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**T Update Week 2004-7
Residential Properties**

Case Name:

**Roy v. Municipal Property Assessment Corp., Region
No. 20**

**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 2001 and 2002 on premises known municipally as
640 - 648 Grey Street**

Between

**Megna Roy in Trust, Assessed Person/Complainant, and
The Municipal Property Assessment Corporation, Region
No. 20 and the City of Brantford, Respondents**

[\[2004\] O.A.R.B.D. No. 66](#)

File No. 25028

Hearing No. 87407

Complaint Nos. 1373195, 1423897

**Ontario Assessment Review Board
T.C. Flannery and D.A. Richenback, Members**

February 5, 2004.

(22 paras.)

Appearances:

S. Pocrnic, for the Assessed Person/Complainant.

K. Lunau, for the Municipal Property Assessment Corporation.

No one appeared for the Municipality.

DECISION

¶ 1 These complaints came before the Assessment Review Board on September 10, 2003 in the City of Brantford.

ISSUE

¶ 2 In determining the projected gross income for the subject, the Municipal Property Assessment Corporation (MPAC) has applied a vacancy rate and an allowance for bad debt based upon an analysis of all similar properties in the municipality. The complainant submits that the vacancy rate and the allowance for bad debt should be higher, having regard to the unique characteristics of the subject property and its recent financial experience.

DECISION

¶ 3 The Board sets the correct current value of the subject property for taxation years 2001 and 2002 at \$1,916,400.

REASONS FOR DECISION

¶ 4 The subject property was a three-building, multi-unit rental property located on the easterly side of the City of Brantford. The three buildings are the same in terms of construction and age. The buildings were constructed in 1974 and are low-rise, 25 unit buildings. The property was last purchased in May of 1990 for \$2,465,000 and the complainant has been in the process of converting the property to residential condominiums for some eight years.

¶ 5 MPAC used the gross income approach to value the property which, simply put, means the projected gross income from the properties, multiplied by the gross income multiplier to arrive at the current value.

¶ 6 The gross income multiplier was determined by MPAC from a careful review of sales of multi-residential properties in the municipality and the complainant accepts the gross income multiplier of 4.8. MPAC then used a projected income of \$463,572 and multiplied it by the gross income multiplier of 4.8 to arrive at a value of \$2,225,000.

¶ 7 The complainant felt that this value would result in the subject property being over-assessed as realistic income expectations were overestimated using this approach. The complainant went on to state that this approach did not properly take into account the unique circumstances of the subject property or the historical or likely income performance of the property. The complainant indicated that there had been chronic vacancy and bad debt experienced over the past 12 years attributable to the fact that the parking lot at the very rear of the premises has a hidden lower level which was difficult to see. The subject property also adjoins a railway line on the open back side, and the units offer smaller bedroom sizes of low quality construction. Further, the complainant argued the location was disjointed from the remainder of Brantford and its shopping amenities were relatively far away, particularly if one relied on public transit. Additionally, over the years there had been countless break-ins and disturbances in the rear lot as well and the building offers less than average street appearance. These problems persisted despite ongoing advertising and marketing efforts by the owners.

¶ 8 The complainant went on to compare actual gross income of the subject property for the years 1997, 1998, 1999, and 2000. The complainant also noted that in 1996 and 1997, the value was reduced by previous Board decision to \$1,520,000, only to go back up from 1998 to 2000 to \$1,964,000. Income received in 1992 was similar to the 2000 rental income and the complainant argued that since MPAC used the same gross income multiplier for 1996 and 1997 as the one presently used, the valuation should not be any higher than \$1,520,000.

¶ 9 It was argued by the complainant that the gross income of the subject property had consistently eroded over the past four years, which reinforced the unique characteristics of the subject property as well as its chronic problems.

¶ 10 The complainant took two approaches. The preferred approach was to use the 2000 income of \$328,208 with a multiplication by the gross income multiplier resulting in a value of \$1,575,398.

