Ontario

Assessment Review Board

Commission de révision de l'évaluation foncière

File No: WR 120736

Region Number:	14
Municipality:	City of Markham
Roll Number:	1936-020-132-23200-0000
Hearing Number:	543041
Appeal Numbers:	2029662, 2336949, 2679943 and 2911965

In the matter of Section 40 of the *Assessment Act*, R.S.O. 1990, c. A.31, as amended, and in the matter of appeals with respect to taxation years 2009, 2010, 2011 and 2012 on premises known municipally as 25 Centurian Drive.

BETWEEN: Christian Schumacher

Assessed Person/
Appellant

- and -

The Municipal Property Assessment Corporation,
Region No. 14 and the City of Markham

Respondents

APPEARING:

L. Bumstead (Bumstead Legal Services) - Representative for the Assessed Person/ Appellant

R. Grundsten - for the Municipal Property Assessment Corporation

J. K. Howe - for the Municipality

DECISION OF THE ASSESSMENT REVIEW BOARD delivered by:

B. Cowan

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[1] These appeals came before the Assessment Review Board ("Board") on September 3, 2013 in the City of Markham.

ISSUE

[2] 25 Centurian Drive is a 57,400 square foot ("sq. ft.") office building in an area of mixed office and industrial properties north of Highway 7, between Highway 404 and Woodbine Avenue in City of Markham.

[3] To establish the assessment, the Municipal Property Assessment Corporation ("MPAC") has utilized rental rates of $15 per square foot ("psf")[1] for each of the tenancies in the building. As it has done with other properties that it considers similar, it has reduced the total rental income by factors of 5% and 3% for vacancy and management costs respectively, and has capitalized the result at 8% per annum. The assessment so derived is $9,901,000, or $172.49 psf of building area.

[4] Referring to the subject property's purchase by its offshore owner in March 2004 for $9,950,000, MPAC considers the purchase price to be an indication of the correctness of the assessment as returned, notwithstanding the timing difference between that transaction and the mandated valuation date of January 1, 2008.

[5] The Appellant has adopted a like capitalized income methodology. However, in stark contrast to MPAC, the Appellant maintains that the rents psf to be utilized should be only $10, and that the vacancy, management and capitalization ("cap)" rate factors in the calculation should be 6%, 4% and 8.5% respectively. Based thereon, the Appellant seeks a reduction in the assessment to $6,077,000. This equates to $105.87 psf.

[6] This value sought by the Appellant is corroborated by its equity analysis whereby the median psf assessment of properties it considers to be similar to and in proximity to the subject property is also $105.87.

[1] "psf" is used interchangeably for rent per annum and for assessment value divided by building area, as applicable in the circumstance.

[7] Unlike most appeals where current value is at issue, no party in this matter has referred to sales of other properties to support the assessment sought.

[8] I must determine from the evidence before me what rents psf are appropriate to calculate the rental income, which vacancy, management and cap rates are determinative, and ultimately what value results for the subject property's assessment. In so doing, I must address the influence of the subject property's purchase price in 2004, if any, on that value. Additionally, I am mandated by the legislation to have reference to the assessments of similar lands in the vicinity, and to reduce the value, if necessary to achieve an equitable result.

DECISION

[9] The current value is found to be $8,179,000 for the 2009, 2010, 2011 and 2012 taxation years.

[10] To achieve equity with the assessments of similar lands in the vicinity, the current value for each of those years is reduced additionally to $6,763,000.

[11] The $6,763,000 assessment determined herein is apportioned $2,945,290 to the commercial property tax class and $3,817,710 to the office building property tax class.

REASONS FOR DECISION

[12] Mr. R. Grundsten appeared for MPAC, and was its sole witness. Supporting his conclusions, Ms. K. Howe appeared for the Municipality. Although she had not received advance disclosure from the Appellant, a recess in the hearing enabled her to review the intended evidence. Ms. Howe did not seek an adjournment or a restriction on the

evidence. Rather, she participated in cross-examination of witnesses and in summation.

[13] Mr. L. Bumstead appeared for the Appellant, who had filed the appeal in its capacity as property manager for the assessed person. The preponderance of the Appellant's presentation was introduced by its primary witness, Mr. P. Ward. He was qualified as an expert witness in assessment and property valuation for property types like the subject property.

Current Value

[14] Section 19.(1) of the *Assessment Act* ("Act") states:

> The assessment of land shall be based on its current value.

[15] The Act establishes January 1, 2008 as the valuation date for 2009 to 2012 taxation, and defines current value to mean:

> ...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.

