2011 CarswellOnt 7432

Egan v. Municipal Property Assessment Corp., Region No. 15

In the matter of Section 40 of the Assessment Act, R.S.O. 1990, c. A.31, as amended

In the matter of appeals with respect to taxation years 2009, 2010 and 2011 on premises known municipally as 85 Second Street

Karen Dale Egan, Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the Town of Oakville, Respondents

Ontario **Assessment Review Board**

J. Laws Member

Heard: February 14, 2011
Judgment: August 2, 2011
Docket: WR 103265

Counsel: R. **Baranowski**, for Assessed Person / Appellant

S. Bennett, C. Mattat, for Municipal Property Assessment Corporation

S. Price, for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Valuation — Uniformity, equity and equality — Miscellaneous

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Market value — Selling price of comparative property

Statutes considered:

Assessment Act, R.S.O. 1990, c. A.31

s. 1 "current value" — referred to

s. 19(1) — referred to

s. 19.2(1) ¶ 2 [en. 2004, c. 7, s. 3(1)] — referred to

s. 19.2(5) [en. 2004, c. 7, s. 3 (2)] — referred to

s. 40(17) — referred to

s. 40(19) — referred to

s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

***J. Laws Member*:**

1 These appeals came before the Assessment Review Board on February 14, 2011 in the Town of Oakville.

Issue

2 The issues to be determined are whether the assessment of $2,908,000 for the 2009, 2010 and 2011 taxation years is correct and whether it is equitable with the assessment of similar lands in the vicinity.

Decision

3 The Board finds that the current value of the subject property as of the valuation day of January 1, 2008 is $2,741,000.

4 The evidence does not support any reduction to the assessment to make it equitable with the assessment of similar lands in the vicinity.

5 As a result, the assessment of the subject property, as at January 1, 2008, for the 2009, 2010 and 2011 taxation years is reduced from $2,908,000 to $2,741,000.

Reasons for Decision

Background:

6 The subject property, located at 85 Second Street in the Town of Oakville, has an effective frontage of 97 feet and an effective depth of 295 feet with an effective lot size of 27,878 square feet. There is a 5,875 square foot, two storey house with an attached garage and the residence is heated by hot water. The basement is unfinished and has a ceiling height of six feet. The house was built in 1900. Based on an addition and renovation in 2001, the Municipal Property Assessment Corporation's (MPAC) records show an effective year built of 1976 with a quality rating of 7.0.

7 The property is assessed at $2,908,000 for the 2009, 2010 and 2011 taxation years using the Multiple Regression Analysis method of valuation.

MPAC's Position:

8 It is MPAC's position that the subject property's assessment is at current value and that the assessed value is supported by the sales of three properties in 2005 and 2006.

9 Ms. Bennett submits that the characteristics of the subject property are unique and there were few sales of similar properties in the vicinity of the subject property. She describes the subject property's homogeneous neighbourhood of A70 as a highly desirable area called Old Oakville with unique single-family detached homes. Her criteria for choosing comparable properties with sales included selecting only A70 properties, the age and size of buildings and size of lots. Ms. Bennett submits that there are very few properties with similar sized lots and there are very few homes with a quality rating of 7.0 with sales for similarly sized buildings. As a result, the sales are some distance from the valuation date of January 1, 2008.

10 The three suggested comparables are 27 Park Avenue which sold in October 2005 for $1,450,000, 72 Park Avenue which sold in May 2006 for $3,100,000 and 63 Second Street which sold in October 2005 for $1,950,000. All are similar to the subject in that they are older homes with similar lot and house sizes, are located in A70 and have renovations and/or additions. The sales were time-adjusted to the valuation date of January 1, 2008: $1,650,982, $3,416,164 and $2,220,286, respectively. These amounts were further adjusted for the physical differences between the subject property and the suggested comparables, resulting in values of $2,788,000, $2,939,000 and $2,793,000. Ms. Bennett contends that because the subject property's assessment falls within this range shows that $2,908,000 is the correct current value for the subject property.

11 To demonstrate the equity of the assessment, Ms. Bennett provided two equity studies. The first includes 77 residential sales in A70 and displays a median time adjusted sales ratio of 1.00 and the second includes 46 sales of one-and-a-half and two-storey homes in A70 displaying a median time adjusted sale ratio of 1.01.

The Appellant's Position:

12 Mr. Robert **Baranowski**, representing the appellant, disagrees with the assessor's determination. He argues that MPAC failed to make adjustments for a number of differences between the subject property and MPAC's suggested comparables. For example, because MPAC's suggested comparables have forced air heating and the subject property has hot water heating, he submits there should be an additional adjustment of $47,000 (a figure provided by Ms. Bennett on cross-examination) to reflect this difference. He points out that the comparable property at 72 Park Avenue has a quality rating of 8.0 and 63 Second Street has a quality rating of 7.5, while the subject property has a quality rating of 7.0. He argues that if MPAC included adjustments for the quality rating differences, the adjusted values would be much lower.

