



Assessment Review Board
Commission de révision de l'évaluation foncière

File No: WR 70364

Region Number: 22
Municipality: Township of Amaranth
Roll Number: 2208-000-002-27050-0000
Hearing Number: 144063
Complaint Number: 1975050

In the matter of Section 40 of the Assessment Act, R.S.O. 1990, c. A. 31, as amended, and in the matter of a complaint with respect to taxation year 2008 on premises known municipally as 21424 10th Line Amaranth.

BETWEEN: Paul Douglas Thompson

Assessed Person/
Complainant

-and-

The Municipal Property Assessment Corporation,
Region No. 22 and Township of Amaranth

Respondents

APPEARING: P. D. Thompson - for the Assessed Person/Complainant
D. Carney - for the Municipal Property Assessment Corporation
No one appeared - for the Municipality

DECISION OF THE ASSESSMENT REVIEW BOARD delivered by:

C. Marques

This complaint came before the Assessment Review Board on July 21, 2008 in the Town of Orangeville.

ISSUE

The subject property is located directly in front of a Canadian Hydro Developers transformer station which emits a noise level of 40 decibels. Mr. Thompson, the complainant, argues that, except for the negative impact of the noise on the value of his home, the assessment of \$255,000 as returned would be correct.

The Municipal Property Assessment Corporation (MPAC), does not dispute that the current value of the subject property is negatively impacted by the noise emitted by the transformer station. MPAC has, however, made no adjustment to the assessment to reflect the noise nuisance and offers no evidence with respect to what the adjustment might be.

The issue before the Board for determination is what correction to the current value assessment (CVA) of the subject property is required to allow for the noise contamination?

DECISION

The Board reduces the CVA of the subject property from \$255,000 to \$127,000 for the 2008 taxation year.

REASONS FOR DECISIONS

Property Description:

The property is a one-storey, single family dwelling, built in 1989, with a total building area of 1,320 square feet. The property is assessed at \$255,000 for the 2008 taxation year.

Complainant's Evidence:

Mr. Thompson, the owner, appeared before the Board. He presented Exhibit #1, a copy of his presentation to the Board, a CD with photographs of the Hydro One transformer station, an audio recording of the sound emitted by the transformer station, and a binder of evidence which was presented at a hearing of the Ontario Municipal Board.

Mr. Thompson testified that the residence on the subject property was built in 1989. In April 2005, the Municipality of Amaranth rezoned the 15 acre parcel of land directly across the road from the subject property for the purpose of the construction of the transformer station. The transformer station is located 360 meters away from the subject property. The constant hum associated with these activities is 40 decibels, audible not only outside in the yard, but also within the house with the windows closed. Mr. Thompson described the noise as a constant nuisance that not only affects his day-to-day activity, but also impacts the sales value and marketability of his property. He believes that there will be more transformers built on this location, further increasing the noise level that he describes as a nightmare, further devaluing his property. Mr. Thompson agrees that the subject property's CVA of \$255,000 assigned by MPAC would be correct if it were not affected by the negative influence of the transformer station. He suggests that he should be exempt from paying property taxes due to this problem, and is looking to the Board to reduce the CVA accordingly.

Municipal Property Assessment Corporation Evidence:

MPAC has placed a CVA on the subject property in the amount of \$255,000 using a sales comparison approach. Mr. Carney did not submit any evidence as to the effect of the noise level on the CVA because there are no sales in the vicinity that would test the

theory that the noise emitted by the transformer station impacts sales values negatively or otherwise. He confirmed that noise is audible even over the telephone, and that it has a negative influence on the value of the subject property. Mr. Carney did not present any evidence to assist the Board in quantifying the nuisance, because he has no idea how to do so.

The Legislation:

In making a decision in this matter, the Board is governed by section 1 and subsections 19(1), 19.1(1) and 44(2) of the *Assessment Act (Act)*.

Section 1 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(1) states that:

***19(1) Assessment based on current value.** - The assessment of land shall be based on its current value or average current value, as determined under section 19.1.*

Subsection 19.1(1) states:

***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.*

***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) states 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.*

Subsection 40(11) of the *Act* directs the Board to "...determine the amount of the assessment as necessary to reflect corrections to the current value." The result of this process should be current value.

The Board's interpretation of the Legislature is that subsections 19(1) and 19.1(1) are primary. The direction contained in subsection 44(2) requiring reference to the value at which similar lands in the vicinity are assessed is secondary. In other words, the Board must first look to sales evidence to determine if a correction to current value is required.

Board's Deliberations:

The only issue before the Board is to determine the effect on the current value of the negative influence created by the noise emitted by the transformer station located directly across the road from the subject property.

Both parties recognize that this very unique situation makes it difficult to determine a correct current value in accordance with the directions set out in the *Act*, and have asked the Board to determine a value reduction for this negative influence on the subject property. Mr. Thompson and Mr. Carney are turning to the Board for assistance in resolving this challenge.

There is evidence that noise contamination exists without any apparent cure. Indeed, if Mr. Thompson's fears come true, the constant noise will become louder. The Board finds that the subject property is unique and it has no doubt that it is negatively impacted by the noise contamination. There is no sales data or similar evidence to assist the Board in quantifying the impact on current value.

Mr. Carney does not dispute the noise contamination. He presented no evidence on behalf of MPAC, as to the contamination's impact on the subject property, but testified that the noise was loud enough to cause significant interference with a telephone conversation he had with Mr. Thompson.

The Board is unable to address the complainant's suggestion that he should be exempt from property taxes, since that is not within the Board's jurisdiction. The Board's jurisdiction is limited to if a correction is required to the current value.

The Board finds that the constant hum alleged by Mr. Thompson does exist and significantly reduces the current value of the subject property. The best evidence is the audio portion of the CD (Exhibit #1) and the testimony of both parties. Having heard this nuisance, apparently sanctioned by the Municipality, the Board accepts Mr. Thompson's testimony that the stigma of noise contamination has a negative impact on the value and marketability of the property, and that after learning of the hum, prospective purchasers will quickly lose interest in purchasing the property. The Board is satisfied that a very substantial reduction is warranted.

Having satisfied the Board that a correction to current value is required, the Board is left without evidence to quantify the effect. While the onus is on the complainant to prove that the assessed value of the subject property is incorrect, the Board is of the view that

in the circumstances of this case where the evidence is clear that a correction is required, MPAC should have some responsibility for returning a correct assessment for the property. The evidence is clear that while aware of the nuisance and agreeing that it affects current value, no effort has been made by MPAC to quantify it. The Board is of the view that if MPAC agrees that the current value is incorrect and makes no effort to quantify the correction so required, the complainant should not be left with an incorrect assessment or bare the expense of a professional appraisal.

Under the circumstances, the Board reduces the assessment of the subject property for the 2008 taxation year by 50% from \$255,000 to \$127,500, rounded down to \$127,000.

"C. Marques"

C. Marques
Member

/ll

DECISION RELEASED ON: September 12, 2008