

Assessment Review Board
Commission de révision de
l'évaluation foncière



ISSUE DATE: October 24, 2016

FILE NO.: WR 140796

Assessed Person(s): Indell Corporation
Appellant(s): Indell Corporation
Respondent(s): Municipal Property Assessment Corporation ("MPAC")
Region 15
Respondent(s): City of Brampton
Property Location(s): 11 Indell Lane
Municipality(ies): City of Brampton
Roll Number(s): 2110-100-025-27809-0000
Appeal Number(s): 2941947, 3007060, 3083556 and 3154238 (deemed
2016 appeal)
Taxation Year(s): 2013, 2014, 2015 and 2016 (deemed appeal)
Hearing Event No. 620639
Legislative Authority: Section 40 of the *Assessment Act*, R.S.O. 1990, c.
A.31, as amended

Heard: May 25, 2016 in Brampton, Ontario

APPEARANCES:

Parties

Counsel[†]/Representative

Indell Corporation

Lorne W. Bumstead

MPAC

Todd Willson

City of Brampton

Aida Karreman

**MEMORANDUM OF ORAL DECISION DELIVERED BY VINCENT STABLE ON MAY
25, 2016**

INTRODUCTION

[1] The subject property comprises two acres of land and a steel frame building with brick exterior built in 1988. The building has a gross building area of 31,289 square feet (“sq. ft.”) including a mezzanine. The site is zoned M3A and coded as “Warehousing”.

[2] For the valuation date of January 1, 2012, the property has been assessed at \$3,034,000.

ISSUES

[3] The issues to be determined are:

- (i) The current value of the subject property as of January 1, 2012, being the “valuation day.”
- (ii) Whether an assessment at current value is equitable with that of similar lands in the vicinity.

DECISION

[4] For reasons set out below, I find that the correct current value is \$2,644,000.

[5] No further adjustments are warranted for equity.

[6] The assessments for the taxation years 2013, 2014, 2015 and 2016 are reduced from \$3,034,000 to \$2,644,000. The classification shall remain as Commercial.

MPAC’s Position

[7] Todd Willson (the “assessor”) testified for the Municipal Property Assessment Corporation (“MPAC”). His report was filed and marked Exhibit 1. The assessor and

Lorne W. Bumstead, Indell Corporation's (the "appellant") representative, inspected the property on April 27, 2016. He used two approaches to value: the Cost approach and the Direct Sales Comparison Approach. The Cost Approach is described by the assessor as an estimate of the cost to reproduce the structure(s)/improvements of equal utility to those of the subject property under current market conditions. That cost would be reduced through various forms of depreciation. Once that value is determined, the land value would be added. The land value is determined by sales, thereby using the Direct Sales Comparison Approach.

[8] Based on the Cost Approach, he determined a net improvement value for the building of \$1,751,457 (Exhibit 1, Tab A)

[9] Based on the Direct Sales Comparison Approach he determined a land value of \$733,094 per acre using the sale of six industrial properties in the vicinity.

[10] The result would be an assessment of \$3,219,000. However, the assessor recommended a reduction to \$3,034,000.

[11] Although the property would remain in the Commercial Tax Class, the assessor argued that the property should be assessed as 'office', given that a substantial portion of the interior, both main floor and mezzanine, was finished as office space.

[12] The assessor also provided a time adjustment study for the land for the period July 6, 2009 to May 10, 2016 (Exhibit 1, Tab B) of 140 land sales and an equity study (Exhibit 1, Tab C) of sales of 48 similar properties in the vicinity suggesting an assessment to sales ratio ("ASR") within an acceptable range.

[13] On cross-examination, the assessor confirmed that MPAC recommends adjustments to value at no greater than 20% - 30%. The assessor acknowledged that the six sales relied upon by him to arrive at his proposed land value were adjusted as follows:

5 Nuggett Court...	14%
6 Indell Lane...	71%
4 Indell Lane...	116%
12 Colony Court...	74%
8 Indell Lane	6%
2 Baker Road...	87%

[14] The assessor also acknowledged for the years 2011 to 2012 the market was generally 'flat'. Accordingly no adjustments would be warranted.

[15] The assessor confirmed that his value of \$3,219,000 resulted in a value of \$102.30 per square foot, including the mezzanine. However, using the sales of the six properties relied upon by him would result in a median of \$82.50 per square foot (see Exhibit 2).

Appellant's Position

[16] Peter L. Ward testified for the appellant. His Curriculum Vitae and Acknowledgment of Expert's Duty were filed and marked as Exhibit 3. Mr. Ward was not qualified by me as an expert witness. However his oral testimony, in support of his narrative report marked as Exhibit 4, was received as opinion evidence.

[17] He states that the subject building has been used as an office and warehouse by single owners and/or tenants since it was built. Although it sits on two acres of land, no further development is permitted given the land to building ratio by-laws imposed by the City of Brampton. Therefore the present use is the highest and best use.

