



Tribunals Ontario

Assessment
Review Board

Tribunaux décisionnels Ontario

Commission de révision de
l'évaluation foncière

ISSUE DATE: April 19, 2021

FILE NO.: DM 168845

Assessed Person(s): Grundel Investments Inc.
Appellant(s): Grundel Investments Inc.; David Herr; CMI
Respondent(s): Municipal Property Assessment Corporation Region 14
Respondent(s): City of Vaughan
Property Location(s): 8470 Keele Street
Municipality(ies): City of Vaughan
Roll Number(s): 1928-000-230-78000-0000
Appeal Number(s): 3236651, 3303398, 3356116, 3404212 and 3444509
Taxation Year(s): 2017, 2018 2019, 2020 and 2021
Hearing Event No.: 739675
Legislative Authority: Section 40 of the *Assessment Act*, R.S.O. 1990, c. A.31

APPEARANCES:

Parties

Counsel*/Representative

Grundel Investments Inc.	Tom Halinski*
Municipal Property Assessment Corporation	Carrie Carone
City of Vaughan	Jaroslav Wowk

REQUEST FOR: Withdraw appeal(s) and an Order for Disclosure
HEARD: February 22, 2021 in writing
ADJUDICATOR(S): Carly Stringer, Member

MOTION DECISION

OVERVIEW

[1] There are two motions before the Board.

[2] First, Grundel Investments Inc. (the “Appellant”) seeks confirmation from the Assessment Review Board (the “Board”) that appeals 3236651, 3303398, 3356116 and 3404212 (the “Subject Appeals”) have been withdrawn as of right or, in the alternative, seeks leave to withdraw pursuant to Rule 29 (formerly Rule 73) of the Board’s *Rules of Practice and Procedure* (the “Rules”). The City of Vaughan (the “City”) and the Municipal Property Assessment Corporation (“MPAC”) oppose the motion.

[3] Second, the City has filed a motion for disclosure pursuant to Rule 47 of the Rules. The Appellant opposes the motion. MPAC has not submitted materials on the disclosure motion.

Result

[4] I have carefully reviewed and considered the evidence, submissions, and case law provided by all parties. For the reasons that follow:

1. The Board finds the Appellant cannot withdraw the Subject Appeals as of right.
2. The Board rejects the Appellant’s request for leave to withdraw the Subject Appeals pursuant to Rule 29.
3. The Board grants the City’s motion for disclosure.

BACKGROUND

[5] The Subject Property is known municipally as 8470 Keele Street in the City of Vaughan. The Appellant purchased the Subject Property on July 13, 2016.

[6] The current value assessment for the Subject Property was returned at \$10,030,000 CT for the 2017 and 2018 taxation years; \$9,349,000 IX for the 2019 taxation year; and \$9,233,000 IX for the 2020 taxation year based on the legislated valuation date of January 1, 2016.

[7] On March 24, 2017, the Appellant filed an appeal pursuant to s. 40 of the *Assessment Act*, R.S.O. 1990, c. A.31 (the “Act”) relating to MPAC's general reassessment for the 2017 taxation year. Pursuant to the Act, “deemed appeals” were created for subsequent taxation years.

[8] On August 17, 2018, the City sent an email to the Appellant’s representative attaching a “Special Notice of Request for a Higher Assessment” (the “Notice”). The Notice was two paragraphs in length, as follows:

1. The City of Vaughan intends to request the following:
 - a. A change in property classification that would result in higher taxation; and/or
 - b. A higher assessment than that returned by MPAC.
2. The City of Vaughan objects to the withdrawal of the subject appeals and any future deemed appeals.

[9] The Subject Appeals are general proceedings with a commencement date of June 17, 2019. In accordance with the Schedule of Events, MPAC provided its initial disclosure to the Appellant on July 15, 2019. On July 29, 2019, the Appellant sent MPAC a Request for Additional Disclosure.

[10] In accordance with the Schedule of Events, the Appellant was required to serve its disclosure and Statement of Issues (“SOI”) by November 11, 2019. The Appellant did

not do so.