[16] The Act accordingly establishes the January 2008 marketplace as determinative of current value.

[17] There is no specific evidence of any office building sale other than the subject property's purchase almost four years prior to the mandated valuation date. This transaction will be addressed separately below.

[18] In the absence of specific determinative sales, the parties have adopted a common valuation technique of determining net income derived after deducting vacancy and management factors, and applying a cap rate to the result, yielding the assessment supported by MPAC or sought by the Appellant.

[19] Rents, vacancy and management costs, together with cap rates, can be essentially a proxy for the marketplace, in the absence of determinative sales evidence. They are presumably derived from analysis by MPAC in establishing a broad basis for application in determining specific properties' assessments and/or by valuation practitioners on behalf of other parties to assessment appeals.

Rents

[20] Location and timing are key elements in establishing rents to be utilized in the methodology of capitalizing net income. Another key element is the property-specific characteristics of a property that differentiate it from others. The interrelationships between these elements merit consideration, in this instance.

[21] Respecting location, MPAC bases the subject property's assessment on its actual rents. These, in its view, exceed \$15 psf and are compatible with rents for three properties on Commerce Valley Drive, together with three others in closer proximity to the subject property. Mr. Ward considers the three properties on Commerce Valley Drive to be in a location considerably different from all 14 other properties in evidence, and accordingly rejects them. He accepts the locational similarity of the three other properties referenced by MPAC and adds 11 others in closer proximity to the subject property than the three.

[22] I concur with Mr. Ward's conclusion that the two locations are different in nature and character. Commerce Valley Drive is located south of Highway 7, west of Highway

404, whereas the subject property and the other 14 properties are diagonally located north of Highway 7, east of Highway 404. Most properties in the former location are major office buildings, many with single-occupant head office tenants. The subject property, on the other hand, is located in an area generally consisting of a mixture of smaller multi-tenanted office buildings and industrial properties.

[23] MPAC has introduced no evidence respecting the six properties referred to by it for comparative purposes. Indeed, its reference to them is only in evidence from Tab 2 of Mr. Ward's Analysis (Exhibit 9), a one-page response to the Statement of Issues. Other than referring to the subject property's leases and purchase, this "response" lists the six properties and states that they "...are similar to the subject property and have all been valued using a 5% vacancy allowance, 3% expense allowance and an 8% capitalization rate."

[24] Mr. Ward's testimony is that 11 of the 13 properties listed at page 17 of his Analysis, all in the north-east quadrant of the two major highways, have been assessed using 6%, 4% and 8.5% factors respectively. This evidence is uncontested, and leads to the logical and hence probable conclusion that the two locations are different, and as such are generally valued by MPAC using different cost and cap rates.

[25] There are two timing issues to consider; the purchase of the property almost four years prior to the valuation date, and the appropriateness of using rents based on leases commencing at various times prior to that date.

[26] Acknowledging the 4-year timing difference between the property's purchase and the January 2008 valuation date set by the Act, Mr. Grundsten does not argue that the $9,950,000 acquisition price be determinative. Rather, he suggests that it corroborates the assessment value determined by MPAC.

[27] Mr. Bumstead advances argument that the purchase price be ignored, not only for timing reasons, but because of his witness' testimony. Ms. V. Mayvac has managed the property for the Assessed Person, a non-resident, since its purchase. According to her testimony, Christian Schumacher bought the property sight-unseen, without financing, as an investment. He had not been to the property, was unaware of tenant inducements that were incorporated into the leases that were assumed, and knew nothing personally about the property. Mr. Bumstead implies that the purchase price in 2004 was excessive.

[28] I place little credence on the issue regarding the price paid for the property as being at variance with the marketplace due to the purchaser's unfamiliarity with the Markham marketplace, as that conclusion is subjective. However, I do not attribute any determinative weight to the transaction value due to the passage of considerable time between the purchase and the valuation date. Real estate values can change rapidly in either direction, based on many economic circumstances. Without any market trend analysis, it would be inappropriate in this matter for me to base the subject property's current value at January 1, 2008 on its 2004 purchase price. Indeed, the current value I determine below is at considerable variance with the purchase price and the MPAC-determined assessment value.

[29] The matter of timing of leases is argued by both Mr. Grundsten and Ms. Howe as not being of material relevance, whereas Mr. Ward challenges that premise.

[30] Leases assumed at the time of the 2004 purchase of the subject property ranged from $13.50 psf to $16.50 psf. Looking to 2007, the range changed whereby the unit previously at $16.50 psf increased to $18.50 psf (by a lease-based-escalation) and one of the three tenancies at $13.50 psf was re-leased for $10.00 psf. As over 40% of the building is occupied by the $18.50 tenancy, MPAC has adopted a $15.00 psf rent as appropriate.

