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**T Update Week 2005-30**  
**Commercial and Industrial Properties**

**Case Name:**  
**Vista Group Inc. v. Municipal Property Assessment Corp., Region No. 19**

**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 2004 and 2005 on premises known municipally as 45 Lancing Drive**

**Between**  
**Vista Group Inc., Assessed Person/Complainant, and The Municipal Property Assessment Corporation, Region No. 19 and the City of Hamilton, Respondents**

[\[2005\] O.A.R.B.D. No. 442](#)

File No. 40831

Hearing No. 103690

Complaint Nos. 1623131, 1739682

**Ontario Assessment Review Board**  
**L. Bryant (Member)**

July 13, 2005.

(14 paras.)

**Appearances:**

S. Pocrnic, for the Assessed Person/Complainant.

J. Richardson, for the Municipal Property Assessment Corporation.

No one appeared for the Municipality.

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DECISION

¶ 1 These complaints came before the Assessment Review Board on April 20, 2005 in the City of Hamilton.

## ISSUE

¶ 2 The issue before the Board for determination is whether the current value assessment (CVA) for the subject property is correct for the 2004 and 2005 taxation years.

## DECISION

¶ 3 The Board has determined that a correction is warranted and the CVA will be reduced from \$908,000 to \$693,000 apportioned as: CT - \$277,200, IT - \$415,800 for the 2004 and 2005 taxation years.

## REASONS FOR DECISION

## Background:

¶ 4 The subject property is a single-storey, multi-tenanted industrial mall. It consists of a concrete block structure having a total area of 21,000 square feet and is situated on a lot having a frontage of 131.23 feet x 357.57 foot depth for a total area of 1.08 acres. The property is zoned industrial and is located at 45 Lansing Drive in the City of Hamilton.

## Complainant's Evidence:

¶ 5 The complainant's representative presented his submission as Exhibit #2. This submission included a "Statement of Issues", a "Valuation by Income Approach" chart, and supporting financial statements. He argues that the Municipal Property Assessment Corporation's (MPAC's) original "fair market rent" schedule of \$5.90 per square foot and also its revised value of \$4.50 per square foot are too high, and that the actual rental income is \$3.04 per square foot after subtracting expenses of \$2.53 per square foot.

¶ 6 When a vacancy and bad debt factor of 12% coupled with a capitalization rate of 12% are applied to the \$3.04 square foot rent, a current value of \$468,599 results. This, he submits, should be the correct current value.

## Assessor's Evidence:

¶ 7 The assessor submitted a revised valuation schedule as Exhibit #1, showing a recommended CVA of \$693,000 based on a "fair market rent" of \$4.50 per square foot. He also submitted four comparable properties as Exhibit 4. Of these four properties, property #1, located at 55 Lansing Drive, is an almost identical building next door to the subject property on the same sized lot and it is also valued at \$693,000. Property #3 is valued at \$554,000 and sold in 2003 for \$555,000. Property #4 is valued at \$651,000 and sold in 2003 for \$650,000.

¶ 8 In conclusion, the assessor drew the Board's attention to the leases for the subject property saying that they contain a clause stating that the lessee "is to pay any increase in property and related taxes in excess of the 2001 base year amount". He submitted a copy of one of the lease agreements as Exhibit #5.

## The Legislation

¶ 9 Subsection 19(1) of the Assessment Act (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.

¶ 10 Subsection 44(2) of the Act states:

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.

¶ 11 Subsection 40(11) of the Act states:

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.

Board's Findings:

¶ 12 After careful consideration of the evidence presented by both parties, the Board finds that:

- a) Clause 5B of the lease agreement, submitted as Exhibit #5, and stating "The lessee covenants with the lesser to pay any increase in property and related taxes in excess of the 2001 base year amount", introduces an element of uncertainty into the financial statement relating to expenses. The complainant's representative stated under cross-examination by the assessor that this clause had not been taken into consideration when calculating the \$2.53 per square foot expense amount.
- b) The assessor has demonstrated the accuracy of MPAC's "fair market rent" calculations and resulting valuations in two ways. First, by direct comparison with the assessed values of four other similar properties in the area valued in the same manner as the subject property. Second, by the sale of two of those same properties at sale prices within \$1,000 of the assessed value.

¶ 13 These two tests of MPAC's valuation calculations satisfy subsections 19(1) and 44(2) of the Act.

¶ 14 The Board prefers the evidence submitted by the assessor for the reasons given above and accepts MPAC's recommendation to reduce the CVA for the subject property from \$908,000 to \$693,000 and apportioned as:

CT	\$277,200
IT	\$415,800

for the 2004 and 2005 taxation years.

QL UPDATE: 20050728

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