[11] Between late November 2019 and February 4, 2020, the Appellant and MPAC engaged in discussions regarding the Subject Appeals, particularly the tax class of the Subject Property. On February 4, 2020, MPAC asked the Appellant to advise when it would provide its SOI, reminding the Appellant that the City had filed the Notice seeking higher assessment.

[12] On February 10, 2020, the Appellant's representative emailed MPAC and the City. The Board was not copied on this email, nor was the email otherwise provided to the Board until it was filed by the City in response to this motion to withdraw. The email stated:

The appellant has reviewed the market and assessments of similar properties and is of the opinion that the assessed 2016 CVA was fair and equitable. The appellant had planned to withdraw the outstanding Sec 40 appeals at the Board after the processing of tax applications by the City. The appellant has not done so only as the City has filed a special notice of request for a higher assessment and had objected to the withdrawal of any appeals including future deemed appeals. As such, the appellant does not plan to file a Statement of Issues and will not object if MPAC files a request to dismiss the appeal.

[13] On April 2, 2020, the City provided its Statement of Response ("SOR"). The City's SOR provided the City would be seeking to revise the current value assessment for the 2017 and 2018 taxation years to \$13,000,000 and the 2019 and 2020 taxation years to \$16,813,292.

[14] On April 15, 2020, MPAC provided its SOR which included a notice to seek a higher assessment, indicating that MPAC would be seeking to revise the 2016 current value assessment to \$13,000,000.

[15] On October 20, 2020, the Appellant delivered a Reply stating the appeals should be dismissed and the current value confirmed.

[16] The parties then brought these motions, which have been scheduled to be heard together in accordance with a Direction from the Board dated December 17, 2020.

ISSUES

[17] The Appellant asks this Board to declare it has withdrawn the Subject Appeals. In the alternative, the Appellant asks this Board to allow it to withdraw the Subject Appeals. Therefore, the issues to be determined on the Appellant's motion are as follows:

1. Can the Appellant withdraw the Subject Appeals pursuant to Rule 27?
2. If the answer to Issue 1 is "no", should the Board grant the Appellant leave to withdraw the Subject Appeals pursuant to Rule 29?

[18] If this Board answers "yes" to Issue 1 or 2, the Subject Appeals will be withdrawn and the City's motion for disclosure will be moot. However, if the Board answers "no" to both Issues 1 and 2, the issue before the Board on the City's motion is:

3. Should this Board order disclosure of a copy of the Agreement of Purchase and Sale of the Subject Property?

ANALYSIS

Preliminary Matters

[19] The Appellant objects to the City's Reply materials on the motion for disclosure. The Appellant submits the Board should refuse to consider the Reply Affidavit of Aaron Zamler sworn February 4, 2021 on the basis that introducing new evidence in reply is improper and unfair. The City requests the Appellant's objection be overruled. The City submits that the Reply materials were necessary and appropriate to address the

Appellant's unproven factual submission that the information the City seeks is available from MPAC's Sales Questionnaire.

[20] I accept the City's submissions. The Appellant has not provided evidence to support its assertion that the information the City seeks is available from MPAC's Sales Questionnaire. This is a very specific item raised for the first time in the Appellant's responding materials. The Board overrules the Appellant's objection.

Issue 1 – Can the Appellant withdraw the Subject Appeals pursuant to Rule 27?

The Applicable Legal Test

[21] Rule 27 provides as follows:

Withdrawal of an Appeal

27. An appellant may withdraw an appeal unless:

- (a) another party has given notice pursuant to these Rules of its intention to request a higher assessment or higher tax rate property class; or
- (b) a hearing has commenced.

[22] Rule 27 permits an appellant to withdraw an appeal as of right only if no notice of intent to seek a higher assessment has been provided.

Submissions

[23] The Appellant's argument focuses primarily on the validity of the City's August 2018 Notice. The Appellant submits the Notice did not provide the amount of the assessment or property classification requested. As a result, the Appellant submits, the Notice is void and did not constitute notice of the City's intent to request a higher assessment in accordance with the Rules. Therefore, the Appellant submits, it could not be prevented from withdrawing the Subject Appeals as of right.

