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Tamana Holdings Ltd. 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 2010, 2011 and 2012 on premises known municipally as 3378
Mavis Road

Tamana Holdings Limited, Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region
No.15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

D. Weagant Member

Heard: April 22, 2013

Judgment: July 5, 2013

Docket: WR 119132

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

C. Mattat, L. Fernandes, 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 — Commercial

Statutes considered:

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

Generally — referred to

s. 1(1) "current value" — considered

s. 19(1) — considered

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

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)(b) — considered

D. Weagant Member:

1 These appeals came before the Assessment Review Board ("Board") on April 22, 2013 in the City of Mississauga.

Issue

2 The subject property is an automobile salvage yard, lying on the west side of Mavis Road in the City of Mississauga. The current value returned for the 2010, 2011 and 2012 taxation years is \$1,037,000, in the Commercial Property Class.

3 The Appellant, Tamana Holdings Limited believes that the current value as returned may be correct, but that for the purposes of equity, the current value should be reduced to \$653,000. The Statement of Issues prepared by the Appellant states that the issue at hand is not so much the current value of the building, but more the current value of the land portion of the property.

4 The Board must determine the correct current value of the subject property and whether the assessment so determined is equitable with the assessments of similar properties in the vicinity of the subject property.

Decision

5 The Board determines the current value of the subject property as \$1,601,000. For the purposes of equity, the Board finds the current value as determined above is reduced to \$961,000. Therefore, the assessment for the subject property is reduced from \$1,037,000 to \$961,000 for the 2010, 2011 and 2012 taxation years.

Reasons for Decision

The Legislation

6 The Board must have regard for the following sections of the *Assessment Act* ("Act"):

7 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.

8 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

9 Section 19.2(1) of the Act 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.

10 Section 44.(3) of the Act 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.

11 Section 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.

12 Section 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.

Subject Property

13 The subject property, 3378 Mavis Road, is a two acre commercial site comprising a 2,800 square foot, single story building and a partially paved yard. The principal activity taking place on the property during the taxation years in question is an automobile salvage yard where cars are taken in, parts are removed for the purpose of selling them in the automobile used part market and the resultant shells are stored on site. The property is surrounded by other similar land uses and other industrial uses.

14 The building has two separate areas, one serving as an office and administration area for the operation which is attached to the second part which serves as an auto parts storage facility. This latter portion is not heated or air conditioned, but the former part of the building is.

Municipal Property Assessment Corporation's ("MPAC's") Evidence

15 Laine Fernandes provided evidence on behalf of MPAC. Ms. Fernandes provided a list of five comparable properties that she selected to address the value of the land under appeal. As it is the land portion of the property where the Appellant places the most importance in this case, the comparables selected by Ms. Fernandes consisted of similar properties and vacant land parcels of similar size to reflect the value of the subject. All of these properties have the same zoning and permitted uses as the subject property.

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16 Two of the comparable properties have buildings located on them and the value for these two properties was reduced by Ms. Fernandes account for the value of the buildings in an effort to arrive at land values to be compared to the subject property. The other three comparables are vacant land.

17 These comparables were all sold in either 2007 or 2008 and all within eight months of the valuation day, January 1, 2008. Through the process of questionnaires sent to purchasers, MPAC determined that these sales represented arm's length transactions between a willing buyer and a willing seller and meet the definition of current value as provided in s. 19.(1) of the Act. The comparables are summarized in Table A.

Table A

	Subject Prop- erty	5671 Kennedy Road	6223 Kennedy Road	Innovator Drive	1829 Gage Court	1085 Cardiff Blvd.
Site Area (acres)	2.00	2.05	3.90	2.25	1.81	1.36
Building Size (Sq. Ft.)	2,800	vacant	vacant	vacant	3,950	7,171
Sale Date	N/A	04/2007	04/2007	07/2008	04/2008	06/2008
Time Adjustment Factor (TAF)		1.04	1.04	0.97	0.98	0.97
Sale price		1,411,100	2,827,500	1,920,330	2,100,000	2,395,000
2008 CVA	1,037,000	1,029,000	1,775,000	1,102,000	1,357,000	1,381,000
Value of Building portion	\$57,327				315,200	547,000
Time Adj. value of land		1,471,777	2,940,600	1,856,959	1,747,000	1,780,940
Time Adj. Sale Price		1,471,777	2,940,000	1,856,959	2,062,200	2,327,940
Time Adj. sale price Land (per acre)		717,940	754,968	825,315	965,193	1,309,515
Time Adjusted Assessment to Sale Ratio		0.70	0.60	0.59	0.66	0.59

18 The value study prepared by Ms. Fernandes was prepared using the "Multiple Regression Analysis" method of determining value. She stated that this method uses the sales of similar properties in the area as a means of determining the value of the subject property.

