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Van Der Marel v. Municipal Property Assessment Corp., Region No. 19

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 39 Church Street
Anne Renee Van Der Marel, Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region
No. 19 and the City of Hamilton, Respondents

Ontario Assessment Review Board

J. Laws Member

Heard: March 19, 2013

Judgment: June 28, 2013

Docket: WR 118732

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

W. Somerville, J.R. Wilson, 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

There was no evidence to support that assessment of subject property should have been reduced below its current value \$552,000 to make it equitable with sale of similar lands in vicinity.

Statutes considered:

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

Generally — referred to

s. 1(1) "current value" — considered

s. 19(1) — considered

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

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s. 19.2(5) [en. 2004, c. 7, s. 3(2)] — considered

s. 40(17) — considered

s. 40(19) — considered

s. 44(3) — considered

s. 44(3)(a) — considered

s. 44(3)(b) — considered

Words and phrases considered

assessment to sale ratios

. . . the [Assessment to Sale Ratios ("ASRs")] acts as a check upon [Municipal Property Assessment Corporation]'s valuation model to determine whether it is tending to either over-value (over-assess) or under-value (under-assess) similar properties in the vicinity of the subject property. The ASR is determined by dividing the assessed value of a property by its sale price.

APPEAL from assessment of subject property in residential property tax class for taxation year of 2012.

J. Laws Member:

1 This appeal came before the Assessment Review Board ("Board") on March 19, 2013 in the City of Hamilton.

Issue

2 The subject property was assessed at \$552,000 in the Residential Property Tax Class for the January 1, 2008 valuation date. This is an appeal of the 2012 taxation year.

3 The parties are not contesting the current value at \$552,000.

4 The Municipal Property Assessment Corporation ("MPAC") takes the position that the assessment of the subject property is correct and equitable and should be confirmed.

5 The Appellant's representative, After-Tax Paralegal Services Professional Corporation, presented a number of calculations to adjust the current value for the purpose of an equitable assessment taking the position that the assessment should be reduced to \$431,000.

6 The task of the Board, in accordance with s. 44.(3) of the *Assessment Act* ("Act") is to determine whether current value is equitable with the assessment of similar lands in the vicinity of the subject property.

Decision

7 The Board determines the current value of the subject property to be \$552,000 in the Residential Property Tax Class for the 2012 taxation year.

8 The Board makes no adjustment for equity.

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9 Accordingly, the assessment of the subject property, as at the valuation date of January 1, 2008 for the 2012 taxation year, is \$552,000 in the Residential Property Tax Class.

Reasons for Decision

Description

10 This is a Lake Ontario waterfront property located in the Stoney Creek area of the City of Hamilton. The lot is 50 feet wide and approximately 287 feet deep and has an effective lot size of 14,341.5 square feet. The property is improved with a single-storey detached residence built in 1960 with 1,713 square feet of living space and an unfinished basement of 851 square feet.

The Legislation

11 In determining the value at which land shall be assessed, the Board must have regard to the following provisions of the Act:

12 Section 19.(1) of the Act states:

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

13 Section 1 of the Act states:

"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.

14 Section 19.2(1)2 of the Act provides:

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.

15 In determining the value at which any land shall be assessed, s. 44.(3)(a) and (b) of the Act requires the Board to do two things:

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.

16 Section 40.(17) of the Act provides:

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.

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17 Section 40.(19) of the Act provides:

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

MPAC's Position

18 Jason Wilson, property valuation specialist with MPAC, presented a current value and Equity Analysis that he had prepared (Exhibit 1). Mr. Wilson presented four sales comparables of waterfront properties in the vicinity of the subject property. Mr. Wilson identified the first two properties, 36 Seabreeze Crescent and 31 Lakegate Drive, as most similar to the subject property in that they are also single-storey detached homes. Although the second two properties, 27 Church Street and 35 Church Street, have one-and-a-half and two storeys, respectively, they are similar to the subject in lot and building sizes and, he argues, because they are on the same street as the subject property, they set the market for the street. Mr. Wilson also argues that single-storey homes sell for more than two-storey homes. The four sales occurred between May 2007 and March 2008.

