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Witkowski v. Municipal Property Assessment Corp., Region No. 22

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 2011 and 2012 on premises known municipally as 11 Leenders  
Lane

Danuta Witkowski, Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region No. 22 and  
the Town of Erin, Respondents

**Ontario Assessment Review Board**

I.A. Birnie Member

Heard: July 30, 2012

Judgment: December 18, 2012

Docket: WR 115882

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

T. Pileggi, 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 — Similar real property in vicinity

**Statutes considered:**

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

s. 1(1) "current value" — considered

s. 19(1) — considered

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

s. 40(17) — considered

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s. 40(19) — considered

s. 44(3) — considered

s. 44(3)(a) — considered

***I.A. Birnie Member:***

1 These appeals came before the Assessment Review Board on July 30, 2012 in the City of Guelph.

**Issue**

2 The appeals before the Assessment Review Board ("Board") are appeals by D. Witkowski ("Appellant") in respect of the assessment of her home at 11 Leenders Lane, Town of Erin ("subject property") for taxation years 2011 and 2012.

3 The subject property is a one-storey single-family detached home (not on water), which was built in 2005 on a 43,560 square foot lot and which has a Total Building Area ("TBA") of 2,433 square feet and an unfinished basement of 2,433 square feet. It has three bedrooms and forced air heat.

4 The subject property is assessed at \$658,000 for taxation years 2011 and 2012 by the sales comparison method, and the issue before the Board is whether it is correctly and equitably assessed.

5 The Municipal Property Assessment Corporation ("MPAC") takes the position that the assessment of the subject property is correct and equitable and should be confirmed at \$658,000 for the taxation years 2011 and 2012.

6 The Appellant's representative presented about a dozen different methods of calculating the current value of the subject property, considered two ways of adjusting for equity, and submitted that the assessment should be reduced to \$568,500 for taxation years 2011 and 2012.

7 The task of the Board, in accordance with s. 44.(3) of the *Assessment Act* ("Act") is to determine the current value of the subject property and then to have reference to the value at which similar properties in the vicinity are assessed, and to adjust the assessment of the subject property to make it equitable with that of similar properties in the vicinity, if such an adjustment would result in a reduction of the assessment.

**Decision**

8 The Board determines the current value of the subject property to be \$643,000; finds that no adjustment is required to make the assessment of the subject property equitable with that of similar properties in the vicinity; and reduces the assessment of the subject property for taxation years 2011 and 2012 from \$658,000 to \$643,000.

**Reasons for Decision**

***Legislation***

9 For the 2011 and 2012 taxation years, in determining the value at which land shall be assessed, the Board must have regard to ss. 19.(1), 19.2(1)2, 44.(3), 40.(17) and 40.(19) of the Act:

10 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.

11 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.

12 Section 19.2(1)2 states:

**19.2(1) Valuation days.** — Subject to subsection (5)<sup>[FN1]</sup>, 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.

13 Section 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.

14 Section 40.(17) 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.

15 Section 40.(19) states:

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

### Case for MPAC

16 MPAC's representative, T. Pileggi, made a short opening statement indicating that MPAC believed the subject property to be correctly and equitably assessed at \$658,000.

17 Mr. Pileggi then called Mr. A. Heipel, a Property Valuation Analyst with MPAC, to give evidence, and stated that he was not asking for him to be qualified as an expert witness.

18 Mr. Heipel presented MPAC's Current Value and Equity Analysis, which he had prepared.

19 In regard to current value, Mr. Heipel presented, as sales comparables, six similar properties in the vicinity of the subject property, all one-storey single-family detached homes, which sold between July 2007 and August 2008.

20 As properties are valued as of January 1, 2008 for the 2011 and 2012 taxation years, he time-adjusted the sale prices of his six comparable properties to January 1, 2008, based on a Sale to Assessment Ratios over Time study of 480

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sales in the subject property's neighbourhood and adjacent neighbourhoods from January 2005 to December 2008, which indicated a rate of change of 0.47% per month over the sale period.