[24] The City submits, in part, that even if the Notice were void and of no force or effect, the City also gave proper notice of its intention to seek a higher assessment in its SOR served April 2, 2020. The City submits that the Appellant did not withdraw the Subject Appeals before this SOR was delivered, and accordingly the Appellant is precluded from withdrawing as of right.

[25] MPAC submits that the Notice was compliant with the Rules and the Appellant is precluded from withdrawing as of right.

Findings on Issue 1

[26] The City delivered the Notice on August 17, 2018 and its SOR on April 2, 2020. At no time prior to the delivery of either the Notice or the SOR did the Appellant file a notice of withdrawal with the Board. The Appellant's email dated February 10, 2020 did not constitute a notice of withdrawal for two reasons. First, it was not provided to the Board. Second, the email only states the Appellant had an earlier "plan" to withdraw – this is not the same as demonstrating an intent to withdraw, or providing notice of withdrawal. Therefore, the first time the Appellant raised the issue of withdrawal with the Board was in its Reply filed on October 20, 2020.

[27] The Appellant's submissions raise two questions which I must address. First, is the Notice provided by the City on August 18, 2018 sufficient to constitute a Notice of Higher Assessment? Second, is the City's pleading of this issue in its SOR sufficient to constitute a Notice of Higher Assessment? If either the Notice or the SOR constitute a Notice of Higher Assessment, the Appellant cannot withdraw as of right.

[28] Turning to the Notice provided by the City in August 2018, I accept that this Notice is sufficient to constitute a Notice of Higher Assessment. In *Merivale-Gilmour Manor Ltd. v Municipal Property Assessment Corporation, Region 03*, 2020 CanLII 28326 (ON ARB) ("*MGM*"), a Decision issued on a request for review, the Board stated

as follows at paragraph 17:

As noted by the Board in *857529 Ontario Inc. Magna International Inc. Municipal Property Assessment Corporation, Region 15*, 2019 CanLII 133074 (ON ARB), at para. 16, the purpose of notice is to provide a party with actual knowledge of a matter - it is the content of a document, not the form, that is important. Typically, an owner or other person who files a s. 40 appeal, does so on the ground that the correct current value of the property is lower than the value assessed by MPAC. An appellant can anticipate that other parties will rely on MPAC's assessed value as being correct. However, an appellant cannot anticipate whether another party will take the position that the correct current value is higher than MPAC's assessed value. Therefore, procedural fairness requires that an appellant be notified of this position. *It is the communication of this information that is important, not the specific written format of the communication.* [emphasis added]

The Notice clearly sets out the City's intent to take the position that the correct current value is higher than MPAC's assessed value, and, therefore, it is sufficient to constitute a Notice of Higher Assessment.

[29] Regarding the City's SOR, at paragraph 18 of *MGM, supra*, the Board finds that including the issue of higher assessment in a Statement of Issues or Response constitutes a sufficient Notice of Higher Assessment.

[30] Therefore, the Appellant cannot withdraw as of right on the basis that the City has given notice pursuant to the Rules of its intention to request a higher assessment.

Issue 2 - Should the Board grant the Appellant's request to withdraw the Subject Appeals pursuant to Rule 29?

The Applicable Legal Test

[31] Rule 29 provides as follows:

Motion to Withdraw

29. An appellant may, by motion, request an order of the Board granting leave to withdraw an appeal.

[32] Rule 29 does not provide any specific factors or criteria to be considered by the Board when deciding whether to grant leave to withdraw.