[31] Mr. Ward supports the view that the lease at $10.00 psf for Unit 203/204 that was established in March 2007 is most demonstrative of the January 2008 marketplace to be utilized to establish current value for the appeals in this matter. This is consistent with Mr. Bumstead's urging that I disregard lease rates established prior to the property's 2004 purchase as being so remote from the valuation date as to merit no determinative weight.

[32] If MPAC had utilized uniform psf rent rates for most properties, based on a market analysis of actual leases contracted within a reasonable time frame of the January 2008 valuation date, I would adopt that rate (or rates if differing for sizes of units). However, MPAC has not done so for the properties in evidence.

[33] Rather, Mr. Ward has calculated the rents used by MPAC for the assessments of the 13 properties listed on page 17 of his Analysis[2]. The range is from $7.42 to $13.86 psf, the median being $10.00; coincidently the rate for Unit 203/204 set in March 2007 for the subject property. The calculation (provided in testimony) incorporates working backwards from the assessment by applying the vacancy, cost and cap rate factors. I reviewed the calculations, and find them accurate.

[34] For two reasons, I find that the evidence in this particular matter favours MPAC's approach of utilizing actual rents received for a property to incorporate into the agreed methodology's formula, as MPAC has done, over using solely the one $10.00 psf lease for Unit 203/204.

[35] Firstly, the oft quoted adage "One sale does not a market make" comes to mind. Unit 203/204 is only one of six units in the building. It is the smallest, at 4,720 sq. ft., and represents only about 8% of the total building. It's psf rent should be included in

[2] Specifically, the rents as calculated for the thirteen properties, in the order listed at page 17 of Exhibit 9 are: $13.86, $13.25, $7.42, $9.50, $9.00, $9.87, $10.12, $10.00, $9.00, $12.95, $11.59, $11.00, and $10.00.

the overall calculation, but the risk of distortion to the entire property value, if used for all units, remains a reality.

[36] Secondly, considering the disparity in rents used by MPAC for the properties in evidence, as indicated by footnote 2, a uniform rent psf for the properties in the north-east quadrant where the two highways meet has not been utilized to establish these properties' assessments. Rather, on balance of probability, actual rents have formed the basis of rents used for capitalization.

[37] Ms. Mayvac testified as to her error in not disclosing tenants' inducements in Exhibits 2, 3 and 4, MPAC's annual Rental Data Requests form. Unfamiliar with this document, in 2007, 2008 and 2010 she submitted the tenancy and lease data without including inducements incorporated into most leases. Consequently, when establishing the assessment based on $15.00 psf rents, MPAC was unaware of the actual tenant inducements ("TIs").

[38] I find it appropriate in this matter to reduce the rents for the subject property to provide for TIs in the specific applicable leases, because on the balance of probability the rents net of inducements is the income to be incorporated into the valuation formula. In Mr. Ward's opinion, that is an appropriate approach, and neither of the other parties challenged this premise. Furthermore, were it irrelevant and inappropriate for its consideration in MPAC's methodology, there is no reason to collect such tenancy-specific data; or if there is such a reason, Mr. Grundsten did not express it.

[39] Tab 5 of Mr. Ward's Analysis sets out the individual psf TIs, and Ms. Mayvac testified as to the psf per annum value based on the specific tenancy durations. Based thereon, I calculate the annual rental income for utilization in calculation of the subject property's current value to be $772,438, as follows:

Unit Number	Rent Psf.($)	TIs ($)	Net	Area[3] (sq. ft.)	Rent ($)
100	18.50	2.50	16.00	24,330	389,280
102	13.50	5.00	8.50	3,809	32,377
201	16.25	3.00	13.25	11,173	148,042
202	16.00	3.00	13.00	6,839	88,907
203/204	10.00	n/a	10.00	4,431	44,310
208	13.50	3.33	10.17	6,836	69,522
				TOTAL	772,438

Costs and Cap Rates

[40] The preponderance of properties located in the subject property's quadrant have been assessed utilizing different cost and cap rate factors than the properties on Commerce Valley Drive. Mr. Ward's uncontested evidence is that his investigation determined that the subject property's assessment incorporated the same cost and cap rate factors as those on Commerce Valley Drive and three others; and that all other properties in evidence had a lesser value of assessment due to having utilized higher cost and cap rate factors.

