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Newbury 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 and 2011 on premises known municipally as 954
Owenwood Drive

Robert Geoffrey Newbury Janet Elizabeth N. Newbury, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

M. Sharma Member

Heard: November 15, 2010

Judgment: May 6, 2011

Docket: WR 99870

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

C. Mattat, L. Reid, 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. 1(1) "current value" — referred to

s. 19(1) — referred to

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

s. 40(17) — referred to

s. 40(19) — referred to

s. 40(26) — referred to

s. 40(26)(b) — referred to

s. 44(3) — referred to

s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

M. Sharma Member:

1 These appeals came before the Assessment Review Board on November 15, 2010 in the City of Mississauga.

Issue

2 The issue is whether the assessment as returned for the subject property for taxation years 2009 and deemed 2010 and 2011 is at current value, and whether it is equitable with the assessments of similar lands in the vicinity?

Decision

3 The Board finds that the current value of the subject property located at 954 Owenwood Drive, as of the valuation day January 1, 2008, is \$673,000.

4 Further, the Board finds that no further adjustment is required since the assessment of the subject property is not inequitably assessed in relation to similar lands in the vicinity, in accordance with subsection 44.(3)(b), of the *Assessment Act (Act)*.

5 Accordingly, the assessment of subject property as of January 1, 2008 is reduced from \$693,000 to \$673,000 for the taxation years 2009, 2010 and 2011.

Reasons for Decision

Description

6 The subject property is a single-family, detached, one-storey building located at 954 Owenwood Drive. It was built in 1954 and is situated on a 14,810.40 square foot lot. The total building area is 1,189 square feet with a finished basement of 925 square feet.

7 The current value (CV) of the subject property as returned is \$693,000.

The Legislation

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8 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.

9 Section 1 of the *Act* defines "current value" as:

"**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.

10 Subsection 19.2(1)2 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) 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) 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) states:

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

14 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.

The Board's Analysis

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15 The assessor presented the Board with a book of evidence which includes a Property Profile of the subject property, a Property Report containing four suggested comparable properties, a map of the area, a "Sales for price Change Over Time" table (Appendix B) and two Equity Analysis Studies 1 and 2 (Appendix C and D) in support of the Municipal Property Assessment Corporation's (MPAC) position that the CV is not inequitable under subsection 44.(3)(b) of the *Act*.

16 The representative for the appellant, Mr. **Baranowski**, provided the Board with a Property Report containing four suggested comparables, maps of the area and a copy of the Property Assessment Notice for the subject property for 2008.

17 Under the *Act*, the Board is required to do two things in determining the amount for which the assessment should be made:

(1) Subsection 44.(3)(a) requires the Board to *determine the current value of the land*.

(2) Subsection 44.(3)(b) of the *Act* requires that the Board *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*.

(1) Current Value

18 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.

19 In determining whether properties are comparable or similar, case law has established that similar may include such things as design, size, age, amenities, construction, etc. When reviewing comparable property evidence, the Board looks to find as many of these criteria as possible.

20 Since there was no sale of the subject property, the Board looks to sales of similar properties in the area. The following is an analysis of MPAC's suggested comparisons.

Table 1 — MPAC's Suggested Comparables

Address of Property	Year Built	Bldg. Size (sq. ft.)	Lot Size (sq. ft.)	Sale Price (\$)
954 Owenwood Drive (Subject Property)	1954	1,189	14,810.40	
866 Parkland Drive	1951	1,356	14,810.40	785,000
1315 Contour Drive	1953	1,095	11,761.20	715,000
1300 Contour Drive	1953	1,263	21,780.00{ * }	835,000
571 Meadow Wood Road	1950	1,325	14,374.80	829,900

Average

Notes: * Different from the subject

Table 2 — Appellant's Suggested Comparables

Address of Property	Year Built	Bldg. Size (sq. ft.)	Lot Size (sq. ft.)	Sale Price (\$)
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954 Owenwood Drive (Subject Property)	1954	1,189	14,810.40	
1286 Contour Drive	1952	1,843	18,933{*}	
974 Owenwood Drive	1960	1,621	14,374.80	
964 Owenwood Drive	1954	1,382	14,810.40	644,000
911 Porcupine Avenue	1967 (effective)	1,517	15,681.60	
Average				