19 According to Ms. Fernandes, the value study indicates that the median value for land, per acre among the comparables is \$825,315. This median applies to time adjusted sales to make them equally comparable between one another and to the valuation day of January 1, 2008. Applying this value to the subject property creates a value of \$1,650,630. Added to the value of the building, which the parties agree to be \$57,327, results in a total value of \$1,707,957. Ms. Fernandes refers to this as the "true value" of the property, based on the valuation method used.

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20 It is Ms. Fernandes' evidence that MPAC recognizes the "under assessment" of properties of this type in the vicinity of the subject property. As a result, MPAC regularly reduces values generated by the "Multiple Regression Analysis" method to bring the result more in line with values of similar lands in the vicinity.

21 In her evidence under cross-examination from the Appellant, she was clear that MPAC did not intend that this "true value" would be the returned value for the taxation years under appeal. The purpose of this value is to set a starting point for reduction to a level of value that is equitable with similar lands in the vicinity. This resultant value is the value returned on the roll.

22 In making this adjustment, Ms. Fernandes applied a multiplier of 0.60 which she advised is the median multiplier used in this case. The Board heard that this multiplier is known as the Assessment to Sale Ratio ("ASR"). Ms. Fernandes' evidence is clear that this ASR, in this case, applies to the time adjusted sale value set for each of the comparable properties used in her study. The resultant value is \$1,037,000, which is the value as returned on the roll for taxation years 2010, 2011 and 2012.

23 In her summation, Christeen Mattat, on behalf of MPAC made it clear to the Board that the value returned on the assessment rolls for the three years under appeal was already reduced for the purposes of equity. To apply the ASR adjustment to the returned value would result in the equity adjustment being applied twice to the same property which MPAC views as neither appropriate nor equitable.

Appellant's Evidence

24 The Appellant's representative, Robert **Baranowski**, cites MPAC's value study as evidence of current value. He maintains that the current value arrived at by MPAC and returned on the roll is the current value and that any adjustment for equity should be applied to the returned value.

25 Mr. **Baranowski** contends as a result that the subject property should have a current value of \$653,000 that being the returned value of \$1,037,000 multiplied by the median ASR of non-time adjusted sales of 0.63. (Note: For current value the returned value is divided by the ASR i.e. $1,037,000 \div 0.63 = 1,646,031$).

26 Mr. **Baranowski** spent a great deal of time and effort in his cross-examination of Ms. Fernandes and in his summary statement to the Board with respect to the difference between value, current value and the equitable value of the property under appeal. He maintains that there is a distinction between the "true value" identified by Ms. Fernandes and that the current value, which he maintains is the returned value and ought to be the value reduced for the purposes of equity.

27 Mr. **Baranowski** takes issue with the properties used for the value study prepared by MPAC and suggests that, for the purposes of determining current value, two of the properties, comparables sale numbers 4 and 5 (1829 Gage Court and 1085 Cardiff Boulevard) should not be considered, as they are in a different municipality. In response, he did not present any alternative comparables for the Board to consider in determining current value.

28 With respect to the mathematics of the case, Mr. **Baranowski** asserts that there is no substantial dispute about the values in question; only how the median ASR is applied, and to what value.

The Board's Deliberations

Determination of Current Value

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29 The best test of current value is an arm's length and market tested sale of the subject property on the valuation day, January 1, 2008 or close to it. If, as in this case, no such transaction took place, the next best measure of current value is arm's length and market tested sales of similar properties in the same vicinity and market on or close to the valuation day. This measure acts as a benchmark and a gauge of the accuracy of the assessed value of the subject and comparable properties.

30 In determining the current value, the Board has all the powers that the assessor had in making the assessment. However, the assessor could have regard to his previous experience and other factors, whereas the Board must act judicially and decide on the basis of the evidence before it.

31 There is no dispute among the parties as to the value of the building situated on the subject property. The evidence presented at the hearing is that the value of the building is \$57,327. The Board must determine the current value of the land portion.

32 To enable an estimate of value for the subject property to be derived from a comparable property, there must be sufficient elements of similarity in terms of physical factors such as total building area, land area, age of construction, physical condition, etc., and in terms of neighborhood characteristics such as access to transportation and services, type and nature of adjacent development, etc., so as to enable a direct comparison to be made between the comparable property and the subject property.