19 Because properties are valued as of January 1, 2008 for the 2012 taxation year, Mr. Wilson time-adjusted the sale prices of his four comparable properties to January 1, 2008, based upon a Sale to Assessment Ratios over Time study of 240 sales in the vicinity of the subject property, all of which occurred between January 2007 and December 2008. His study indicates a rate of increase in sale prices of 0.34% per month over this period.

20 Details of the subject property and of MPAC's four sales comparables are shown in the following table

Table 1

Property Address	Assessment (\$)	Sales (\$) Actual and Time-Adjusted Values	Effective Frontage and Depth (Sq. Ft.)	Building Size (Sq. Ft.)	Number of Storeys	Year Built	Time Adjusted ASR
39 Church Street	552,000	N/A	50 × 287 (14,341)	1,713	1	1960	N/A
36 Seabreeze Crescent	676,000	730,000 (06/2007) 746,069	75 × 131 (9,760)	1,470	1	1971{*}	0.91
31 Lakegate Drive	618,000	585,000 (11/2007) 587,972	60 × 252 (15,094)	1,450	1	1982	1.05
27 Church Street	539,000	625,000 (03/2008) 619,708	50 × 322 (16,100)	1,858	1.5	1930	0.87
35 Church Street	569,000	832,000 (05/2008) 819,714	50 × 299 (14,933)	1,878	2	1921{*}	0.69

Notes: * with renovations in 2004 and 2003, respectively.

21 In regard to equity, Mr. Wilson presented a Geographical Equity Analysis (Exhibit 1, Appendix C) of 35 residen-

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tial sales within 0.68 kilometres of the subject property between January 2007 and December 2008 "that are typical, arm's length transactions between willing buyers and sellers". The Assessment to Sale Ratios ("ASRs") of these sales range from 0.77 to 1.24 with a median of 0.97.

22 Based on this analysis, Mr. Wilson argues that similar properties in the vicinity have been assessed close to their current values and, therefore, no equity adjustment is required.

23 On cross-examination by the Appellant's representative, Robert **Baranowski**, Mr. Wilson replied that:

- the average time-adjusted ASR for his four sales is 0.88, the average time-adjusted ASR of the two properties on Church Street is 0.78
- with regard to his Geographical Equity Analysis (Exhibit 1, Appendix C) he did not know how many outliers were removed, could not provide data such as lot and building size, quality of construction or year built for the 35 properties and acknowledged the study contained detached waterfront and non-waterfront homes as well as townhouses and he acknowledged that only 43% of the 35 ASRs fell within the 0.95 to 1.05 acceptable range of the International Association of Assessing Officers ("IAAO") that he relies upon in his analysis

The Appellant's Position

24 Mr. **Baranowski** presented no evidence of his own but utilized MPAC's Current Value and Equity Analysis (Exhibit 1) and focused his arguments on whether the assessed value was equitable to that of similar lands in the vicinity.

25 Mr. **Baranowski** argues that a precondition of s. 44.(3)(b) is that the lands must be similar to the subject property and because MPAC could not provide details to the Board regarding the lot and building sizes, quality of construction and age of the 35 properties, the analysis cannot be relied upon.

26 Mr. **Baranowski** made the following arguments:

- Applying the average time-adjusted ASR for 36 Seabreeze Crescent and 31 Lakegate Drive, which he calculates is 0.978, to the subject property's assessed value of \$552,000 results in a value of \$540,960 ($\$552,000 \times 0.978$)
- Applying the average time-adjusted ASR for 27 and 35 Church Street to the subject property results in a value of \$431,000 ($\$552,000 \times 0.78$)
- Applying the average time-adjusted ASR for all four comparable to the subject property results in a value of \$485,760 ($\$552,000 \times 0.88$)
- Applying the median ASR from MPAC's equity study of 0.97 to the subject property results in a value of \$535,440 ($\$552,000 \times 0.97$)

27 Mr. **Baranowski** argues that the Board should disregard MPAC's equity study (Exhibit 1, Appendix C) because:

- Mr. Wilson could not explain how the properties in the study were similar to the subject property other than they are residential
- a range of ASRs that MPAC argues is acceptable (0.95 to 1.05) is not stated in the Act and the taxpayer is entitled to a reduction if the ASR indicates an inequity

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- there are two properties from MPAC's Current Value Study (Exhibit 1, Appendix A) with valid sales that are not included in Appendix C, therefore, Appendix C must be incomplete
- approximately 50% of the ASRs are outside of the IAAO range (more if the two missing sales are included)
- the outliers were not provided
- none of the ASRs have 1.00

28 Mr. **Baranowski's** position is that the equitable value for the subject property is \$431,000.

Analysis

29 The parties do not dispute that the current value of the subject property is \$552,000 for the 2012 taxation year. The only issue before the Board is whether the current value is equitable with similar lands in the vicinity.