Submissions

[33] The Appellant makes several arguments in support of its request for leave to withdraw. Its submissions on Rule 29 are intertwined with its earlier submissions regarding Rule 27, and primarily relate to the validity of the Notice:

1. The Appellant argues that denying its motion to withdraw would endorse misuse of the Board's process where any municipality could block the withdrawal of any appeal by serving a "bare", perfunctory notice early on in the process. According to the Appellant, this would result in procedural unfairness, as an appellant who does not wish to pursue its appeal would still be required to prepare and serve a Statement of Issues without any indication of the increase in value or change in classification the municipality would be seeking. The Appellant further submits this frustrates attempts at resolution without a hearing and forces unwilling parties to participate in appeal proceedings.
2. The Appellant submits it had a settled, demonstrated intention to withdraw or not pursue the Subject Appeals. The City should not be permitted to "take control of" or "commandeer" an appeal that would otherwise be abandoned.
3. The Appellant submits there is no prejudice to the City and, if there is, it is prejudice of its own making not having filed an appeal. If the City believed the Subject Property is substantially undervalued, it could have filed its own appeal.

[34] The City submits that almost all of the arguments raised by the Appellant have

already been considered and determined by the Board in *MGM*. The City submits there is no evidence the Appellant will be prejudiced if the Board denies its motion to withdraw. The City submits that granting leave to withdraw the Subject Appeals would result in significant prejudice to other taxpayers in the municipality.

[35] MPAC submits that the Appellant provided no evidence of prejudice or unfairness that would allow the Board to evaluate the merits of its request for leave to withdraw.

Findings on Issue 2

[36] The Appellant has made a variety of arguments in support of its request, and I have carefully considered each and every submission. That said, I will only address those submissions most germane to my analysis.

Validity of the Notice

[37] I find that the Appellant's submissions relating to the content of the Notice are irrelevant for the purposes of determining whether the Appellant should be permitted to withdraw at this stage of the proceedings, as I have already found that the Notice and the SOR are sufficient to constitute a Notice of Higher Assessment.

Procedural Unfairness

[38] The Appellant argues that it would be procedurally unfair to require an appellant who does not wish to pursue its appeal to prepare and serve a Statement of Issues without any indication of the increase in value or change in classification the municipality would be seeking. I do not accept this submission. Where a Notice of Higher Assessment has been served, an appellant can, immediately upon receiving the Notice, bring a motion for leave to withdraw its appeals. An appellant is not required to wait until completion of the exchange of pleadings before it can bring its motion. As for the

argument that an Appellant would be required to serve its Statement of Issues without an indication of the increase in value being sought by the municipality, I do not accept the Appellant's submission that this is unfair. Once the Notice of Higher Assessment is served, it is clear that the current value of the property is in dispute. The Appellant's Statement of Issues is then necessary for the Appellant to set out its evidence and position on the issue of current value. Then, the municipality and/or MPAC must set out their evidence and position on the current value in the SOR. Where the municipality and/or MPAC seek a higher assessment, the Rules require the SOR to include the basis on which a higher assessment is sought, and a list of the facts, legal grounds and evidence the party relies on in support of this position. Once the SORs are received, the Appellant has the right to serve a Reply to fully address the issues raised in those SORs. Therefore, there is no procedural unfairness to the Appellant.

"Commandeering" an Otherwise Abandoned Appeal

[39] The Board next addresses the Appellant's assertion that the Board should not let the City use the Subject Appeals to effectively advance their own appeals to request a higher current value for the Subject Property. Essentially, the Appellant argues that if the City or MPAC wanted to request a higher current value, they ought to have filed their own appeals and ought not to be able to force the Appellant to proceed where it has no interest in pursuing the Subject Appeals. The Appellant characterizes this as the City "hijacking" or "commandeering" the Subject Appeals.

[40] The Board has considered and rejected this line of argument in previous decisions. I adopt the same reasoning, and refer the parties to *MGM* at paragraphs 23, and 27 to 29; *Claridge Homes (Bank St) Inc. v Municipal Property Assessment Corporation, Region 03*, 2021 CanLII 17422 (ON ARB) at paragraphs 55 to 58.

