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Rebane 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 and 2010 on premises known municipally as 1253
Woodland Avenue

Thomas Mart Rebane, Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region
No. 15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

J. Laflamme Member

Heard: January 18, 2010

Judgment: April 20, 2010

Docket: WR 84617

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

J. Cole, P. Alves, for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Similar real property in vicinity

Statutes considered:

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

Generally — referred to

s. 1(1) "current value" — referred to

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

s. 40(17) — referred to

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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

J. Laflamme J.:

1 These appeals came before the Assessment Review Board on January 18, 2010 in the City of Mississauga.

Issue

2 Mr. R. **Baranowski**, a paralegal representative with "After-Tax Paralegal Services", represented the assessed person. Mr. **Baranowski** claims the assessment was too high because:

1. the Municipal Property Assessment Corporation (MPAC) had the wrong lot area.
2. MPAC had not carried forward an adjustment given previously for the 2005 base year because the property was susceptible to flooding.
3. MPAC had the wrong Quality Classification on the house.
4. Mr. **Baranowski** does not consider a 36% increase in market value from one base year to another acceptable.

Decision

3 The Board is required by the *Assessment Act (Act)* to arrive at two conclusions:

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

4 The Board finds that the current value of the subject property for the 2009 taxation year is \$1,809,000. No party has requested a higher assessment than the returned assessment. Accordingly, the Board finds that no correction is required to the returned assessment as a result of its finding of current value.

2. Subsection 44.(3)(b) directs the Board to 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.

5 The Board finds that the value of \$1,444,000 recommended by MPAC is equitable and that no further adjustment to the assessment is warranted.

6 The Board reduces the assessment from \$1,448,000 to \$1,444,000 as recommended by the MPAC for the

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2009 and 2010 taxation years.

Reasons for Decision

The Subject Property:

7 The subject property, situated at 1253 Woodland Avenue, is a single-family dwelling on a lot having an effective frontage of 100 feet by an effective depth of 200 feet. The effective site area is 17,424 square feet. The two-storey residence was built in 1990, is 4,864 square feet in size, and has a quality construction classification of 7.5 with forced air heat. It has five bedrooms, a finished basement, outdoor pool and an attached garage.

Position of MPAC:

8 Mr. Cole, the assessor, advised at the beginning of the hearing, that because of a recalculation, MPAC was recommending that the current value of this property be reduced from \$1,448,000 as returned to \$1,444,000.

9 Mr. **Baranowski**, representing the assessed owner, declined to accept the new lower value.

10 Mr. Cole submitted Exhibit #3, which contained data on three properties considered by MPAC to be similar to the subject property to substantiate the subject's recommended current value of \$1,444,000.

11 Mr. Cole testified that his comparable #2, 1510 Glenburn Road, was the most comparable property.

12 Mr. Cole also detailed for the Board how MPAC calculated the lot area using effective lot frontage and effective depth.

13 Mr. Cole also submitted a "2008 Base Year Residential Level Study" which indicated that for this homogeneous neighbourhood A79, 121 residential sales had taken place between January 2005 and December 2008. The resulting median assessment to sale ratio was .95.

Position of the Appellant:

14 Mr. **Baranowski** introduced Exhibits #5 and #6 in support of his opinion that the subject property was over-assessed. Exhibit #5 contained one comparable only, 17 Mineola Road. Mr. **Baranowski** based his whole case on the sale of this comparable.

15 Mr. **Baranowski** also raised the issue of flooding, incorrect lot area and incorrect quality classification of the subject property.

The Legislation:

16 The Board is directed by the following subsections of the *Act*:

19.(1) Assessment based on current value. — The assessment of land shall be based on its current value.

17 Current value is defined in section 1:

"**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.

18 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.

19 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.

20 Subsection 40.(17) of the *Act* 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.

21 Subsection 40.(19) of the *Act* states:

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

22 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:

Subsection 40.(17) — Burden of Proof:

23 The Board finds that MPAC has satisfied the burden of proof referred to in subsection 40.(17) of the *Act* and accepts a recommended value of \$1,444,000 as being both reflective of current value and equity. In its opening remarks, the Board referred to this burden and stated that if MPAC satisfied the Board that the assessment is probably correct, then the onus shifts to the appellant to provide evidence to show either that the current value is not correct or that the assessment is not equitable when compared with the assessments of similar lands in the

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vicinity. The appellant has not done so.

