



Assessment Review Board

Commission de révision de l'évaluation foncière

File No: WR 68162

Region Number: 09
Municipality: City of Toronto
Roll Numbers: 1908-012-290-00500-0000 and 1908-012-290-00600-0000
Hearing Number: 140525
Complaint Numbers: 1817484, 1817485, 1920265, 1920266, 1995939 and 1995940

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, 2007 and 2008 on premises known municipally as 3266 and 3286 Weston Road.

BETWEEN: Coranado Court Apartments Limited

Assessed Person/
Complainant

- and -

The Municipal Property Assessment Corporation,
Region No. 09 and the City of Toronto

Respondents

APPEARING: B. Blufarb - Counsel for the Assessed Person/
Complainant

L. Bumstead - Representative for the Assessed Person/
(Bumstead Complainant
Associates Inc)

K. Lunau - Counsel for the Municipal Property
(Conway Davis Assessment Corporation
Gryski)

L. Sepe - for the Municipal Property Assessment
Corporation

No one appeared - for the Municipality

**DECISION OF THE ASSESSMENT REVIEW BOARD delivered by:
A. MacKay**

These complaints came before the Assessment Review Board on April 23, 2008 in the City of Toronto.

ISSUE

The issue before the Board is whether the assessments of the subject properties are correct at \$5,028,000 for 3286 Weston Road and \$5,046,000 for 3266 Weston Road for the 2006, 2007 and 2008 taxation years.

DECISION

The assessments of the subject properties are reduced from \$5,028,000 to \$3,712,000 for 3286 Weston Road and from \$5,046,000 to \$3,614,000 for 3266 Weston Road for the 2006, 2007 and 2008 taxation years.

REASONS FOR DECISION

When asked at the commencement of the hearing, both parties were in agreement to have the decision apply to the 2008 taxation year.

Issues:

In opening statements, both parties agreed that the gross income approach is the most appropriate method to determine the current value assessment (CVA). There is no

issue with classification and a gross income multiplier (GIM) of 7.1 is accepted by both parties. The issue before the Board is whether actual rents or fair market rents (economic rents) should be used in determining gross income.

The parties disagree as to the unit mix for 3266 Weston Road which must be determined in order to calculate gross income.

Property Description:

3286 Weston Road:

3286 Weston Road is a four storey, 55-unit multi-residential rental apartment building located on a 2.25-acre site. The property was constructed in 1962 and consists of one one-bedroom apartment, 34 two-bedroom apartments and 20 three-bedroom apartments.

The structure is in average condition for its age with the exterior showing deterioration. The building has one elevator. As units become vacant, they are renovated, including new kitchens and bathrooms. Heat and water are paid by the landlord with the tenant paying the hydro.

3266 Weston Road:

3266 Weston Road is a four-storey, 59-unit multi-residential rental apartment building located on a 1.25-acre site. The subject property was constructed in 1962 and according to MPAC's evidence the building consists of 40 two-bedroom apartments, 16 three-bedroom apartments, and three four-bedroom apartments.

The complainant's evidence in this regard, given by its expert Lorne Bumstead, is that the property has 41 two-bedroom apartments 15 three-bedroom apartments and three

four-bedroom apartments for a total of 59 apartments. There is a disagreement with respect to the number of two versus three bedrooms apartments.

The structure is in average condition for its age with the exterior showing deterioration. The building has one elevator. As units become vacant, they are renovated, including new kitchens and bathrooms. Heat and water are paid by the landlord with the tenant paying the hydro.

Both properties are former limited dividend buildings. In the 1950's the Province established a program to promote the construction of new, low rental, multi-residential housing. In exchange for a below market interest rate on a construction loan, the building's owners entered into an agreement to "limit" their return on their investment to a certain amount. As a result, the rents that the owner charged were below market rents. The subject properties are no longer subject to the limited dividend agreements, but many of the rents in the buildings are still below the rents charged in other buildings for similar units.

Issue:

The Mix of Suites in 3266 Weston Road:

Before the Board can consider the rental income to be applied in calculating gross income the Board must determine the suite mix for 3266 Weston Road.