[41] As confirmed by this Board in *Pure Industrial Real Estate Trust v Municipal Property Assessment Corporation, Region 15*, 2020 CanLII 103476 (ON ARB) at

paragraph 23, referencing *HLS York Developments Ltd v Municipal Property Assessment Corporation*, Region 9, 2016 CanLII 154412 (ON ARB)

when an appeal is filed against an assessment, the appellant takes the chance that MPAC may seek to have the Board consider an increase in the current value. To find otherwise would mean that an appellant who faces no downside risk of an upside move in the value, has the real litigation advantage.....s.44.(1) [sic] that presents taxpayers with the prospect that any time you challenge that your assessment is too high, you run the risk that in fact your assessment may be too low.

Prejudice

[42] The Appellant has not provided evidence of any prejudice it would experience if it is not entitled to withdraw the Subject Appeals. Proceeding with an appeal to determine the correct current value of the Subject Property, in and of itself, does not constitute prejudice to any of the parties to the proceeding.

[43] I do not accept the Appellant's submission that any prejudice to the City is of its own making by not filing its own appeals to seek a higher assessment. The Act and the Rules permit the City, as a statutory party to the Subject Appeals, to request that the Board find that the correct current value is higher than MPAC's assessed value. The Board does not accept the argument that "a responding party who maintains that the correct current value should be higher, can only advance this claim by filing its own appeal": see *MGM* at paragraph 29.

Summary

[44] I find that the Appellant has failed to establish any grounds on which to find that it should be allowed to withdraw the Subject Appeals.

Issue 3 – Should this Board order disclosure of a copy of the Agreement of Purchase and Sale of the Subject Property?

The Applicable Legal Test

[45] Rule 45 of the Board’s Rules requires all parties to serve a copy of all “relevant documents in their possession, control or power to all other parties in the proceeding, except for privileged documents, or documents that cannot be disclosed by law.” This is an ongoing obligation.

[46] Rule 47 provides as follows:

- A party may seek an order from the Board, by motion, for:
- (a) the oral examination or cross-examination of any person;
 - (b) the written examination or cross-examination of any person; or
 - (c) any other method of discovery.

[47] In determining whether to order disclosure, the Board applies a two-part test. First, the Board considers whether the information sought is relevant to the issues in dispute. Second, the Board considers whether ordering disclosure is proportionate to the issues in dispute: see *Metro Ontario Inc. v Municipal Property Assessment Corporation, Region 13*, 2019 CanLII 47974 (ON ARB) (“*Metro*”), *supra* at paragraph 11.

Relevance

[48] Relevance is determined in relation to whether a document is relevant to an issue in dispute: *Walmart Canada Corporation and Target Canada Corporation v Municipal Property Assessment Corporation, Region 01*, 2018 CanLII 67789 (ON ARB) (“*Wal-Mart*”) at paragraph 18. As noted by the Board in *Toyota Motor Manufacturing Canada Inc. v Municipal Property Assessment Corporation*, 2020 CanLII 77938 (ON ARB) (“*Toyota*”) at paragraph 13, “the test for relevance really comes down to whether or not the production of documents requested relates to the issues in dispute. If so, they are

relevant.”

Submissions on Relevance

[49] The City submits the Agreement of Purchase and Sale is relevant to an issue in dispute. The City points to paragraph 10 of its SOR, where it asserts that the sale of the Subject Property which sold to the Appellant on July 13, 2016 in the amount of \$13,000,000 is the best indicator of the current value. The Agreement of Purchase and Sale, submits the City, should be disclosed because it is relevant to the issue of whether the sale of the Subject Property which sold on July 13, 2016 in the amount of \$13,000,000 is the correct current value. The City also points to s. 3(a)(i) of the Board’s Disclosure Schedule, which confirms that an Agreement of Purchase and Sale is a relevant document when the sale of a property is raised as an issue in dispute.

[50] The Appellant submits the City has not demonstrated the relevance of the Agreement of Purchase and Sale, as it is unrelated to the highest and best use of the Subject Property, which the Appellant submits is the method of valuation used by the City in its SOR.