Subsection 44.(3)(a) Current Value

24 Although Mr. **Baranowski** objected to the lot area as being 17,424 square feet, he had no map, survey or calculations to show the Board that the area was in error. Therefore, the Board finds that the area of the lot is 17,424 square feet.

25 Mr. **Baranowski** was concerned that a previous reduction given by MPAC for the base year of 2005 was not carried forward in the calculation of the January 1, 2008 current value.. The "Property Assessment Details" report in Exhibit #6 indicates an adjustment carried forward from a previous appeal in the amount of \$55,000. MPAC explained to the Board that the \$55,000 adjustment was the reduction granted by the Assessment Review Board for "marginal land". Mr. Cole stated that this was the first time that he had heard of flooding. No evidence, photographs, maps or reports were submitted by Mr. **Baranowski** to substantiate the claim of flooding. The Board is unable to find on the evidence before it that the property is susceptible to flooding.

26 Mr. **Baranowski's** concern dealing with the Quality Class of the subject property was examined closely by the Board. Other than MPAC's own Quality Classification Specifications, nothing else was submitted by either party. The Board examined photographs of the subject property as well as the photographs of the comparables submitted in Exhibit #5. It is apparent from the photographs, that the subject property is a custom built home, made of good quality materials and workmanship. The Board confirms the quality class of 7.5.

27 MPAC submitted three suggested similar properties (comparables).

28 Comparable #1 was listed as a one-storey but later changed to read two-storey. Mr. **Baranowski** objected, stating it was something other than a full two-storey; the Board was unable to tell from the aerial photographs submitted by MPAC. The Board will not use it in its calculations.

29 Comparable #2 was stated by MPAC to be the best comparable and the Board agrees. The lot size is very close to the subject, the quality classification for both properties is 7.5 and the home sizes are within 340 square feet of one another. The Board will use it in the current value determination.

30 Comparable #3 has a larger lot, smaller house, all of which would skew the selling price per square foot. The Board will not use it in its calculation.

31 Mr. **Baranowski** submitted one comparable. In the Board's opinion, this property is not comparable because:

1. Lot size is much smaller than subject (53%).
2. House size is smaller than subject (57%).
3. Quality class is a 6.5 versus 7.5 for the subject.
4. Original year built is 1916 versus 1990 for the subject.

32 Mr. **Baranowski** made no attempt to adjust his comparable for these differences. During cross-examination, Mr. **Baranowski** stated that in his opinion, "no adjustments were needed" to bring his comparable

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in line with that of the subject property. The Board disagrees. Similar does not mean identical. But in order for comparisons to be meaningful, properties should be as close as possible when comparing location, lot sizes, number of stories, year built, quality classification, house size, amenities and secondary structures.

33 The Board was left with only one comparable, 1510 Glenburnie Road submitted as comparable #2 by MPAC. This property sold in November 2007 for \$1,685,000 or \$372.00 per square foot. When the Board applies this rate to the square footage of the subject, the resulting value is \$1,809,000 (rounded).

The Board's Analysis — Subsection 44.(3)(b) — Equity

34 The Board has considered the assessment of \$1,444,000 and finds it to be equitable when compared with the assessment of similar land in the vicinity.

35 The Board also considered the value per square foot, based on assessment, of 1510 Glenburnie Road, the most similar property in evidence. The value is \$315.00 per square foot. The subject property is valued at \$296.88 per square foot, below the assessed value per square foot of the similar property. The Board finds that no equity adjustment is required.

Deemed Appeal for 2010:

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

Conclusion:

37 The Board accepts the recommendation of the assessor. The assessment is reduced from \$1,448,000 to \$1,444,000 for the 2009 taxation year and from \$1,489,000 to \$1,444,000 for the 2010 taxation year.

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

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