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Quinlan v. Municipal Property Assessment Corp., Region No. 25

In the Matter of Section 40 of the Assessment Act, R.S.O. 1990, c. A.31, as amended

In the Matter of an appeal with respect to taxation year 2012 on premises known municipally as 102 Wensley Drive, Unit 32

Richard Shown Quinlan Christine Quinlan, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No. 25 and the Town of Blue Mountains, Respondents

Ontario Assessment Review Board

F. Saponara Member

Heard: February 5, 2013

Judgment: April 26, 2013

Docket: WR 118332

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

T. Pileggi, for Municipal Property Assessment Corporation

D. Doyle, 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 — Residential

Statutes considered:

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

s. 1(1) "current value" — considered

s. 19(1) — considered

s. 40(17) — considered

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s. 44(3)(a) — considered

s. 44(3)(b) — considered

Rules considered:

Assessment Review Board Rules of Practice and Procedure, A.R.B. Rules

R. 48 — considered

F. Saponara Member:

1 This appeal came before the Assessment Review Board ("Board") on February 5, 2013 in the Town of Markdale. An oral decision decreasing the assessment was delivered following a full hearing. The Municipal Property Assessment Corporation ("MPAC") has requested written reasons for the decision.

Issue

2 The subject property, 102 Wensley Drive, Unit 32, is a 1,696 square foot, two-storey single family detached home, located in the Georgian Peaks area of Blue Mountains.

3 The assessment as returned on the roll for the property is \$449,000 for taxation year 2012.

4 Robert **Baranowski**, appearing on behalf of the Assessed Persons, takes the position that the assessment as returned for the subject property reflects the correct current value of the property as of January 1, 2008. He asks the Board to reduce the assessment to make it equitable with that of similar lands in the vicinity.

5 It is MPAC's position that no equity adjustment is required and the assessment of \$449,000 should be confirmed by the Board.

6 The main issue is whether a reduction to the assessment of the subject property is required in order to make it equitable with the assessment of similar lands.

Decision

7 The Board agrees with the Appellant that similar properties in the vicinity are being under-assessed. The Board finds that a reduction in the subject property's current value is required to make it equitable with the assessments of similar lands. Therefore, the assessment of the subject property for the taxation year 2012 is reduced from \$449,000 to \$422,000.

Reasons for Decision

8 At the commencement of the hearing, Tony Pileggi stated that MPAC had not received any disclosures from the Appellant prior to the hearing, as required by Rule 48 of the Board's Rules of Practice and Procedure. Mr. **Baranowski** confirmed that he had not made any disclosures and agreed not to submit any documentary evidence during the course of the hearing, unless he could demonstrate to the satisfaction of the Board, that such evidence had been previously disclosed to MPAC.

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9 The only evidence before the Board is provided by Jeff Bauman, property valuation analyst, employed by MPAC. This evidence is filed as Exhibits 1, 2 and 3.

10 The initial task for the Board is to determine the current value of the subject property as required by s. 44.(3)(a) of the *Assessment Act*, R.S.O. 1990, c.31 as amended ("Act"), which in part states that "...the Board shall...determine the current value of the land."

11 Section 19.(1) of the Act states that "...the assessment of land shall be based on its current value..." and s. 1 of the Act defines current value 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..."

12 Section 40.(17) of the Act stipulates that "...the burden of proof as to the correctness of the current value of the land rests with the assessment corporation."

13 Mr. **Baranowski** states that he accepts that the assessment of \$449,000 reflects the correct current value of the subject property. He further argues that because the parties are in agreement, there is no requirement for the Board to make a determination as to the current value of the land and the Board should accordingly confine its deliberations to the issue of equity.

14 Although the Board questions the need of hearing evidence from MPAC in support of the property current value, given the Appellant's acceptance of the current value, it sees no reason not to allow MPAC to present its current value evidence, if it wishes to do so.

15 Mr. Bauman, testifying on behalf of MPAC, states that he used the Sales Comparison approach to establish the subject property current value. The details of Mr. Bauman's analysis are documented in Exhibit 2. Using the sales of three properties and adjusting for the differences in characteristics and timing of the sales in relation to the valuation date of January 1, 2008, it is Mr. Bauman's conclusion, as per page 7 of Exhibit 2, that the subject property current value is \$449,000.

16 Accordingly, with no objections or evidence to the contrary from the Appellant, the Board finds that the current value of the subject property is \$449,000.

17 Having established the current value of the subject property, the main issue raised by the Appellant, is for the Board to determine whether a reduction should be made to lower the assessment below current value in order to make it equitable to the assessments of similar lands in the vicinity.

18 Section 44.(3)(b) of the Act states that "...the Board shall...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 land."

19 Again the only evidence available to the Board is the evidence provided by Mr. Bauman. This evidence is documented in Exhibit 3. Mr. Bauman has examined the sale and assessment of 35 residential condominium properties within a distance of 4.8 kilometers of the subject property. The properties were sold between January 2005 and December 2008 in arm's length transactions. For each property, Mr. Bauman compared the assessed values as of January 1, 2008 to their time adjusted sale prices, to determine an Assessment to Sale Ratio ("ASR"). An ASR of above 1.00 would indicate that similar properties in the vicinity are being over-assessed. An ASR of below 1.00 would indicate that properties are being under-assessed.

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20 Mr. **Baranowski** agrees with the assessor's use of the ASR as an acceptable approach for testing equity, however he questions the inclusion of the properties that sold in 2005 and 2006. According to Mr. **Baranowski** these transactions took place too far from the valuation date and if they are excluded from the analysis, the median ASR is 0.93. Mr. Bauman testified that due to the low volumes of transactions, he had to expand the time period. Mr. Bauman's submits that it is his practice to use a sample of at least 35 transactions. Not having received any evidence from Mr. **Baranowski** on an acceptable sample size, the Board accepts Mr. Bauman's rationale for the inclusion of the 2005 and 2006 transactions in his analysis.

21 According to Mr. Bauman's testimony, the median ASR of the sales in the study should fall between 0.95-1.05. The actual median ASR for the 35 properties in the vicinity of the subject property is 0.94, which is outside Mr. Bauman's range. Other than to indicate that 0.94 is close enough to the ideal range, MPAC has failed to demonstrate to the Board's satisfaction that by its own measurement matrix, a reduction is not warranted. The Board also notes from MPAC's analysis that of the 35 similar properties examined, only two properties had an ASR above 1.00.

22 The Board finds that on a balance of probabilities, there is sufficient evidence to conclude that similar properties are being under-assessed by at least six per cent. Therefore in accordance with s. 44.(3)(b) of the Act, the current value of the subject property needs to be reduced by six per cent in order to make it comparable to the assessments of similar properties in the vicinity.

23 Accordingly, the Board finds that the current value assessment for the taxation year 2012 for the subject property is \$422,060, which is being rounded to \$422,000.

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