[41] I find that for these appeals, there is no reason to differentiate the subject property's cost and cap rate factors from those utilized for most other properties. The nature and character of the three Commerce Valley Drive properties is different from the subject property and from 11 of 13 properties referenced at page 17 of Mr. Ward's Analysis. Mr. Grundsten concedes in cross-examination that the management costs for single-occupancy properties (like those on Commerce Valley Drive) are commonly less than those for multi-tenanted premises like the subject property and most of its neighbouring office buildings. Furthermore, he offers no rationale for applying the

[3] The rented areas total 57,418 sq. ft. This differs marginally from the 57,400 sq. ft. agreed (or unopposed) by the parties. The difference is, in any event, inconsequential.

factors that MPAC did to the subject property's, in lieu of those used to assess its neighbours. It is accordingly appropriate for these appeals, based on the evidence and Mr. Ward's expertise, to utilize vacancy cost and cap rate factors of 6%, 4% and 8.5% respectively.

Current Value Determination

[42] I reduce the subject property's $772,438 rental income after reduction for TIs by 10%, and I capitalize the $695,194 result by an 8.5% factor. This calculation yields the rounded value of $8,179,000, which I find to be the current value for the subject property.

Reference to Similar Lands in the Vicinity

[43] Section 44.(3) of the Act states in part:

> ...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 land.

[44] Mr. Grundsten introduces no evidence for this mandated equity test. While the burden of proof in this regard rests with the Appellant, it is the Board that must determine from the evidence what properties constitute the similar lands in the vicinity for its reference. Accordingly, my reference is mandated to be to assessments, not to assessment methodology.

[45] I find that the vicinity for my reference is the area within the boundary of the north-east quadrant where Highways 7 and 404 intersect, Woodbine Avenue to the east

(both sides) and 16th Avenue to the north. Vicinity expands from the subject property until a handful of similar properties are determined for comparison, at which point I stop expanding the area. I have found from the evidence eight properties similar to and in closer proximity to the subject property, as will be addressed below. Accordingly the properties on Commerce Valley, being in the south-west quadrant of the two highways, are not in the vicinity. Furthermore, the three properties on that street are dissimilar to the subject because of a combination of locational and character elements.

[46] Single-occupant head offices characterize properties on Commerce Valley, according to Mr. Ward's evidence, and hence add location as an element of similarity. As a result, these properties' assessments range from $166.74-$207.00 psf. This range substantially exceeds the $95.28-$159.45 psf range of assessments for all other properties in evidence, with only one exception, 65 Allstate Parkway. The three Commerce Valley properties are accordingly neither similar to nor in the vicinity of the subject property.

[47] Although excluded by Mr. Ward from his list of "comparables" for my equity reference, I find that the building at 65 Allstate Parkway is in fact sufficiently similar to the subject property to merit inclusion in my equity analysis. Photographs of the property's exterior (in MPAC's Exhibit 7) demonstrates it to be of like character to the subject property and most other offices in Mr. Ward's evidence, and its use is for multiple tenancies, again like the subject property and most others.

[48] Although Mr. Ward's view is that this property's features and tenant mix are superior to the subject, this is a subjective assertion addressed in less than four lines on page 18 of his Analysis. Any such superiority does not appear to be manifested by its assessed value of $110.06 psf, once adjusted for excess land. This is at the low-end of the range of the 13 properties that Mr. Ward urges me to adopt for my reference.

[49] In cross-examination by Mr. Bumstead, Mr. Grundsten indicates that the $8,082,250 assessment for 65 Allstate Parkway includes an excess land component of $2,556,750. Mr. Ward's information is that this additional portion is slated for further development.

[50] I am satisfied that the portion of this property other than the excess land area meets the test of "similar in the vicinity". Mr. Grundsten's testimony is that the assessment of the office building and its related portion of the total site, net of the excess land, equates to $5,525,500, or $110.06 psf. I accordingly include this value in my reference.

[51] I attribute no weight to the submissions of Mr. Grundsten and Ms. Howe that it may be appropriate to exclude the properties on Renfrew Drive from my analysis, because they are (or may be) older than the subject property. MPAC, in particular, had disclosure of Mr. Ward's Analysis, and indeed of the Statements of Issues (initial and supplementary) well in advance of the hearing. Nevertheless, no evidence or testimony was introduced to demonstrate the impact of ageing/depreciation on these Renfrew Drive properties' assessments. One might speculate that there may be an age influence incorporated into the rental incomes and hence an impact on value; but I am not the one to do so. Indeed, the year built is not before me respecting any of the Renfrew Drive properties. Age differences cannot merit weight when no party provides relevant, quantifiable evidence.

