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Ooi 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 a complaint with respect to taxation year 2008 on premises known municipally as 8 Waverly Place

Joseph Ooi Julie Ooi, Assessed Persons/Complainant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Brampton, Respondents

Ontario Assessment Review Board

A. LaRegina Member

Heard: November 27, 2008

Judgment: January 23, 2009

Docket: WR 73463

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

J. Cole, for Municipal Property Assessment Corporation

M. Finnegan, 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(1) "current value" — referred to

s. 19(1) — referred to

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

s. 40(19) — referred to

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s. 44(2) — referred to

A. LaRegina Member:

1 This complaint came before the Assessment Review Board on November 27, 2008 in the City of Brampton.

Issue

2 The issue is whether the assessment for the subject property for the 2008 taxation year of \$439,000 is correct.

Decision

3 The assessment is reduced from \$439,000 to \$402,000 for the 2008 taxation year.

Reasons for Decisions

The Subject Property:

4 The subject property, which was originally constructed in 1982, has a total building area of 2,938 square feet. The home is a two-storey, single family home, located at 8 Waverly Place, in the City of Brampton. This residence is made up of 1,558 square feet on the first floor, 1,380 square feet on the second floor and 1,380 square feet in the basement with no finished space. The property is located on a pie shaped lot with .26 acres and the home has a two car attached garage.

5 The 2008 taxation year assessment, based on the sales approach to valuation, was returned at \$439,000.

The Complainants' Case:

6 Mr. **Baranowski** began his evidence by indicating that a Request for Reconsideration was filed with Municipal Property Assessment Corporation (MPAC) on December 31, 2007. MPAC did not respond, or the response was not received by the complainant, and therefore, an appeal was filed for 2008.

7 Mr. **Baranowski** also indicated that the subject property is assessed with a Green Space Premium, which he believes should be removed. Mr. Baranowski presented a topographic view of the property to illustrate that the subject property is not adjacent to a green space.

8 Mr. **Baranowski** also submits that the property has a one percent negative adjustment for light traffic nuisance when in fact, he claims that the nuisance factor should be for medium traffic resulting in a negative adjustment of two percent.

9 Mr. **Baranowski** submitted six comparables all within the same homogeneous neighbourhood as the subject property which are listed below:

<i>Address</i>	<i>Sale Price</i>	<i>Assessed Value</i>	<i>Sale Date</i>	<i>Build Area Square Feet</i>	<i>Sales \$/Sq. Ft.</i>	<i>ASR</i>
14 Waverly Place	\$389,000	\$420,000	Feb/05	2,795	139.1	1.08
16 Chalmers Court	\$420,000	\$469,000	Oct/04	3,293	127.54	1.12
37 Dawnridge Trail	\$430,000	\$478,000	July/04	3,312	129.8	1.11

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22 Clifton Court	\$337,000	\$530,000	Mar/04	3,492	96.5	1.57
62 Monte Vista Trail	\$395,000	\$459,000	Jan/01	3,400	116.2	1.16
20 Regentview Drive	\$416,000	\$454,000	July/05	3,364	123.7	1.09

10 Mr. **Baranowski** acknowledged that MPAC recently advised him that 22 Clifton Court may be a family sale. If that is the case, he agrees that the property should be removed from the list of comparable properties.

11 Mr. **Baranowski** concluded by indicating that the average sales value per square foot of building area for the comparables, excluding 22 Clifton because of it being a family sale, is \$127.30. Applying this value to the square footage of the subject (2,938) would result in an assessed value based on comparable sales of \$374,000.

12 Mr. **Baranowski** submits that the assessed value of 8 Waverly should therefore be reduced from \$439,000 to \$374,000 for the 2008 taxation year.

The Municipal Property Assessment Corporation's (MPAC) Case:

13 The assessor, Mr. Cole, presents six suggested comparable properties all located within the same homogeneous neighbourhood as the subject property, as listed below.

<i>Address</i>	<i>Sale Price</i>	<i>Assessed Value</i>	<i>Sale Date</i>	<i>Building Area Sq. Ft.</i>	<i>Sales \$/Sq. Ft.</i>	<i>Assd\$/Sq. Ft.</i>
26 Oakridge Court	N/A	\$448,000	N/A	2,964	N/A	151.14
8 Oakridge Court	\$550,000	\$432,000	Aug/04	2,862	192.17	150.94
12 Waverly Place		\$450,000		2,901		155.11
6 Waverly Place		\$457,000		2,863		159.62
4 Waverly Place	\$450,000	\$435,000	Dec/05	2,921	154.1	158.92
8 Manor Place		\$437,000		2,959		147.68

14 Mr. Cole concludes that, based on the sales of 8 Oakridge and 4 Waverly, with sales values per square foot of \$192.17 and \$154.05, the assessed value of the subject at \$149.40 per square foot indicates that the subject property is assessed at a reasonable level.