Findings on Relevance

[51] I accept the City’s submissions. The City’s position is that the best indicator of current value is the sale of the Subject Property to the Appellant on July 13, 2016 in the amount of \$13,000,000. The Agreement of Purchase and Sale, which will provide details of the sale, is clearly relevant to this. I do not accept the Appellant’s submissions that the Agreement of Purchase and Sale is not relevant because it is unrelated to highest and best use of the Subject Property. Simply put, a property’s “highest and best use” indicates the valuation methodology to be applied when assessing its current value. The Appellant may not agree with the City’s position regarding the highest and best use of the Subject Property, but that dispute is to be decided at the main hearing, not at this

stage of the proceeding. The Agreement of Purchase and Sale is relevant to the City's position on how to determine current value and what that current value is.

Proportionality

[52] Relevance is not the only criteria that the Board will consider when determining whether a document should be disclosed. Rule 5 of the Board's Rules provides "[t]hese Rules shall be applied in a manner proportionate to the importance and complexity of the issues in a proceeding and with a view to resolving appeals within the four year cycle."

[53] Therefore, the requirement to disclose relevant documents must also be applied in a proportionate manner. As noted by the Board in *Toyota, supra* at paragraph 15,

In making this determination it is necessary for the Board to consider the competing interests of non-disclosure and, excessive disclosure which may unreasonably increase the cost in a particular case and delay the final resolution of the matter on its merits.

[54] Although the Rules do not include specific criteria to assess proportionality, the Board has previously applied the criteria enumerated in Rule 29.2.03(1) and (2) of Ontario's *Rules of Civil Procedure: Walmart, supra* at paragraph 18. This is considered a non-exhaustive list and other criteria may be considered on a case by case basis.

Submissions on Proportionality

[55] The City submits that disclosure of the Agreement of Purchase and Sale is proportionate to the importance and complexity of the issue. The City submits that producing the Agreement of Purchase and Sale:

1. Will not require an unreasonable amount of time to complete;
2. Will be a minimal expense;

3. Will not cause undue prejudice;
4. Will not unduly interfere with the orderly progress of the proceeding; and
5. Will not require an excessive volume of documents.

[56] The City further submits that details contained in the Agreement of Purchase and Sale, such as the negotiated sale price date or special conditions that may have influenced the sale price, are not readily available from any other source.

[57] The Appellant submits this information is readily available from other sources, which factors into the proportionality analysis. The Appellant points to the Land Transfer Tax Affidavit for the sale of the Subject Property, or the MPAC Sales Questionnaire. The Appellant also argues that requiring disclosure of the Agreement of Purchase and Sale would be prejudicial, as it is a confidential contract with sensitive commercial information.

Findings on Proportionality

[58] It is unclear how the Appellant can assert both that the Agreement of Purchase and Sale must be kept confidential, and that the same information is readily available from other sources. The City's evidence suggests this information is not available elsewhere. There is no evidence in the Appellant's materials that establishes that this information is readily available elsewhere. There is also no evidence in the Appellant's materials to establish that the Appellant would be prejudiced if the Agreement of Purchase and Sale is disclosed. There is also no evidence that it would take an inordinate amount of time to produce this document, or that production would be costly.

[59] Based on the above analysis, I find that the Disclosure of the Agreement of Purchase and Sale is proportionate to the issues in dispute.

Summary

[60] Based on the above analysis and findings, the Board determines the Agreement of Purchase and Sale must be disclosed.

ORDER

[61] The Board dismisses the Appellant's motion for leave to withdraw the Subject Appeals.

[62] The Board grants the City's motion for disclosure, and orders the Appellant to disclose the Agreement of Purchase and Sale relating to its July 2016 purchase of the Subject Property within 10 days of the issuance of this decision.

[63] In view of the exceptional circumstances caused by the delay in resolving this motion and pursuant to Rule 40, the Board orders the Schedule of Events for the Subject Appeals will resume, where the due date for the mandatory settlement meeting will be adjusted to 60 days from the issuance of this decision. All subsequent due dates in the Schedule of Events will be adjusted accordingly. The Board's Case Coordinator will advise the parties of the specific due dates, which may be adjusted slightly due to constraints imposed by the Board's electronic case management system.

"Carly Stringer"

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