The Board finds that the suite mix used by the Municipal Property Assessment Corporation (MPAC), namely 40 two-bedroom apartments, 16 three-bedrooms and three four-bedrooms, is to be used in calculating gross income.

Mr. Sepe 's evidence is that MPAC's unit mix is correct based on MPAC's records and the owners 2004 and 2005 rent rolls.

Counsel for the complainant sent this same unit mix to MPAC by fax dated March 22, 2007 found at Tab #1 page 11 of Exhibit 1.

The Board prefers this evidence over the evidence of Mr. Bumstead for the reason that in Exhibit #4 (his expert report) there are conflicting unit mixes used for the building.

Issue:

The Rents To Be Applied In Calculating Gross Income:

Mr. Bumstead, accepted by the Board on consent of MPAC as an expert witness for the complainant, argues that the actual rents that are being achieved by the subject properties are the maximum rents that can be achieved within the market for the units in the subject properties. Mr. Bumstead contends that the actual January 1, 2005 rent roll should be used to determine the fair market rents.

Mr. Bumstead states that the rental rates used by the MPAC can only be achieved after units are vacated, renovated, and marketed, which would require time and money. He stated that renovated units could possibly generate approximately \$1,000 per month rent. If the units remain unrenovated, he doubts that new tenants would move in given the Toronto rental market and condominiums available in today's market. Mr. Bumstead stated that with the increased costs in renovating, it could take years for the owner to see any financial benefit.

MPAC called Mr. Sepe, a Senior Valuation Analyst with MPAC. Mr. Sepe's evidence is that the majority of rents for the subject properties are depressed rents and not fair

market rents, so MPAC has used rents reflective of the market to determine current value of the subject properties.

In determining the appropriate rents to use The Board is governed by the following sections of the Assessment Act, R.S.O. 1990, c.31 as amended in the *Assessment Act (Act)*.

Subsection 19 (1) of the *Act* directs that:

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

Section 1 of the *Act* defines current value as:

"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.

Subsection 19.2(1) of the *Act* directs that:

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.*

Subsection 44(2) of the *Act* directs that:

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.*

The Board's task is to determine whether a change to the assessment is necessary to reflect a correction to current value.

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.*

Evidence, Submissions and Analysis:

Case law was submitted by both parties. Both parties submitted the case of *Cardinal Plaza Ltd. et al. and Regional Assessment Commissioner, Region No. 19 et al.* (1984), 49 O.R. (2nd) 161, a decision of the Ontario Court of Appeal. The issue in this case was whether actual or economic rent should be used in the income calculation to determine market value. The Ontario Municipal Board and the Divisional Court both found that the economic rent rather than the actual rent should be used. The Court of Appeal stated that,

We are all of the view that an equitable assessment of multi-residential properties based upon the income approach must necessarily use economic rents rather than actual rents.

The court stated that,

...actual rents for similar units may vary considerably and can fluctuate according to the length and other terms of the lease as well as the market conditions which obtain when the lease is entered into.

The Court found that, "fair market rent" was correctly interpreted by the assessor as the "most typical rent that a unit would rent for if available in the open market".

MPAC's position is that the actual rents for the subject properties are below market level and that the units would have rented for more as of the valuation day.

Mr. Blubfarb argues that the actual rents are the market rents. The evidence is that only a few of the units are renovated and that the higher rents shown on the rent rolls and considered by MPAC to be market rents are the rents for the renovated units and that most of the units in the buildings could not be rented at the rates considered by MPAC to be market rents.

Neither party was able to say which units have been renovated and it makes sense to the Board that the units with the higher rents may be the renovated units. In looking at the rent rolls very few units are rented at the rates that MPAC has determined to be market rents for the building.

A market rent is defined to be the rent a willing lessor would pay to the lessee in an open market. The Board must decide if a willing tenant would pay the typical average rents (TAR) determined by MPAC for the units.