33 The Board places the greatest weight on sales located in close proximity to the subject property. However, on the rare occasions when sufficient similar properties cannot be found close to the subject property, the Board may look to sales from other markets more remote to the subject property providing those markets exhibit similar characteristics.

34 The Board finds that comparable sale numbers 4 and 5 (1829 Gage Court and 1085 Cardiff Boulevard) provided by Ms. Fernandes are not comparable to the subject property in as far as properties with lot areas of 1.81 acres and 1.36 acres respectively, are too small to be reflective of the value of land on the subject lands which comprise 2 acres. In addition, these two sales include much larger buildings than the subject (3,950 and 7,171 sq. ft., respectively, as compared to 2,800 sq. ft. for the subject property). Although MPAC made efforts to separate the building value from the land value for sales 4 and 5, the combination of the smaller lot areas and larger buildings lead the Board to disregard these two sales as indicators of current value of the subject.

35 The Board finds that comparable sale number 2 (6223 Kennedy Road) provided by Ms. Fernandes is not comparable to the subject property in as far as it has a larger site area than the subject property (3.90 acres as compared to 2 acres) and is too large to be reflective of the land value on the subject lands.

36 The Board finds that the best evidence of the current value of the subject property are the sales of 5671 Kennedy Road and Innovator Drive. (Comparable sales 1 and 3.) These two properties comprise land areas of 2.05 and 2.25 acres respectively and are vacant lands which serve to focus their value on the issue at hand, which is the value of the land portion of the subject property.

37 The Time Adjusted land value, per acre of sales numbers 1 and 3 are 717,940 and 825,315 respectively, leading to an average of \$771,127 per acre. The subject property is 2 acres in size resulting in a land value of \$1,543,255. Adding the agreed-to value of the building on the subject lands equates to a total value of \$1,600,582 or \$1,601,000 rounded. Therefore, the Board determines the current value to be \$1,601,000.

Determination of Equity

38 The parties argued that the disposition of these appeals turns on whether or not the median ASR for time adjusted sales should be applied to the "true value" as determined by MPAC, or the returned value. Mr. **Baranowski** believes that the returned value constitutes the current value and that this is the value that should be reduced for the purposes of equity and fulfilling s. 44.(3)(b) of the Act. MPAC believes that the returned value was already reduced for this purpose, prior to being returned.

39 The Board is persuaded by MPAC that the value returned was created through a process of determining current value, then reducing that value so that the subject property's current value is in line with similar properties in the vicinity.

40 The evidence presented by MPAC and cited by both parties indicates that properties similar to and in the vicinity of the subject property are regularly under-assessed in comparison to the value of their sales. For the purposes of determining equity, a broader range of comparison is required as the test is not the same as determining current value. The purpose of determining equity is to establish that the subject property is assessed in the same way as similar properties in the vicinity. Similar does not mean identical. The Board finds that for the purposes of equity, the five properties used in MPAC's value study are satisfactory in defining the extent to which similar lands in the vicinity are under assessed in comparison to their sale values.

41 A generally accepted method to determine the level of correctness of an assessment is the ASR. An ASR of 1.00 indicates that an assessment is at current value. An ASR of above 1.00 indicates that a property has been assessed at above its current value and an ASR of below 1.00 indicates that a property is assessed at below its current value.

42 All of the comparable sales have a Time Adjusted ASR of well below 1.00; ranging from 0.59 to 0.70, indicating that properties that are similar and in the vicinity of the subject property are consistently under-assessed. The Board normally prefers larger sample sizes than the five properties for the purposes of determining an ASR for application to a property for the purposes of equity. However, in this case, both parties accept the median ASR for the comparables provided. The median Time Adjusted ASR for these properties is 0.60.

43 The Board finds that the best evidence is that the subject property's current value must be adjusted using an equitable valuation and accordingly applies the median Time Adjusted ASR for the five comparable properties in evidence. The adjusted current value of the subject property is the current value as determined above of \$1,601,000 by the median time adjusted ASR of 0.60 with a resulting value of \$961,000 (rounded).

Decision

44 The Board determines that the current value of the subject as \$1,601,000.

45 For the purposes of equity, the Board reduces the current value as determined above to \$961,000.

46 Therefore, the assessment for the subject property is reduced from \$1,037,000 to \$961,000 for the 2010, 2011 and 2012 taxation years.

FNI Subsection 5 permits the Minister to prescribe a different valuation day. A different day has not been prescribed.

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