1,091,000 to \$1,003,000.

10 As no sales comparables were presented on behalf of the appellant, the Presiding Member based his determination of current value on three comparable properties, submitted by MPAC, which sold in 2007, with sale prices, time-adjusted and adjusted to the subject property, ranging from \$1,181,000 to \$1,242,000.

11 As the subject property is assessed below this range, he found the assessment of \$1,091,000 to be reasonable, and determined \$1,091,000 to be the current value.

12 As regards equity, the Presiding Member rejected MPAC's Equity Studies because of the wide range of the Assessment to Sales Ratios (ASRs) and because of the small number of them within the 0.95 to 1.05 range, and declined to make an adjustment based on the assessment of one property presented on behalf of the appellant on the ground that one property was not sufficient for an equity adjustment.

13 Instead, he made an equity adjustment based on the three properties presented as sale comparables by MPAC. As their average ASR is 0.92, he applied this ratio to the current value of \$1,091,000, reducing it to \$1,003,000.

14 Based on the foregoing, he reduced the assessment of the subject property for taxation years 2009 and 2010 from \$1,091,000 to \$1,003,000.

Submissions on behalf of MPAC

15 MPAC's counsel, Donald G. Mitchell, submitted that the Presiding Member erred in his determination of current value and in his finding in regard to an equity adjustment.

16 In regard to current value, Mr. Mitchell pointed out that the Presiding Member had found that the best comparable was the property at 1667 Ruscombe Close, which sold in 2007, with an adjusted sale price of \$1,242,000, and submitted that based on this sale, he should have determined the current value of the subject property to be \$1,242,000.

17 In regard to equity, he submitted that the Presiding Member erred in making an equity adjustment based on only three sales as this was too small a number to establish a general over-assessment.

18 He submitted that these errors were errors of law or fact such that he would likely have reached a different decision had they not been made.

Submissions on behalf of the Appellant

19 The appellant's representative, Robert **Baranowski**, submitted that there was no error in the determination of current value, nor in the equity adjustment, and the motion should be dismissed.

Findings

20 In regard to current value, the Board finds that the Presiding Member erred in determining current value to be \$1,091,000, when MPAC's three comparables, on which he based his determination, established a range of current value for the subject property from \$1,181,000 to \$1,242,000.

21 If there were no equity test, it would be correct to confirm the assessment as returned, where the evidence indicated that it was too low and MPAC was not seeking an increase. Now that an assessment must be reduced below current value pursuant to subsection 44.(3)(b) of the *Act*, if required to achieve equity with the assessment of similar properties in the vicinity, it is essential that the current value determined by the Board be the actual value indicated by the evidence and not the amount of the assessment as returned if different because equity would not be achieved if the starting off point for the equity adjustment were not the actual current value of the subject property.

22 While subsection 44.(3)(b) directs the Board to adjust "the assessment of the land" to make it equitable with that of similar lands in the vicinity, it cannot mean the assessment as returned, but must mean the assessment based on the current value which the Board has determined, as otherwise the adjustment would ignore the determined current value.

23 In regard to equity, it is generally accepted that the larger the sample size, the more accurate the median ASR.

24 As Member J.M. Wyger states, at page 17 of his Disposition of Motion in *Municipal Property Assessment Corp. Region No. 9 v. Koifman*, [2011] O.A.R.B.D. No. 49(ARB File No. DM 100066), released on January 28, 2011:

Reducing the sample size renders the resulting ASR less statistically correct and of less probative value in

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determining inequity.

25 The Presiding Member based his equity adjustment on the ASRs of the three properties presented by MPAC as sales comparables, and an equity adjustment based on only three ASRs is clearly much less reliable than one based on a larger number of ASRs.

26 Moreover, he used, as the starting point of his equity adjustment, a current value which is clearly too low and accordingly the resulting assessment is clearly too low.

27 The Board finds that the Presiding Member's errors in his determination of current value and in his equity adjustment are errors of fact or law such that he would likely have reached a different decision, if they had not occurred.

28 Accordingly, the Board cancels the decision and orders a rehearing of the appeals before a different Member.

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