21 In addition to time-adjusting the sale prices, Mr. Heipel adjusted them to reflect what they would be if the comparable properties had the same features and were in the same state and condition as the subject property.

22 Details of the subject property and of MPAC's six sales comparables are shown in the following table (in which "LL" denotes Leenders Lane, "TR" denotes Trafalgar Road, and "DD" denotes Delarmbro Drive):

**Table 1**

	<b>11 LL</b> <b>(Subject</b> <b>Property)</b>	<b>5109 TR</b>	<b>129 DD</b>	<b>141 DD</b>	<b>153 DD</b>	<b>134 DD</b>	<b>10 LL</b>
<b>Sale Price (\$)</b>	570,000	576,300	633,000	619,900	620,000	700,000	
<b>Sale Date</b>	2007/10	2007/12	2007/07	2008/06	2008/08	2008/08	
<b>Time Adjusted Sale Price (\$)</b>	576,698	577,654	649,365	603,874	598,142	675,322	
<b>Effective Frontage (Ft.)</b>	217.32	131.23	99.25	99.25	98.43	98.95	238.12
<b>Effective Depth (Ft.)</b>	220.14	669.29	296.90	280.81	265.29	420.76	308.83
<b>Effective Site Area</b>	43,560.00 Sq. Ft.	2.02 Acres	29,467.32 Sq. Ft.	27,870.39 Sq. Ft.	26,112.49 Sq. Ft.	41,634.20 Sq. Ft.	1.01 Acres
<b>Year Built</b>	2005	1999	2004	2003	2004	2004	2005
<b>Central Air-conditioning</b>	No	Yes	Yes	Yes	Yes	Yes	Yes
<b>Forced Air Heat</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Bedrooms</b>	3	4	3	3	3	3	3
<b>TBA (Sq. Ft.)</b>	2,433	2,246	2,732	2,326	2,229	2,427	2,555
<b>Basement Area (Sq. Ft.)</b>	2,433	2,246	2,888	2,401	2,273	2,464	2,611
<b>Finished Basement Area (Sq. Ft.)</b>	0	0	0	1,600	2,000	0	0
<b>Adjustment to Subject (%)</b>		+16	+14	+14	+13	+9	+1
<b>Adjusted Sale Price (\$)</b>		669,000	659,000	741,000	680,000	653,000	681,000

23 Based on his analysis of these six sales, Mr. Heipel established a range of value for the subject property of between \$653,000 and \$741,000.

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24 He concluded that the subject property has been correctly valued at \$658,000 because it is within the range of adjusted sale prices.

25 In regard to equity, Mr. Heipel presented an equity study of 35 sales of residential properties within 1.49 kilometers of the subject property between January 2007 and December 2008 that were typical, arm's length transactions between willing buyers and sellers.

26 The Assessment to Sales Ratios ("ASRs") of these sales ranged from 0.76 to 1.20, with a median ASR of 0.97.

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

28 Mr. Heipel submitted that the assessment of the subject property at \$658,000 for taxation years 2011 and 2012 is correct and equitable.

29 Cross-examined by the Appellant's representative, Mr. R. **Baranowski**, Mr. Heipel replied that:

- His report follows MPAC's template, but all the data is his work.
- The sale prices of his sales comparables have been adjusted for all differences from the subject property, including lot size.
- He used 35 sales in his equity study because that is the number accepted by MPAC as sufficient for an equity study.
- He did not know if the 480 sales used in MPAC's Sale to Assessment Ratios over Time study included any two-storey homes or any town houses.
- The 35 sales in his equity study are all of single-family detached homes, but he did not know the size of the lot, the year built or the number of storeys of each property.
- The assessment of MPAC's six comparables are respectively \$567,000, \$576,000, \$540,000, \$584,000, \$602,000 and \$652,000, and their ASRs, based on their time-adjusted sale prices, are respectively 0.98, 1.00, 0.83, 0.96, 1.00 and 0.96, with an average ASR of 0.95.
- The time-adjusted sale price per square foot of his six sales comparables are \$256.76, \$211.43, \$279.17, \$270.91, \$246.45 and \$264.31 respectively, with an average of \$254.83, which applied to the subject property's TBA of 2,433 square feet, as proposed by Mr. **Baranowski**, would result in a current value of \$620,001.
- His equity study indicated a median ASR of 0.97 and applying this ratio to the subject property's assessment of \$658,000, as proposed by Mr. **Baranowski**, would result in a current value of \$638,000.