30 Section 44.(3)(b) of the Act requires the Board to determine if the assessment of a property at current value is equitable with the assessments of similar lands in the vicinity and to lower the assessment below current value if it is required to achieve equity.

31 A useful tool in making the determination required by s. 44.(3)(b) of the Act is the ASR, which acts as a check upon MPAC's valuation model to determine whether it is tending to either over-value (over-assess) or under-value (under-assess) similar properties in the vicinity of the subject property. The ASR is determined by dividing the assessed value of a property by its sale price.

32 Mr. Wilson's Geographical Equity Analysis (Exhibit 1, Appendix C) shows 35 arm's length sales of residential properties within 0.68 kilometers of the subject property between January 2007 and December 2008. The time adjusted ASRs for these 35 sales range from 0.77 to 1.24 with a median ASR of 0.97. According to Mr. Wilson, this indicates that similar properties within the vicinity of the subject property have been assessed at their current value.

33 Mr. **Baranowski** argues that MPAC's equity analysis is incomplete because two of MPAC's suggested comparables used for the purpose of substantiating the subject property's current value (36 Seabreeze Crescent and 35 Church Street) were not included. However, the Board notes that 36 Seabreeze Crescent is located some 6 kilometres from the subject property, far beyond MPAC's 0.68 kilometer analysis range, and 35 Church Street had a time-adjusted ASR of 0.69 which falls outside of the time-adjusted ASR range of the equity study, the lowest being 0.77.

34 Mr. **Baranowski** argues that because details such as size, age and quality of construction were not included, one cannot determine whether they are similar to the subject property. In the Board's opinion, for the purpose of equity, properties do not need to be as similar to the subject property as required for the purpose of determining current value. They should be of the same general nature, character and function. In the Board's opinion, residential properties in the vicinity of the subject property sufficiently fulfill the requirement of s. 44.(3)(b). As mentioned above, an ASR study acts as a check upon MPAC's valuation methodology. The Appellant did not provide any evidence that the assessment methodology differed among the properties.

35 Mr. **Baranowski** argues that MPAC's equity analysis should not be relied upon because Mr. Wilson could not say how many outliers were removed, because less than half the ASR's fell within the IAAO acceptable range of 0.95 and 1.05 and the IAAO standard should not be acceptable because it is not set out in the Act.

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36 While the Board routinely recognizes the IAAO standard of a 5% variance from 1.00 as acceptable, it is concerning that less than 50% of the ASRs fell inside range. The range of ASRs (0.77 to 1.24) with less than half the sampling falling outside of a 5% range does not provide the Board with confidence that MPAC's residential assessment methodology is assessing lands in the vicinity of the subject property correctly. However, it does not lead the Board to conclude that the subject property is inequitably assessed as neither the average ASR (1.00) nor the median ASR (0.97) would lead to an adjustment for the purpose of equity.

37 The Board is also concerned that Mr. Wilson, the author of the analysis, did not know how many outliers were removed.

38 Mr. **Baranowski** argues that the best indication of equity is the average ASR of 27 and 35 Church Street. The Board is of the opinion that a larger sample of sales is preferred when using ASR's to determine equity. If, however, the Board used a small sampling, it would prefer 36 Seebreeze and 31 Lakegate, which, like the subject, have single-storey homes. The average ASR of these two properties is 0.98, indicating, again, that an adjustment for the purpose of equity is not required.

39 Based on the above, the Board concludes that there is no evidence to support that the assessment of the subject property should be reduced below its current value to make it equitable with the sale of similar lands in the vicinity.

Appeal dismissed.

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

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