15 However, Mr. Cole does concede that the premium associated with the green space at the rear of the property is questionable and he is willing to recommend a reduction of two percent or \$9,000 from the assessed value of the subject property, reducing the assessment from \$439,000 to \$430,000 for the 2008 taxation year.

16 Mr. Cole also submits a copy of a Transfer obtained from the Land Registry Office indicating that the transfer of 22 Clifton Court, presented by Mr. **Baranowski**, is an addition to title and not an outright transfer or sale to a completely new individual. Mr. Cole submits that 22 Clifton Court is not an arm's length sale and should not be included in the list of comparable properties.

17 Mr. Cole also points out that the only comparable presented by Mr. **Baranowski** which is truly similar to the sub-

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ject is 14 Waverly Place with 2,795 square feet of building area. Mr. Cole claims that all the other comparables presented by Mr. **Baranowski** are at least 300 square feet greater than the area of the subject property and should therefore not be considered as similar properties.

18 In cross-examination by Mr. **Baranowski**, Mr. Cole agreed that 8 Oakridge Court was upgraded with \$243,000 in landscaping, pool and waterfall installations. Mr. Cole is not aware of the timing of the improvements.

19 Also during cross-examination, it was determined that that 8 Oakridge does not have a light traffic adjustment as does the subject, while both properties back onto Conservation Drive.

Legislation:

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

21 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.

22 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.

23 Subsection 19.2(1) of the *Act* states:

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.

24 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.

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

44(2) Reference to similar lands in the vicinity. — For taxation years before 2009, 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.

The Board's Deliberations:

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1. The *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 day. For the 2006, 2007 and 2008 taxation years, properties are valued as at January 1, 2005.

3. Subsection 19(1) of the *Act* is paramount to subsection 44(2). Subsection 44(2), while mandatory, does not dictate 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 in determining current value.

4. The Board has considered an analysis of values per square foot based upon sales but considers the result of its analysis to be unreliable because of the small sample. The Board will accept as similar, for the purpose of its value per square foot analysis, those properties within ten percent of the total building area of the subject property which is 2,938 square feet. Therefore the Board will only accept properties between 2,644 square feet and 3,231 square feet. Only two properties fall within this plus or minus 10% threshold.

Of the comparable properties presented by Mr. **Baranowski**, only one qualifies, that being 14 Waverly. Of the six comparable properties presented by Mr. Cole, only two had sold, both of which meet the Board's size criteria. The property at 8 Oakridge Court sold for \$450,000 in December 2005; however, the Board must reject this property in view of the \$243,000 of landscaping improvements including the installation of a pool and waterfalls. Even though Mr. **Baranowski** objected to the inclusion of 4 Waverly Place because it sold in December 2005, the Board considers this property a good comparable to the subject property. It is on the same street as the subject; it is almost identical in size and sold within 12 months of the January 1, 2005 valuation day.

Two properties do not provide a sufficient sample for a reasonable comparison in order to properly determine the correct current value for the subject property when better evidence exists.

5. There is better evidence, based upon a sample of six sales, found in the Board's assessment to sales ratio (ASR) analysis. Assessment is, by its nature, a system of mass appraisal and does not result in perfectly accurate values for every property. The ASR permits the Board to determine the accuracy of MPAC's valuation methodology by comparing assessed values with known market values. The ASR is determined by dividing the assessment by the sale price. A perfect ASR is 1.00 which almost never occurs. An ASR of less than 1.00 (using a number of sales) may indicate that MPAC's methodology is producing values less than the values expressed in the marketplace. Conversely, an ASR greater than 1.00 (using a number of sales) may indicate that MPAC's methodology is producing values greater than the values expressed in the marketplace. Because it is a test of valuation methodology, the Board may expand the sample to include all properties which sold, except the two properties providing unreliable sales data as illustrated above.

The Board will use the ASR of all comparable properties presented by both MPAC and the Complainant, excluding 22 Clifton Court and 8 Oakridge Court for the purpose of evaluating the assessed value of the subject property. The ASR of each of the comparable properties is as follows;

14 Waverly Place	1.08
16 Chalmers Court	1.12
37 Dawnridge Trail	1.11
62 Monte Vista Trail	1.16
20 Regentview Drive	1.09
4 Waverly Place	.97

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The Average ASR of the above properties is 1.09 and the median is 1.10. Adjusting the assessment of the subject property as returned by MPAC to compensate for the average ASR of 1.09 results in a new assessed value of \$402,000 (rounded).

Based on the evidence presented the Board finds that the correct current value is best determined by adjusting the value of the subject property to compensate for the ASR. The assessed value of 8 Waverly Place is accordingly reduced from \$439,000 to \$402,000 for the 2008 taxation year.

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