The case of *A. Merkur & Sons Ltd. and Regional Assessment Commission Region, No. 14 et al.*, (1977) 17 O. R. (2d) 339 (H. C. J) (*Merkur*) was submitted by Mr. Blufarb. This case is an Ontario Court of Appeal decision where the Appeal Court overturned the decision of the Divisional Court and upheld an Ontario Municipal Board Decision (OMB) to calculate income using actual rent figures rather than hypothetical figures. The Ontario Municipal Board found that actual rent may be synonymous with market rent providing that the market has been analysed. The Board found that shopping centres were bought and sold on the basis of actual rents and not market rents.

According to Mekur the Board must determine whether there is evidence to suggest that the actual rents are not real market rents.

The Board accepts the evidence of Mr. Bumstead that,

...the rents that are being achieved by this subject property are the maximum rents that can be achieved legally and within the market.

MPAC entered no evidence to dispute this contention of Mr. Bumstead. MPAC's evidence is that other buildings are able to achieve higher rents. The state of repair or overall condition of the other buildings is not known.

The evidence is undisputed that most of the subject properties' units are in need of upgrading. Mr. Sepe states that he used only market rents within the building to calculate the TAR. The Board finds that Mr. Sepe's method would require that all of the units be in the same state of repair and renovated to the same date. The evidence before the Board is that they are not.

The Board notes that the rent billing data for both properties contained in Exhibit 1 shows that both buildings had vacancies even at the low rental rate.

MPAC introduced no evidence to support how it arrived at the "contract rents" it used to determine the gross income of the property.

For the reasons above the Board accepts the income valuation approach put forth by Mr. Bumstead with the exception of a correction for the unit mix 3266 Weston Road.

The Board is satisfied that both an analysis of the sales of similar properties in the vicinity and a comparison of the assessments of similar properties in the vicinity support this conclusion.

With respect to sales, MPAC did not introduce any sales evidence. Mr. Sepe gave evidence on the sales comparables relied upon by the Complainant. The Board notes three of the assessment to sales ratios (ASR) for the four properties introduced by Mr. Bumstead are greater than one indicating, if anything, that MPAC may be over assessing multi-residential buildings.

The Board agrees with MPAC that the property at 35 Tobermory Drive is not comparable, being an 11-storey highrise. The Board is satisfied that the buildings at 1780 Wilson Avenue, 2782 Keele Street and 3018 Keele Street are reasonably similar to the subject properties. The sales prices per unit are higher for 1780 Wilson Avenue and 2782 Keele Street than the assessment per unit sought by Mr. Bumstead. The sale price per unit of 3018 Keele Street is between the assessments per unit sought by Mr. Bumstead. The Board is satisfied that the difference may be explained by the lower rents for the subject properties. MPAC's suggested assessment per unit of the subject properties is higher than the sales price per units of any of the suggested comparables. It does not make sense that a purchaser would pay more per unit for a building with low rents that cannot be immediately increased.

With respect to the assessments of similar properties in the vicinities the Board has already noted that three of the four ASR's in evidence are greater than one.

For the reasons given above the Board accepts the expert evidence of Mr. Bumstead and reduces the assessment of the subject property as set out in the charts below:

3286 Weston Road:

Unit Type	Number of Units	Unit Rent	Total Annual Rent
1 Bedroom	1	\$707	\$ 8,484
2 Bedroom	34	\$830	\$338,640
3 Bedroom	20	\$732	\$175,680
Total Potential Annual Income			\$522,804

Total Potential Annual Income x G.I.M. of 7.1 = \$3,711,908

The assessment of 3286 Weston Road is reduced from \$ 5,502,800 to \$3, 712,000 for the 2006, 2007, and 2008 taxation years.

3266 Weston Road:

Unit Type	Number of Units	Unit Rent	Total Annual Rent
2 Bedroom	40	\$694	\$333,120
3 Bedroom	16	\$732	\$140,544
4 Bedroom	3	\$980	\$ 35,280
Total Potential Annual Income			\$508,944

Total Potential Annual Income x G.I.M. of 7.1 = \$3,613,502

The assessment of 3266 Weston Road is reduced from \$5,046,000 to \$3,614,000 for the 2006, 2007 and 2008 taxation years.

"A. MacKay"

A. MacKay

Member

/th

DECISION RELEASED ON: August 15, 2008