CITATION: PPF Investments Inc. v. The Town of Oakville, 2010 ONSC 5865
DIVISIONAL COURT FILE NO.: DC-10-13
DATE: 20101125

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT - BRAMPTON

HACKLAND R.S.J., HARVISON YOUNG, WHITAKER JJ.

BETWEEN:	)	
	)	
PPF INVESTMENTS INC.	)	*Adam J. Ezer*
	)	Counsel for the Appellant
Appellant	)	
	)	
– and –	)	
	)	
THE TOWN OF OAKVILLE and THE MUNICIPAL PROPERTY ASSESMENT CORPORATION, REGION NO. 15	)	*Shawn R. Douglas* Counsel for the Respondent, Municipal Property Assessment Corp.
	)	
	)	*John L. O'Kane*
Respondents	)	Counsel for the Respondent, Town of Oakville
	)	
	)	
	)	**HEARD:** October 19, 2010

BY THE COURT

[1] This is an appeal of the decision of the Assessment Review Board (the "Board") dated January 23, 2009. The Board determined that the assessed value of the appellant's commercial property had increased from $1,606,000.00 to $2,235,000.00.

[2] The respondents the Town of Oakville (the "Town") and the Municipal Property Assessment Corporation ("MPAC") agree with the assessment of the Board.

[3] The significant facts are not in dispute.

[4] The appellant purchased the subject property on April 28, 2004 for $2,350,000.00. Following the purchase, the Town sought to have the assessment for the years 2006 to 2008 increased to the sale price. The appellant objected to the reassessment and the Town initiated proceedings before the Board.

[5] The Board convened a hearing in the matter on November 18, 2008.

[6] The appellant took the position that the property remained appropriately assessed at $1,606,000.00.

[7] At the hearing, the appellant provided the Board with a document that referenced other similar properties in the vicinity of the subject property, including assessed values, property size and other parameters.

[8] The Board released its decision on January 29, 2009. At page five of the decision, the Board acknowledged the appellant's reliance on the information presented at the hearing regarding "a list of five suggested comparable properties showing their current CVA...".

[9] At page six of the decision under the heading "Board's Deliberations and Conclusions", the Board indicated that the best evidence of value is the sale of the property close to valuation date. Further, the Board went on to observe that "where there is no sale", it must then look at the sales of comparable properties to determine current value.

[10] The Board concluded by increasing the assessment to $2,235,000.00 for the 2006, 2007 and 2008 taxation years as suggested by the Town.

[11] Leave to appeal was granted by Price J. on January 19th, 2010.

[12] Section 44(2) of the *Assessment Act* R.S.O. 1990, c.A.31 (the "Act") at the time of the hearing was as follows:

> **"For taxation years before 2009, 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, 2008, c. 7, Sched. A, s. 13".**

[13] In *Krugarand Corp. v. Ontario Property Assessment Corp., Region No. 09*, [2002] O.J. No. 4727 (Div. Ct.), at page 3, the Divisional Court discussed the application of section 44(2) of the Act. The Court acknowledged that the aim of the exercise is to focus on the correctness of current value but also indicated that it was the duty of the board to have reference to the value of similar lands in the vicinity:

> **...However, it must be noted that for the first time, the statutory reference to assessed values of similar properties in the vicinity in s. 44(2) is in mandatory language. Therefore, while no doubt the aim of the new assessment regime is to adopt 'current value' as the base of assessment and to focus on the correctness of 'current value', it is the duty of the Court or the Board on an appeal also to have reference to the value at which similar lands in the vicinity are assessed...**

[14] The obligation to "have reference" is not onerous. It is mandatory however and must be given a meaningful application in the determination and assessment of value.

[15] Adopting the reasoning in *Krugarand*, it is clear that section 44(2) of the Act as in force at the time, required the Board at the very least, to indicate or demonstrate in its decision that "reference" was had to the information provided by the appellant concerning what were suggested to be comparable properties in the vicinity.

[16] It is apparent from the reasons that not only did the Board not indicate any regard to the appellant's proffered information, but it went on to suggest that it would only look at comparable properties in the vicinity where there was no sale of the subject property upon which the Board could "rely". In other words, the absence of a sale is a pre-condition to having regard to comparable properties.

[17] In our view, this treatment of the information regarding suggested comparable properties is contrary to the express provisions of section 44(2) of the Act. Regardless of the appropriate standard of review, the Board's decision is unreasonable and cannot stand.

[18] The appeal is allowed. The matter is remitted to the Board for adjudication in accordance with our reasons.

[19] The parties may make written submissions regarding costs, to be provided on no more than three pages and within ten days of the date of this judgment.

Hackland R.S.J.

HACKLAND R.S.J.

Harvison Young J.

HARVISON YOUNG J.

WHITAKER J.

Released: November 25, 2010

CITATION: PPF Investments Inc. v. The Town of Oakville, 2010 ONSC 5865
DIVISIONAL COURT FILE NO.: DC-10-13
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ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

(BRAMPTON)

PPF INVESTMENTS INC.

Appellant

BETWEEN:

THE TOWN OF OAKVILLE and
THE MUNICIPAL PROPERTY ASSESMENT CORPORATION,
REGION NO. 15

Respondents

REASONS FOR JUDGMENT

By The Court

Released: November 26, 2010