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Smith 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, and in the matter of complaints with respect to taxation years 2006 and 2007 on premises known municipally as 290 Donessle Drive

Megan Hagarty Smith (Assessed Person / Complainant) and The Municipal Property Assessment Corporation Region No. 15 and Town of Oakville (Respondents)

**Ontario Assessment Review Board**

A. Castel Member, and A. LaRegina Member

Heard: October 31, 2007

Judgment: November 23, 2007

Docket: WR 64451

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Counsel: R. **Baranowski** for Assessed Person / Complainant

C. Safranka for Municipal Property Assessment Corporation

S. Price for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Market value — Selling price of comparative property

Municipal law --- Municipal tax assessment — Valuation — Basis for reduction — Miscellaneous

**Statutes considered:**

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

Generally — referred to

s. 1 "current value" — considered

s. 19(1) — considered

s. 19.1 [en. 1997, c. 5, s. 13] — referred to

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- s. 19.1(1) [en. 1997, c. 5, s. 13] — considered
- s. 19.2(1) [en. 1997, c. 5, s. 13] — considered
- s. 19.2(1) ¶ 1 [en. 2004, c. 7, s. 3(1)] — considered
- s. 40(11) — considered
- s. 44(2) — considered
- s. 60(1) — referred to

***A. Castel Member, and A. LaRegina Member:***

1 These complaints came before the Assessment Review Board on October 31, 2007 in the Town of Oakville.

**Issue**

2 The issues before the Board for determination are:

- I. Whether seasonal flooding in the rear part of the lot affects value.
- II. Whether the assessment of the subject property for the 2006 and 2007 taxation years is correct.

**Decision**

3 The decision of the Board is to reduce the assessment from \$2,967,000 to \$2,817,000 for the 2006 and 2007 taxation years.

**Reasons for Decision**

**Subject Property**

4 Exhibit 1 submitted by the assessor, Ms. Safranka, describes the subject property as a 5,878 square foot, custom-built, single-family dwelling, constructed in 2002. The basement is 2,709 square feet of which 2,400 square feet are finished. The lot is .59 acres. The property abuts green space for which a premium of 5% is included in the assessment.

5 The record shows the dwelling as having forced air heating.

6 For the 2006 and 2007 taxation years, the assessment, based on the sales comparison approach, is \$2,967,000.

7 At the commencement of the hearing, Ms. Safranka offered to reduce the assessment from \$2,967,000 to \$2,817,000 to account for the seasonal flooding and the radiant heat system equipped in the structure. The size of the lot is effectively reduced from .59 to .49 acres, which allows for the portion subject to seasonal flooding.

8 Mr. **Baranowski** accepted the assessor's offer, thus leaving the value assigned to the property as the only issue for which a Board decision is required.

**Complainant's Case**

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9 Mr. **Baranowski**, representing the complainant, provided a detailed submission in support of the complaint comprising five exhibits numbered 2 to 6 consisting of:

Exhibit 2: Issues, calculations and 12 comparable properties.

Exhibit 3: Backup for methodology used to calculate the time adjustment.

Exhibit 4: Request for Reconsideration.

Exhibit 5: Property Assessment Notice.

Exhibit 6: Properties in vicinity with reduced assessments.

10 The agent explained the methodology used to arrive at a rate for adjusting sales to account for time from the valuation date of January 1, 2005, which relies on two parameters as follows:

I. Using the change in the average value of residential properties in the Town of Oakville over the 18-month period from June 2003 to January 2005 of 16.71%, which yields .92 on a monthly basis.

II. Using the sales of a property located at 177 Gloucester Avenue that occurred before and after the valuation date of January 1, 2005 to arrive at a monthly differential of 1.48%.

11 Mr. **Baranowski** settled on an approximate mid-point position of 1% based on his best judgement.

12 Exhibit 2 consists of 12 suggested comparables adjusted for time in accordance with the above. Mr. **Baranowski**, using an average sale value per square foot of \$356.00, arrives at a value for the subject property of \$2,092,000.

#### **MPAC's Case**

13 Ms. Safranka submitted in evidence a property report with six suggested comparables and four sales that occurred in the required period. In addition, a property report consisting of the comparables used by the agent was also provided.