¶ 11 In the alternative, the complainant argued that using the 1999 rent roll income of \$449,712 and multiplying by 4.8, a value of \$2,158,000 was arrived at and rounded. Subsequently, an accounting for the more recent vacancy and bad debt between 26% and 29% experienced in 1999 and 2000 would mean a median of 27.5% should be deducted for anticipated and regular losses. MPAC admitted during the hearing that the typical standard for vacancy as stated by the Canada Mortgage and Housing Corporation (CMHC) was 2%, however, the subject property then would be under-performing the standard by 25.5% and the complainant argued it is this amount that should be deducted from the economic potential, meaning the value would then be adjusted to \$1,607,710. Using the preferred complainant's approach, the difference between the MPAC figure and the complainant's figure is \$649,602. Using the alternative approach, there is still a substantial difference of \$617,290. Although the alternative approach moves closer to the MPAC figures, this substantial difference still requires the Board to make a decision on the appropriate approach.

¶ 12 MPAC argued that the Appraisal Institute of Canada defines "projected" gross income as representing full occupancy before operating expenses are deducted, whereas effective gross income would be anticipated income from all operations adjusted for vacancy and collection losses. While it may very well be that there are typically high vacancy rates, MPAC argued it was necessary to determine the cause and whether or not the vacancies were attributable to market conditions in order to adjust the current value. Vacancies attributable to management were not something MPAC was prepared to make an adjustment for in terms of methodology. MPAC went on to argue that the current property owner was in the process of converting the property to condominium units, which would cause higher vacancy rates due to the fact that the property was in transition. MPAC also indicated the complainant's methodology was not an accepted appraisal technique. The complainant naturally asserted the vacancy rate had more to do with market conditions and was something MPAC should have taken into account.

¶ 13 MPAC argued the poor performance of the subject property was the result of poor management. While there could be some issue about location, the comparables presented demonstrated that the value as returned was in the correct range. This would lead to a conclusion that management decisions are the real reasons why vacancy is up.

¶ 14 Nonetheless, on cross-examination, Mr. Ham, on behalf of MPAC, indicated that he would be willing to entertain a reduction if the vacancy rate remained high and there was no transition towards condominiums. At the same time, he stated that the transition was the "biggest single factor" for the vacancy rate being so high. It is interesting to note that he did not say it was the "only factor". It would appear then that Mr. Ham recognized there were some other elements that came into play, albeit perhaps not as predominantly as the management decisions. The complainant argued that the overall condition of the building and problems described earlier were those other factors.

¶ 15 The parties agreed on the use of comparables as well as the gross income multiplier. They even agreed to the methodology albeit they disagreed with some of the ingredients that would be used for the methodology. Mr. Ham was quick to point out that bad debts occurring over a period of three years were not included in the definition supplied by the Appraisal Institute referred to earlier. However, this does not mean the Board cannot accept bad debts as a factor.

¶ 16 MPAC presented some case law, however the complainant argued that this case law really did not take the factors he had mentioned into account. The Board reviewed the case law which did not specifically address the issues surrounding potential gross income, actual gross income, and effective gross income less bad debt and vacancy adjustments.

¶ 17 The Board is therefore left with a very difficult decision. The Board recognizes there had been

historical problems with the building not related to the conversion of this building to a condominium complex. Accordingly, the Board finds that the subject property is unique, and not easily comparable to similar property in the neighbourhood.

¶ 18 At the same time, the Board also takes into account that management decisions may have resulted in short-term losses in return for long-term gain and cannot really be rewarded by a full reduction in property values.

¶ 19 The very real challenge facing the Board is that the submissions of both parties have merit when considering the best available evidence and analysis of methodology.

¶ 20 The complainant has therefore discharged its burden that there should be a reduction. The question remains as to what the amount of the reduction should be, taking into account the points raised by the complainant and MPAC. While the burden of proof has been met, the two methods result in such different values. This places the Board in a position of having to come up with a value which is fair and reflective of the current market conditions. Given the fact that the Board finds that both methods and positions have equal merit, the Board has chosen an amount that is equally reflective of both positions. The Board prefers the complainant's alternative position in that it takes into account the CMHC vacancy rate calculation and adjusts the value accordingly when arriving at a middle ground decision.

¶ 21 The assessment as returned was \$2,225,000. The assessment according to the complainant's second approach was \$1,607,710. The average of these positions is \$1,916,355.

¶ 22 As a result, the Board finds that the value of \$1,916,355 reflects the mid-view of both methodologies applied using the complainant's alternative method. This value will be rounded off to \$1,916,400.

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