***Case for the Appellant***

30 In regard to MPAC's six sales comparables, the Appellant's representative, Mr. **Baranowski** stated that:

- The average time-adjusted sale price per square foot of TBA of MPAC's six comparables is \$254.83 and applying this ratio to the subject property's 2,433 square feet of TBA indicates a current value of \$620,000. Making an equity adjustment based on their average ASR of 0.95 reduces it to \$589,000.

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- MPAC's sales comparable at 5109 Trafalgar Road has a lot size twice that of the subject property, but is assessed at only \$567,000 and has a time-adjusted sale price of only \$567,698.
- MPAC's sales comparable at 134 Delarmbro Drive has a time-adjusted sale price of \$246 per square foot of TBA, and applying this rate to the subject property's TBA of 2,433 square feet gives a current value of \$598,518, rounded to \$598,500. Making an equity adjustment based on the median ASR of 0.97 indicated by MPAC's equity study reduces this to \$580,545, rounded to \$580,500.
- MPAC's sales comparable at 10 Leenders Lane has a time-adjusted sale price of \$264 per square foot of TBA, and applying this rate to the subject property's TBA of 2,433 square feet gives a current value of \$642,000. Applying the median ASR of 0.97 from MPAC's equity study reduces it to \$610,000.
- The average time-adjusted sale price of MPAC's sales comparables at 134 Delarmbro Drive and 10 Leenders Lane is \$255 per square foot of TBA and applying this rate to the subject property's TBA of 2,433 square feet gives a current value of \$620,000. Applying an equity reduction based on the 0.95 average ASR of MPAC's sales comparables would reduce it to \$589,000, and, alternatively, applying an equity reduction based on the 0.97 median ASR from MPAC's equity study would reduce it to \$601,000.
- Dividing the sum of the adjusted sale prices of MPAC's six sales comparables (\$3,681,065) by the sum of their TBAs (14,517 square feet) gives a sale price of \$253.50 per square foot of TBA, which applied to the subject property's TBA of 2,433 square feet gives a current value of \$617,000. Applying the 0.95 equity adjustment would reduce it to \$586,150, and, alternatively, applying the 0.97 equity adjustment would reduce it to \$598,500.

31 Mr. **Baranowski** presented the Appellant's evidence package, containing "My Neighbourhood Properties of Interest" printouts and Property Assessment Details in respect of the subject property, the Appellant's six comparable properties and MPAC's six sales comparables, together with Mr. **Baranowski's** calculations of the current value of the subject property by various methods.

32 He adjusted the assessed values and sale prices of the Appellant's six comparables for differences in lot sizes and time-adjusted the sale prices for the number of months from the January 1, 2008 valuation date, as set out in the following table (in which "LL" denotes Leenders Lane, "AS" denotes Armstrong Street, and TC denotes Treelong Crescent):

**Table 2**

	<b>11 LL (Subject Property)</b>	<b>14 LL</b>	<b>8 AS</b>	<b>15 TC</b>	<b>1 AS</b>	<b>39 AS</b>	<b>10 LL</b>
<b>Assessed Value (\$)</b>	658,000	612,000	490,000	548,000	510,000	583,000	652,000
<b>Lot Size Adjustment (\$)</b>	94,577	93,813	49,180	94,422	53,909	98,975	94,719
<b>TBA (Sq. Ft.)</b>	2,433	2,555	2,448	2,149	2,799	2,446	2,555
<b>Sale Date</b>		2005/06		2010/06			2008/08
<b>Sale Price (\$)</b>		433,000		630,000			700,000
<b>Lot Size Difference (Sq. Ft.)</b>		764	45,397	155	40,668	-4,398	-142