[18] Mr. Ward states that although a large percentage of the building is finished as 'office', the present occupant of the building uses a limited amount of the office space. He noted that it is not uncommon for subsequent occupants to re-do the leasehold

improvements to meet their specific needs. The previously finished space, therefore, is in fact a negative value.

[19] He states therefore that the subject property should continue to be classified as 'office warehouse'.

[20] Mr. Ward does not agree that the Cost Approach to value should be used. There are ample sales of similar properties in the vicinity. He states that the best approach to value is the Direct Sales Comparison Approach.

[21] At page 11 of Exhibit 4, Mr. Ward sets out the sale of eight (8) properties in the vicinity upon which he relies.

[22] Based on his analysis, he determined a sale per square foot of \$66 to \$84. He suggests a current value for the January 1, 2012 valuation date of \$2,493,000.

The Legislation

[23] The Board's jurisdiction to make corrections to an assessment is found in the *Assessment Act* ("Act.") Section 19.(1) of the Act provides that the assessment of a property must be based upon its current value:

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

[24] Section 1 of the Act:

"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.

[25] Section 19.2(1) of the Act provides:

Valuation days

19.2 (1) 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.
2. For the period consisting of the four taxation years from 2009 to 2012, land is valued as of January 1, 2008.
3. For each subsequent period consisting of four consecutive taxation years, land is valued as of January 1 of the year preceding the first of those four taxation years.

Exception

(5) Subsection (1) does not apply in respect of the valuation of land for a taxation year after 2004 if the Minister prescribes a different day as of which land is valued for that year.

[26] 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.

[27] Section 45 of the Act states:

45. Powers and functions of the Assessment Review Board. – Upon an appeal with respect to an assessment, the Assessment Review Board may review the assessment and, for the purposes of the review, has all the powers and functions of the assessment corporation in making an assessment, determination or decision under this Act, and any assessment, determination or decision made on review by the Assessment Review Board shall be deemed to be an assessment, determination or decision of the assessment corporation and has the same force and effect.

Analysis

[28] The best evidence of value is the sale of the subject property. There is no recent sale of the subject property to inform the Board. The duty of the Board under the Act is

to determine current value with reference to similar lands in the vicinity.

[29] The Board accepts the Cost approach and the Direct Comparison approach to value as valid approaches. The Board also accepts a determination of current value based upon the sale values per square foot of valid sales of comparable properties.

[30] The evidence presented and relied upon by the assessor proposes a combined approach to value. It is clear that to arrive at the land value portion of the valuation methodology, the assessor was required to make adjustments well beyond the parameters normally used or recommended by MPAC. Only two of the six sales used are within the acceptable range of 20% - 30%. The others vary from 71% - 116%. The adjustments proposed by the assessor are not acceptable.

[31] The Board has often held that although the cost approach to value is acceptable, it must nevertheless be capable of being supported by actual sales. In the present appeals both parties have presented evidence of sales of similar properties in the vicinity. Interestingly, six of the proposed sales are common to both parties.

[32] There was ample discussion as to the validity of two sales proposed by MPAC: 55 Nuggett Court and 8 Indell Lane. There was also controversy in respect to 22 Bramwin Court, proposed by the appellant.

[33] I prefer to use the Direct Sales Comparison Approach to value as a much better indicator of value as defined under s. 19(1) of the Act. Using the sales proposed by MPAC and excluding the two disputed sales, I have an average value of \$84.50 per sq. ft. Applying that value to the gross square footage of building space submitted by MPAC at 31,289 sq. ft., results in a current value of \$2,643,920 (\$2,644,000 rounded).

EQUITY

[34] On the issue of equity, the only evidence received is that from the assessor which suggests that the ASRs' are within the acceptable range. I am satisfied therefore

that no further adjustment is required for equity.

CONCLUSION

[35] Accordingly, the assessments for the taxation years 2013, 2014 and 2015 are reduced from \$3,034,000 to \$2,644,000. The classification shall remain the same at Commercial.

2016 DEEMED APPEAL

[36] An appeal for the 2015 taxation year is presently before the Board. Section 40.(26) of the *Assessment Act* provides that the appellant is deemed to have made the same appeal for the subsequent taxation year if the appeal is not finally disposed of before March 31 of the subsequent taxation year. The Board has not disposed of the 2015 appeal before March 31, 2016. For that reason, this decision also applies to the 2016 taxation year.

[37] Section 40.(26) of the Act directs:

Deemed appeals, 2009 and subsequent years

(26) For 2009 and subsequent taxation years, an appellant shall be deemed to have brought the same appeal in respect of a property,

- (a) in relation to the assessments under sections 32, 33 and 34 for the year; and
- (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.

“Vincent Stabile”

VINCENT STABILE
MEMBER

Assessment Review Board

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