[52] I consider it appropriate to exclude properties lacking elevators from my determination of the properties that are similar to the subject property, as they are less similar than those that have an elevator, as does the subject property. I do have Mr. Ward's evidence, based on his inspections, that the properties at 100, 140 and 180 Renfrew Drive lack any elevators, being two-storey structures. He was unable to ascertain whether or not the properties at 55, 85 and 185 Renfrew Drive have elevators.

Rather than risk an error by speculating that these properties, all also two-storey buildings, have elevators, I adopt the approach of excluding them from my analysis for two reasons. Firstly, I have a sufficient handful of other properties for my reference. Secondly, in cross-examination by Ms. Howe, Mr. Ward expresses the view that buildings without elevators generally attract lower rents, thereby leading to lower values in the marketplace. This appears eminently rational. .

[53] Schedule 1 hereto is an Equity Analysis for the 2009 to 2012 taxation years, listing the eight properties that I find to constitute the similar lands in the vicinity. Seven of the properties therein are extracted by me from page 17 of Mr. Ward's Analysis, after deleting the six Renfrew Drive properties not known to have elevators. The eighth property is 65 Allstate Parkway referred to above.

[54] I reject Ms. Howe's argument that I should make no equity reduction because of the small sample of 13 assessments listed by Mr. Ward in his Analysis, when an equity study incorporating about 30 properties is necessary, in her view. Rather, I echo Mr. Bumstead's observation that I can only refer to what is before me in evidence. Lacking any evidence respecting three of the six properties noted as "similar" in MPAC's one-half page response to the Appellant's statement of issues, I am left with only three properties referenced by MPAC for which all evidence is provided by Mr. Ward and absolutely none for any of the six by MPAC. Had I had 30 properties for reference, I would have evaluated them in their context. Instead, I am left with a satisfactory handful of eight properties for my equity reference.

[55] I consider Mr. Ward's approach of comparing assessments on a psf of building basis to be most appropriate in the circumstances. Practitioners in valuation frequently utilize this approach, and neither of the other parties raised any issue in that regard.

[56] Schedule 1 indicates the median and average assessment of the similar lands in the vicinity to be $113.26 and $122.39 psf respectively. Applying these values to the subject property's 57,400 sq. ft. area yields a range of rounded values from $6,501,000 to $7,025,000 as being equitable with the lands I have found to be similar.

[57] Lacking any persuasive argument from the parties respecting the merits differentiating usage of the median or average values, I consider the mid-point of $6,763,000 to be a reasonable option in this particular matter. This is the value to which I reduce the assessment to achieve equity with the assessments of similar lands in the vicinity.

CONCLUSION

[58] Although s. 19.(1) of the Act establishes the marketplace as being determinative of current value, other than the rental of one small-unit in the subject property itself, there is no specific rental/lease rate data among comparable properties in evidence that were contracted near the January 1, 2008 valuation date. Nor is there any sales evidence whatsoever in a time frame near that date. The challenge to establish the subject property's current value is exacerbated by the unexplained use of different expense and cap rates by MPAC among properties in evidence. Using the best available evidence of current value, I determine it to be $8,179,000 for the subject property.

[59] In this particular matter, more weight is appropriately attributable to the result determined by my reference to the assessments of similar lands in the vicinity than to the evidence respecting current value that lacks market-based data.

[60] The assessments of the properties in Schedule 1 constitute the best basis to determine the subject property's assessment in this matter in accord with the equity test

in s. 44.(3)(b) of the Act. The assessments for the taxation years 2009 to 2012 are accordingly reduced from $9,901,000 to $6,763,000.

[61] The assessment is apportioned $2,945,290 to the commercial property class and $3,817,710 to the office building property class. This represents the same proportionate ratio as the initial allocation among classes, and is not at issue among the parties.

"B. Cowan"
B. Cowan
Member

/lp
DECISION RELEASED ON: November 20, 2013

Schedule 1

25 Centurian Drive
Equity Analysis
For 2009 to 2012 Taxation

Address	Building Area		Assessment Per Sq. Ft. ($)
80 Allstate Parkway	55,000		159.45
75 Tiverton Court	73,286		152.43
1 Valleywood Drive	87,261		97.11
60 Renfrew Drive	67,610		100.58
8920 Woodbine Avenue	40,860		137.18
275 Renfrew Drive	33,157		116.45
8901 Woodbine Avenue	63,351		105.87
65 Allstate Parkway	50,206		110.06
		Median	**113.26**
		Average	**122.39**