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<b>Assessed Value with Adjusted Lot Size (\$)</b>	612,764	535,397	548,155	550,668	578,602	651,858	
<b>Time Adjusted Sale Price (\$)</b>	488,857		548,730			675,920	
<b>Land Corrected Sale Price (\$)</b>	489,621		548,885			675,778	
<b>Adjusted Sale Price per Sq. Ft. (\$)</b>	192		255			264	
<b>Adjusted Assessment per Sq. Ft. (\$)</b>	270	240	219	255	197	237	255

33 The amount shown in Table 2 for the lot size adjustment for each property is taken from the Property Assessment Details for that property.

34 In his time adjustment of the sale prices of the Appellant's comparables in Table 2, Mr. **Baranowski** has used a rate of change of 0.43% per month, whereas MPAC has used 0.47%. He explained that the rate of 0.43% was from a previous MPAC Sale to Assessment Ratios over Time study.

35 Based on Table 2, Mr. **Baranowski** calculated that:

- The average adjusted sale price per square foot of TBA of the Appellant's three sales comparables is \$237, which applied to the subject property's TBA of 2,433 square feet gives a current value of \$577,058.
- The average adjusted assessment per square foot of TBA of the Appellant's six comparable properties is \$234 which, applied to the subject property's TBA of 2,433 square feet gives a current value of \$568,523.
- The median adjusted sale price per square foot of TBA of the Appellant's three sales comparables is \$255 which, applied to the subject property's TBA of 2,433 square feet gives a current value of \$621,423.
- The median adjusted assessment per square foot of TBA of the Appellant's six comparable properties is \$238, which applied to the subject property's TBA of 2,433 square feet gives a current value of \$579,516.

36 Based on information previously obtained from MPAC, Mr. **Baranowski** presented the following table comparing the subject property to the Appellant's two sales comparables at 14 Leenders Lane and 15 Treelong Crescent, both of which sold in June 2005:

**Table 3**

	<b>11 Leenders Lane (Subject Property)</b>	<b>14 Leenders Lane</b>	<b>15 Treelong Crescent</b>
<b>Sale Price (\$)</b>		433,426	396,405
<b>Sale Date</b>		2005/06	2005/06
<b>Time-adjusted Sale Price</b>		495,565	453,236

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(\$)			
<b>Effective Frontage (Ft.)</b>	217.32	Not Shown	Not Shown
<b>Effective Depth (Ft.)</b>	220.14	Not Shown	293.90
<b>Site Area (Sq. Ft.)</b>	43,560	43,207.75	43,488.38
<b>Year Built</b>	2005	2005	2005
<b>Central Air-condition</b>	No	Yes	Yes
<b>Forced Air Heat</b>	Yes	Yes	Yes
<b>Bedrooms</b>	3	3	3
<b>Storeys</b>	1	1	1
<b>Total Building Area (Sq. Ft.)</b>	2,433	2,555	2,149
<b>Basement Area (Sq. Ft.)</b>	2,433	2,669	2,175
<b>Adjustment to Subject</b>		+8%	+20%
<b>Adjusted Sale Price (\$)</b>		532,000	544,000

37 In another table, Mr. **Baranowski** made the same adjustments on the same basis as in Table 2 for the Appellant's comparables at 14 Leenders Lane and 15 Treelong Crescent and for MPAC's six sales comparables, and calculated that their adjusted sale prices per square foot of TBA were respectively \$192, \$255, \$264, \$248, \$288, \$293, \$223 and \$250 and that their adjusted assessments per square foot of TBA were respectively \$240, \$255, \$255, \$250, \$279, \$262, \$222 and \$246.