14 Based on sales, Ms. Safranka argued that the assessment should be confirmed at the recommended amount of \$2,817,000.

#### **Comments from the Municipal Representative**

15 Ms. Price took strong exception to the methodology used by the agent to adjust for time since one of his parameters is for properties of all types, not similar properties as called for in the *Act*.

16 Reference was made to a property located at 139 Elton Road. It consists of a dwelling and a lot smaller than the subject, yet it sold for \$2,495,000.

#### **Legislation**

17 The Board must have regard to section 1 and subsections 19(1), 19.1(1), 19.2(1), 40(11) and 44(2) of the *Assessment Act (Act)* when determining whether or not the assessment under appeal is correct.

18 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.

19 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.

**19.1(1) Assessment, single years and averages.** — Subject to subsections (2) and (3), land shall be assessed for a taxation year at the current value of the land for the taxation year.

20 Subsection 19.2(1) of the *Act* provides:

**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.

21 Subsection 40(11) of the *Act* states:

**40(11) Board to make determination** — After hearing the evidence and the submissions of the parties, the Board shall determine the matter and, in complaints involving current value, shall determine the amount of the assessment as necessary to reflect corrections to the current value.

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

**44(2) Reference to similar lands in the vicinity.** — 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.

### **Board's Deliberations**

(1) Current value is defined in the *Act* 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.

(2) Subsection 19(1) and 19.1 of the *Act* are paramount to subsection 44(2). Subsection 44(2), while mandatory, does not establish 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 as evidence of current value.

(3) The *Act* is silent on equity. The extensive reform in Ontario initiated from 1998 has eliminated the mandatory equity provision that existed in the *Act*. Prior to the amendments of the *Act*, the Board's jurisdiction was found in subsection 60(1) of the *Act*. The overriding objective under the legislation was to strive for equity. This is no longer the case. The removal of the equity provision places a far greater emphasis on current value and subsection 19(1), which is dominant and controlling.

(4) The Board places no weight on the time adjustment methodology introduced by Mr. **Baranowski**. The first parameter is for all types of properties while the second parameter relies on a sample of just one property. The rate in between is based on judgement.

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(5) The use of value per square foot for custom-built homes of different types and sizes is not appropriate. For a larger building, due to economies of scale, the additional square footage would be less costly.

(6) For the Board to allow a reduction for a nuisance, the Board must be convinced that the nuisance had a negative effect on value. No evidence was provided to show that dogs in the park affect value.

(7) The Board is aware that it is difficult to find good comparables for custom-built homes. Most of the properties submitted by the agent differ considerably in size of structures and lots. Those submitted by the assessor differ in terms of quality which the Board was informed may be subjective. The most suitable properties with sales are the following:

<b>Property</b>	<b>Date of Sale</b>	<b>Assessment</b>	<b>Sale Amount</b>
254 Donessle Drive	2004/07	\$2,233,000	\$1,901,869
184 Chartwell Road	2006/04	\$2,195,000	\$2,457,500
1199 Lakeshore Road East	2006/11	\$1,511,000	\$1,500,000
348 Balsam Drive	2005/05	\$1,980,000	\$1,950,000
178 Donessle Drive	2003/07	\$2,515,000	\$2,360,000
274 Donessle Drive	2003/10	\$2,671,000	\$2,540,000
139 Elton Park Road	2004/03	\$2,491,000	\$2,459,000

The sale at 254 Donessle Drive is a builder sale and is, therefore, not being considered. The two sales that occurred during the required period have an average assessment to sales ratio of 1.01, which reflects that assessments coincide with sales.

(8) Sales provide an indication of the accuracy of assessments. The Board examined all the sales before it that occurred in 2004 and 2005 and finds that the median assessment to sales ratio is 1.01, which shows that assessments are not on the high side and, in fact, coincide exactly with sales.

(9) The decision of the Board, therefore, based on sales, is to accept the recommendation of the assessor and reduce the assessment of the subject property from \$2,967,000 to \$2,817,000 for the 2006 and 2007 taxation years.

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