21 The Board accepts two of MPAC's suggested comparable properties located at 866 Parkland Avenue and 1315 Contour Drive since they are located within the same homogeneous neighbourhood as the subject property, they are very similar in age and lot size to the subject, (average building and lot size of 1,225 and 13,286 square feet respectively as compared to the subject property with a building and lot size of 1,189 and 14,810 square feet respectively). Both properties had sales within the valuation period. The Board rejects MPAC's suggested comparable located at 1300 Contour Drive since the lot, being 21,780 square feet, is 47 percent larger than the subject lot. The Board also rejects 571 Meadow Wood Road as a comparable since it is located in a different homogeneous neighbourhood and this property was renovated in 1999 making its effective year built 13 years newer than the subject property.

22 The Board accepts Mr. **Baranowski's** suggested comparable located at 964 Owenwood Drive as comparable to the subject property since it is of similar age, building and lot size to the subject property. The Board rejects the suggested comparables located at 1286 Contour Drive, 974 Owenwood Drive and 911 Porcupine Drive as comparable to the subject property since they differ in building and/or lot size or age from the subject property. Only the property located at 964 Owenwood Drive had a valid sale within the valuation period.

23 The average adjusted sales value per square foot of the three comparable properties with valid sales is \$566, which is lower than the assessed value per square foot of the subject property of \$583. When the average is applied to the subject property it results in a current value of \$672,974. The Board finds that the current value of the subject property is \$673,000 (rounded).

(2) Equity with Similar Lands in the Vicinity

24 As mentioned above, subsection 44.(3)(b) of the *Act* requires that the Board 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.

25 Exhibit #1, page 24, contains a document entitled "Appendix D: Equity Analysis — Study 2". This is an analysis of all arm's length sales of one storey residences in the vicinity, of which there were 24. The analysis is based upon time adjusted sale prices and assessments as returned. MPAC presented the median assessment to time adjusted sales ratio of 0.95 as proof that the assessment of the subject property is in line with that of similar properties in the area claiming that the extreme ratios were removed to prevent them from unduly influencing the calculated level of appraisal. The Board also looked at the assessment (adjusted for variables) to sales ratio (ASR) of the four sales in the A20 homogeneous neighbourhood, i.e. the one in which the subject property is located, and finds the average ASR to be 0.95, the same as the overall average of the 24 sales in the locational neighbourhood. This suggests that MPAC is assessing properties in the area five percent lower than sales. The Board finds that five percent falls within an acceptable range of values and as such, no further reduction is required for equity under subsection 44.(3)(b) of the *Act*.

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26 Both the assessor and the appellant provided the Board with previous Board decisions to support their positions. However, the Board is not bound by previous Board decisions and, in addition, the evidence and facts of each case are not identical and may not necessarily result in the same outcome. The Board did not find these decisions provided any additional evidence or information to alter the outcome of the Board's decision.

Conclusion

27 Deemed Appeals for 2010 and 2011 — The appellant appealed the assessment for the 2009 taxation year. The general reassessment for the 2009 taxation year applies to the 2010 and 2011 taxation years. The Board has not disposed of the 2009 appeal before March 31, 2011. Subsection 40.(26) provides that the appellant is deemed to have made the same appeal for the 2010 and 2011 taxation years. For that reason, this decision applies to the 2009, 2010 and 2011 taxation years.

28 The Board finds that the current value of the subject property, as of the valuation day January 1, 2008, is \$673,000. Further, no evidence was presented to show that the assessment of the subject property is inequitably assessed in relation to similar lands in the vicinity, in accordance with subsection 44.(3)(b), of the *Act*.

29 Accordingly, the assessment of the subject property as of January 1, 2008 is reduced from \$693,000 to \$673,000 for the taxation years 2009, 2010 and 2011.

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

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