



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LT11004
Order LT11-01**

IN THE MATTER of an appeal by
Donald F. Hickox of a decision of the Minister
of Finance and Municipal Affairs regarding
the 2010 assessment of Provincial Property
Number 203877 located in Canoe Cove.

BEFORE THE COMMISSION
on Wednesday, the 26th day of October,
2011.

Allan Rankin, Vice-Chair
Leonard Gallant, Commissioner
Peter McCloskey, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

Appeals Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal by Donald F. Hickox of a decision of the Minister of Finance and Municipal Affairs regarding the 2010 assessment of Provincial Property Number 203877 located in Canoe Cove.

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IN THE MATTER of an appeal by Donald F. Hickox of a decision of the Minister of Finance and Municipal Affairs regarding the 2010 assessment of Provincial Property Number 203877 located in Canoe Cove.

Appearances & Witnesses

1. **For the Appellant Donald F. Hickox**
Donald F. Hickox

2. **For the Respondent Minister of Finance and Municipal Affairs**
Paul Olscamp
Boyce Costello

IN THE MATTER of an appeal by Donald F. Hickox of a decision of the Minister of Finance and Municipal Affairs regarding the 2010 assessment of Provincial Property Number 203877 located in Canoe Cove.

Reasons for Order

1. Introduction

[1] This is an appeal under the *Real Property Assessment Act*, R.S.P.E.I. 1988, Cap. R-4 (the *Act*), by Donald F. Hickox (Mr. Hickox) of the decision of the Respondent Minister of Finance and Municipal Affairs (the Minister) with respect to the 2010 assessment of Provincial Property Number 203877 located at Canoe Cove (the subject property).

[2] According to the Minister's Assessment Valuation Summary (AVS) the 2010 assessment of the subject property was determined to be \$330,100.

[3] On March 30, 2011, the Commission received a Notice of Appeal from Mr. Hickox. After suitable scheduling for the parties, the Commission heard the appeal on September 12, 2011.

2. Discussion & Findings

The Appellant's Position

[4] Mr. Hickox advised the Commission that the assessment of the subject property increased 64.1% in one year, 83.33% in the last three years and 159.50% in the last six years. He stated that he is "baffled" as to the rapid rate of assessment increase. He stated that he suspects the subject property is being assessed on its potential value rather than on its current use. He submitted that such increases will force the sale, or development, of properties caught in a similar situation to the subject property.

[5] Mr. Hickox testified that the subject property has been owned by his family for the last 203 years. He noted that a neighbouring farmer cuts hay off of 80 acres of the subject property.

[6] Mr. Hickox requests that the Commission reduce the assessed value of the subject property.

The Minister's Position

[7] The Minister had provided a copy of the AVS to the Commission and Mr. Hickox well in advance of the hearing. The AVS provides a detailed rationale for the Minister's position. At the hearing, the Minister's staff highlighted the following points:

- The market value of the subject property is based on the “as is” value not the highest or best use of the property.
- The bulk of the value of the subject property arises from the fact that the property has 600 feet of shore frontage on the Northumberland Strait and the recent market activity in that area. The increase was phased in over a three year period with 2010 representing the final year of the assessment increase phased in for the area.
- The Minister submitted that an analysis of five comparable properties in the Canoe Cove and Rice Point area demonstrate that the subject property has been uniformly assessed with other similar properties.
- The Minister submitted that a comparable sales analysis of five water front vacant land sales, within the last four years, in the Hampton, Cumberland, Fairview, St. Nicholas and New Dominion areas provide support for the market value attributed to the location and characteristics of the subject property. The comparable sales analysis supports the 2010 market value assessment of the subject property.
- The Minister submitted that Order LT97-02 stands for the proposition that the size of a property assessment increase is not a matter than can be considered on appeal.

[8] The Minister requests that the Commission confirm the 2010 assessment of the subject property.

The Commission's Findings

[9] After giving careful and full consideration to the evidence presented in this case, and upon a review of the applicable law, it is the decision of the Commission to make a minor variance to the assessment of the subject property. The reasons for the Commission's decisions follow.

[10] Subsection 22(1) of the **Act** sets out the jurisdictional scope of a property tax assessment appeal to the Commission:

22.(1) Where an assessment has been referred to the Minister under section 20, and after the Minister has notified the person making the reference of his decision, the person making the reference may appeal to the Commission to have the assessment vacated or varied.

[11] Subsection 3(2) of the **Act** reads as follows:

3(2) All real property owned by the Crown or any person shall be assessed at its market value, either

(a) as commercial realty; or

(b) as non-commercial realty.

[12] Market value is defined in the **Act** as:

1.1 (f) "market value" means, in respect of real property, the most probable sale price of that real property as indicated by consideration of the cost of reproduction, the sale price of comparable properties and the value indicated by rentals or anticipated net income;

[13] Subsection 28(1) states:

28.(1) Subject to subsection (2), in any appeal to the Commission, the Minister shall demonstrate the uniformity of the assessment in relation to other assessments.