38 Based on the foregoing, he calculated that:

- Their average adjusted sale price per square foot of TBA is \$252, which applied to the subject property's TBA of 2,433 square feet gives a current value of \$612,231.
- Their average adjusted assessment per square foot of TBA is \$251, which applied to the subject property's TBA of 2,433 square feet gives a current value of \$611,061.
- Their median adjusted sale price per square foot of TBA is \$253, which applied to the subject property's TBA of 2,433 square feet gives a current value of \$614,411.
- Their median adjusted assessment per square foot of TBA is \$252, which applied to the subject property's TBA of 2,433 square feet gives a current value of \$614,138.

39 Mr. **Baranowski** stated that his calculations showed a range of values from \$568,150 to \$621,423, and submitted that the assessment of the subject property should be reduced from \$658,000 to \$568,500.

40 Cross-examined, Mr. **Baranowski** replied that:

- He preferred to use the average rather than the median in his calculations, because the median distorted figures and did not reflect value.
- He did not know when the subject property was purchased by the Appellant.



41 At this point, Mr. Pileggi tried to put to Mr. **Baranowski** the Deed to the Appellant and the related Land Transfer Tax Statement, but the Board would not let him do so because copies of these documents had not been provided to the Appellant before the Hearing as required by Rule 48 of the Board's Rules of Practice and Procedure. Mr. Pileggi stated that he did not want to make the documents exhibits, and only wanted to put them to the witness. As he asked for the Board's ruling in writing, the Board states that it did not allow him to put the documents to the witness because this would be getting in by the back door documents that could not come in by the front door as exhibits, because copies had not been provided to the Appellant prior to the hearing in accordance with Rule 48, which provides:

**48. Disclosure Prior to a Hearing Event** Unless the Board orders otherwise, if a party intends to present documentary evidence at a hearing, at least 21 days before the hearing, the party must provide one copy of each document to each party. If documentary evidence is not exchanged at least 21 days before the hearing, the Board may refuse to accept the documents at the hearing. Material in response must be exchange 14 days prior to the hearing and other parties may respond 7 days prior to the hearing.

As the documents related directly to the main issue before the Board, namely the current value of the subject property, the Board was not prepared to waive the requirement for prior production.

42 The cross-examination of Mr. **Baranowski** continued, and he replied that:

- He made no adjustments, in his calculations, for differences from the subject property, except in regard to lot sizes.
- The Appellant's comparables at 8 Armstrong Street and 1 Armstrong Street are not in the same homogenous neighbourhood as the subject property, but are in close proximity.
- He had made no adjustment for these properties being respectively 17 and 15 years older than the subject property.
- The property at 1 Armstrong Street has  $1 \frac{3}{4}$  storeys.
- Establishing a range of values is a reasonable way of determining current value.

### **Summations**

#### *Summation for MPAC*

43 In regard to current value, MPAC's representative, Mr. Pileggi, submitted that MPAC's sales comparables were valid sales of similar properties in the vicinity and their sale prices, time-adjusted and adjusted for differences from the subject property, established a range of value for the subject property, and the subject property's assessed value of \$658,000 is within that range.

44 In regard to equity, Mr. Pileggi submitted that MPAC's Equity Study showed that similar properties in the vicinity sold with a median ASR of 0.97 which indicated that they were being assessed so close to their current values that no equity adjustment was required to be made to the subject property's current value.

45 In regard to Mr. **Baranowski's** comparable properties, Mr. Pileggi submitted that:

- Some of them are not in the same homogenous area as the subject property.
- No adjustments were made for differences in year built, although two were built respectively 17 and 15 years before the subject property.

- No adjustments were made for differences in basement areas.
- Their Quality Classes were not shown.
- Calculations of current value based on a price per square foot comparison are not reliable unless adjustments are made for every element.
- The assessment of \$658,000 is correct and equitable.

