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**T Update Week 2002-20
Residential Properties**

Case Name:

**Roy v. Municipal Property Assessment Corp., Region No.
18**

**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 2001 on premises known municipally as 264 Oakdale
Avenue**

Between

**Megna Roy in Trust, Assessed Person/Complainant, and
The Municipal Property Assessment Corporation, Region
No. 18 and the City of St. Catharines, Respondents**

[\[2002\] O.A.R.B.D. No. 321](#)

File No. 14302

Hearing No. 41692

Complaint No. 1394768

Ontario Assessment Review Board

A. Castel, Member

April 19, 2002

(18 paras.)

Appearances:

S.M. Pocrnic, for the Assessed Person/Complainant.

J. Mercier, for the Municipal Property Assessment Corporation.

No one appeared for the Municipality.

DECISION

¶ 1 This complaint came before the Assessment Review Board on April 4, 2002 in the City of St. Catharines.

ISSUE

¶ 2 The issue before the Board for determination is whether the assessment of the subject property for the 2001 taxation year is correct.

DECISION

¶ 3 The decision of the Board is to reduce the assessment from \$1,358,000 to \$1,031,297.

REASONS FOR DECISION

¶ 4 The subject property is a 2 and 1/2 storey walk-up apartment building consisting of 36 units. It was constructed in 1972 and has one bachelor, 13 one-bedroom and 21 two-bedroom units. The site is 1.03 acres.

¶ 5 The assessment for the 2001 taxation year is \$1,358,000 derived by using the income approach. The assessor, Ms. Mercier, demonstrated the methodology of arriving at the assessed value and that is to calculate the gross potential rents, which are set by reference to actual rents reported by the owner. A gross income multiplier of 5.4 is then applied to arrive at an estimated market value.

¶ 6 Mr. Pocrnic, agent for the complainant, takes the view that the effective instead of the potential income should be recognized. The position of the parties is as follows:

	Complainant	MPAC
Actual Income	\$190,981 x 5.4	\$1,031,297
Potential Income	\$251,640 x 5.4	\$1,358,000

¶ 7 Mr. Pocrnic argued that the potential rental of the building is limited due to a number of "local nuisances" such as drug trafficking, vehicle break-ins, the nearby home of a biker gang and a lack of control over its surroundings. An auto body repair and sales shop is located to its right and to the left are discarded tires and debris.

¶ 8 The agent's documentation contains an unaudited income statement for the 12-month period ending December 1999, photographs of the subject during and after extensive 2002 renovations, as well as previous decisions of the Assessment Review Board.

¶ 9 Ms Mercier, on behalf of MPAC, submitted a number of photographs of the subject. The photographs were taken after renovation of the building and its conversion to a condominium. It was observed that the units are currently advertised for sale.

¶ 10 The assessor's comparable report contains five properties comprising a minimum of 32 and a maximum of 51 units. The subject falls within the range of the value per unit as well as the range of the rent per unit.

¶ 11 Ms Mercier explained that the Biker's House has been in existence since 1991 and demonstrated that it is located several blocks away in an area where properties are selling and appreciating in value coinciding with market trends.

¶ 12 Mr. Pocrnic, under cross-examination by the assessor, confirmed that he had no documentation to support his views of the neighbourhood but that his information is based on visual inspection and

perception. He referred to the adjoining auto body repair outlet as well as the discarded tires and debris.

¶ 13 In this case, the Board is governed by subsections 19(1) and 44(2) of the Assessment Act reading as follows:

Subsection 19(1) of the Act states:

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 44(2) of the Act states:

44(2) Reference to similar lands in 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.

¶ 14 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.

¶ 15 The assessor's Property Report provides the average rent per unit and the value per unit for the subject and the comparables. This information can be misleading because rents are different depending on the size of units and amenities. The report does not provide the vacancy rates of the comparables and is silent on location and the surroundings of each property.

¶ 16 A press clipping submitted by Ms. Mercier states that in the Niagara Region "vacancy rates are the lowest they have been in more than a decade." Clearly, this is not the case at 264 Oakdale Avenue.

¶ 17 The income reported for the subject property was not questioned by the assessor. It is well below the gross potential income. The Board accepts the actual income as being more representative, particularly in view of the condition of the building prior to its renovation and conversion to a condominium.

¶ 18 The decision of the Board, therefore, is to reduce the assessment from \$1,358,000 to \$1,031,297 to reflect the 1999 actual income.

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