[14] In Order LT97-02, *Maynard v. The Provincial Treasurer*, the Commission considered the issue of the magnitude of the increase in the assessed value of a property and noted that:

*This issue was addressed by the Commission in the case of In the Matter of an Appeal by Sleiman Wakim (Order LT93-4) dated August 11, 1993 and in a case of In the Matter of an Appeal by Douglas and Margaret Fitzpatrick (LT94-08) dated December 19, 1994. In these cases the Commission agreed with the Appellants that the sudden increase in assessment was shocking. In the Wakim case the increase was approximately 52% while in the Fitzpatrick case it was approximately 75%. However, since the requirement under the **Real Property Assessment Act** is to assess at market value, and such value must be uniform with other provincial assessments, the suddenness of the increase cannot be used as a basis for challenging the legality of the assessment.*

*The Commission finds that the **Act** and Regulations do not require assessment changes to be made gradually, consequently the suddenness of the change cannot be used to invalidate the assessment.*

In this case, as the new assessment is valid, one can draw the conclusion that the property in question was undervalued for some years and one could view this as an advantage the Appellant received in the past.

Therefore the appeal will not be allowed on this issue.

[15] It is noteworthy that in Order LT97-02 referred to above, the Commission was considering a sixteen fold increase in property assessment which occurred in a single year.

[16] In the present appeal, the Commission finds that the Minister has demonstrated that the assessment of the land component of the subject property is uniform compared to other assessments in the area and that such assessment was at market value, based on a comparable sales analysis.

[17] The Commission finds that the Minister valued the residence on the subject property at a nominal value of \$2,500.

[18] In Mr. Hickox's Statement of Referral he describes the residence as:

House – roof bad, foundation in shambles house unlivable. No running water or indoor plumbing.

[19] In his Notice of Appeal, Mr. Hickox describes the residence as:

[The] house is uninhabitable and [there are] no outbuildings.

[20] The Commission has had the opportunity of reviewing the photographs of the house contained in the AVS. The Commission accepts Mr. Hickox's description of the residence and reduces the assessed value of the residence to zero. Accordingly, the Commission varies the assessed value of the subject property to \$327,600 [\$330,100 - \$2,500].

[21] The Commission is, however, mindful that Mr. Hickox has raised the concern that such large property tax increases applied to agricultural land will force the sale, or development, of properties similar to the subject property. While the **Act** does not allow the Commission to consider this concern as a basis for an appeal, the Commission notes that this concern raises important policy considerations. The Commission is concerned that such large increases in the assessed value of what is in essence non-developed agricultural land may encourage pre-mature development and thus perhaps conflict with some objects of other legislation, such as the **Lands Protection Act**, an Act which the Commission administers. While the **Act** contains 'bona fide farmer' provisions which may serve to soften the impact on the taxes payable by a landowner, the Commission remains concerned that good faith efforts to objectively and professionally determine the market value of land similar to the subject property may unintentionally encourage landowners to subdivide or otherwise develop such land, thus reducing the Province's agricultural and resource land base.

3. Disposition

[22] An Order will therefore be issued allowing the appeal and varying the 2010 assessment for Provincial Property Number 203877 to \$327,600.

IN THE MATTER of an appeal by Donald F. Hickox of a decision of the Minister of Finance and Municipal Affairs regarding the 2010 assessment of Provincial Property Number 203877 located in Canoe Cove.

Order

WHEREAS the Appellant Donald F. Hickox has appealed a decision of the Minister of Finance and Municipal Affairs pertaining to the 2010 real property assessment of Provincial Property Number 203877 located in Canoe Cove;

AND WHEREAS the Commission heard the appeal at a public hearing conducted in Charlottetown on September 12, 2011;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Real Property Assessment Act*,

IT IS ORDERED THAT

1. The appeal is allowed.
2. The 2010 real property assessment of Provincial Property Number 203877 is hereby varied to \$327,600.

DATED at Charlottetown, Prince Edward Island, this 26th day of October, 2011.

BY THE COMMISSION:

(Sgd.) *Allan Rankin*

Allan Rankin, Vice-Chair

(Sgd.) *Leonard Gallant*

Leonard Gallant, Commissioner

(Sgd.) *Peter McCloskey*

Peter McCloskey, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. *The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 33 and 34 of the *Real Property Assessment Act* provide as follows:

33. *Notwithstanding anything in any public or private Act, an appeal lies to the Supreme Court of the province from any order, decision, or award of the Commission, if notice of the appeal is given the other parties within forty-five days after the making of the order, or decisions sought to be appealed from.*

34. *The rules and practices of the Supreme Court respecting appeals apply with the necessary changes to any appeal.*

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC142A(2009/11)