#### *Submissions for the Appellant*

46 The Appellant's representative, Mr. **Baranowski** submitted that:

- Adjusting for basement areas, would reduce the assessment of the subject property even further.
- No evidence was presented as to the effect of Quality Class on current value.
- MPAC's Equity Study should be disregarded as no details of the sales were provided.

#### *Analysis*

##### *Current Value*

47 The Board's first task, in accordance with s. 44.(3)(a) of the Act, is to determine the current value of the subject property.

48 The Courts have held that the best evidence of current value is a sale of the subject property on or close to the valuation date or, if there is no such sale, the sales of similar properties in the vicinity on or close to the valuation date.

49 In this case, there was no sale of the subject property close to the January 1, 2008 valuation date, but MPAC has presented, as sales comparables, six similar properties in the vicinity that sold close to the valuation date, and has adjusted the sale prices for time from the valuation date and for differences from the subject property.

50 The adjusted sale prices of MPAC's comparables establish a range of value for the subject property of between \$653,000 and \$741,000, and the assessment of the subject property at \$658,000 is within this range.

51 The Appellant's representative, Mr. **Baranowski**, presented six comparable properties, three of which were sales comparables, but one of the three (the property at 10 Leenders Lane) had already been presented by MPAC, and the Board finds the remaining two (the properties at 8 Armstrong Street and 1 Armstrong Street) not to be reliable comparables because they were built respectively 15 and 17 years before the subject property and because their sales in respectively June 2005 and June 2010 are too far removed from the January 1, 2008 valuation date to be reliable evidence of current value as of that date.

52 Mr. **Baranowski** presented several calculations of current value based on the assessments and sale prices per square foot of TBA of the Appellant's comparables and MPAC's comparables, after adjustments of the assessments and sale prices for differences in lot sizes and adjustment of the sale prices for time from the January 1, 2008 valuation date.

53 The Board gives little weight to these calculations of current value because a direct comparison based on square feet of TBA requires that the comparable properties have roughly similar TBAs and that adjustments be made for differ-

ences from the subject property and, in this case, four of the comparables are not roughly similar to the subject property in TBA (as their TBA's are not with 10% of its TBA) and no adjustments were made in regard to the differences in respect of year built, number of storeys, TBA, basement area or finished basement area.

54 The Board finds the best evidence before it as to the current value of the subject property to be the sale of MPAC's comparable at 10 Leenders Lane, which is the most comparable to the subject property, being very similar in effective frontage, total building area and basement area.

55 This comparable sold in August 2008 with a time-adjusted sale price of \$675,322, which amounts to \$264.31 per square foot of total building area, and applying this rate to the subject property's total building area of 2,433 square feet gives \$643,066, rounded to \$643,000, which the Board determines to be the current value of the subject property.

56 The Board prefers the evidence of this sale to MPAC's calculation of a range of values using sale prices adjusted for differences from the subject property, because MPAC's representative did not explain how these adjustments were calculated. If, as it appears, they were based on comparing the assessments of the comparables to that of the subject property, this is not reliable methodology as the assessment of the subject property is not a given but is the very matter at issue before the Board.

#### *Equity*

57 MPAC's Equity Study of 35 sales of residential properties within 1.49 kilometers of the subject property shows that they sold with a median ASR of 0.97, which is within the generally accepted range of 5% above or below current value and indicates that no equity adjustment is required.

58 Mr. **Baranowski** pointed out that the average ASR of MPAC's six sales comparables is 0.95, but this is also within the 5% range and indicates that no equity adjustment is required.

59 The median ASR of MPAC's six sales comparables is 0.97, which is also within the 5% range and indicates that no equity adjustment is required.

60 Based on the foregoing, the Board finds that no equity adjustment is required.

#### **Conclusion**

61 The Board determines the current value of the subject property to be \$643,000; finds that no adjustment is required to make the assessment of the subject property equitable with the assessments of similar properties in the vicinity; and reduces the assessment of the subject property for the 2011 and 2012 taxation years from \$658,000 to \$643,000.

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

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