13 Mr. **Baranowski** argues that because 27 Park Avenue has no basement, 72 Park Avenue has a basement height of eight feet and 63 Second Street has a basement height of 9.5 feet they cannot be compared to the subject, which has an actual basement height of five feet, without further adjustments. Ms. Bennett responded that adjustments for differences have been made and that the differences in ceiling heights do not result in a change in value.

14 Mr. **Baranowski** submits that MPAC's records do not show any renovations or changes to the property between the January 1, 2005 and January 1, 2008 valuation dates, yet the assessed value has increased by $839,000 or 40.6% while MPAC's own evidence is that the time adjustment factor for the same period is 0.52% per month (page 19 of Exhibit #1) or 18.72% during this 36 month period. Applying MPAC's change in value over time results in an assessment of $2,456,316 ($2,069,000 ×18.72%). In response to this argument, Ms. Bennett states there are other factors such as an increase in lot values between 2005 and 2008, which is reflected in sales of properties that are purchased not for the building(s) but for the lot alone and that the 0.52% per month value is an average derived from 136 sales over 48 months.

15 According to Mr. **Baranowski** MPAC failed to carry forward a reduction from a previous Board decision (1953089) in which the 2008 taxation year assessment was reduced by $104,000. Neither party could advise the Board of the reason for the reduction, whether it was a negotiated settlement or was a result of a full hearing.

16 Mr. **Baranowski** presented a property assessment details (PAD) sheet for 52 First Street which includes a 15% reduction for "Market (not otherwise defined)" and argues that the subject property should also receive this reduction as an equity adjustment because they are both located in the same vicinity. Mr. **Baranowski** provided no reason why 52 First Street received this reduction.

17 Mr. **Baranowski's** position is that the current value of the subject property is $1,868,000 based on a single sale, 71 Reynolds Street. This suggested comparable is a 4,002 square foot home, built in 1985 with a 5,121 square foot lot. It sold in August 2009 for $1,275,000. In the alternative, he asks that the current value be no more than $2,450,000 to reflect MPAC's time adjustment factor of 0.52% per month for the 36 months between valuation dates. Mr. **Baranowski** submitted a second sale for 213 Balsam Drive but did not rely on it in his submissions and arguments.

18 With regard to equity, Mr. **Baranowski** submitted four assessments which include the assessments for the two sales. In his arguments, he relied solely on the assessment for 71 Reynolds Street, which is assessed at a higher value than the sale price.

The Legislation:

19 In determining the value at which land shall be assessed, the Board must have regard to the following provisions of the *Act:*

20 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.

21 Section 1 of the *Act* states:

> **"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.

22 Subsection 19.2(1)2 of the *Act* provides:

> **19.2(1) Valuation days. —** Subject to subsection (5)[FN1] , the day as of which land is valued for a taxation year is determined as follows:
>
> > 2. For the period consisting of the four taxation years from 2009 to 2012, land is valued as of January 1, 2008.

23 In determining the value at which any land shall be assessed, subsection 44.(3)(a) and (b) of the *Act* requires the Board to do two things:

> **44.(3) Same, 2009 and subsequent years. —** For 2009 and subsequent taxation years, in determining the value at which any land shall be assessed, the Board shall,

(a) determine the current value of the land; and

(b) have reference to the value at which similar lands in the vicinity are assessed and adjust the assessment of the land to make it equitable with that of similar lands in the vicinity if such an adjustment would result in a reduction of the assessment of the land.

24 Subsection 40.(17) of the *Act* provides:

40.(17) Burden of proof. — For 2009 and subsequent taxation years, where value is a ground of appeal, the burden of proof as to the correctness of the current value of the land rests with the assessment corporation.

25 Subsection 40.(19) of the *Act* provides:

40.(19) Board to make determination. — After hearing the evidence and the submissions of the parties, the Board shall determine the matter.

Determination of Current Value:

26 The best evidence of current value is an arm's length and market tested sale of the subject property on or close to the valuation date of January 1, 2008.

27 If, as in this case, no such transaction has taken place, the Board looks to sales of comparable properties in the vicinity to determine if the sales evidence suggests that the current value requires a correction.

28 The parties submitted five sales. MPAC's three suggested comparables sold in either 2005 or 2006 and have been time adjusted to the valuation date of January 1, 2008. The appellant's two sales submitted in evidence occurred in 2009 and 2010 with no time adjustments. All of the properties are located in the vicinity of the subject property and the evidence is that they were all sold on the open market in arm's length transactions.

29 Although Mr. **Baranowski** relied on only one of the two sales in his arguments, the Board reviewed both sales because they were submitted into evidence. The Board rejects both sales for the determination of current value. The first sale, 71 Reynolds Street, is rejected because the property is not similar to the subject. The lot is one-fifth the size of the subject's, the residence is 47% smaller than the subject and the house was built in 1985. The second sale, 213 Balsam Drive, is rejected because it occurred in June 2010, 30 months from January 1, 2008 and the Board finds it occurred too far from the valuation date to be of assistance in determining the subject property's current value.

30 Ms. Bennett made a number of adjustments to the sale prices of her suggested comparables, as detailed on Appendix A of Exhibit #1. The adjustments are made to account for the impact on market value of the different characteristics between the subject property and the proposed comparable properties.

31 MPAC's adjustment methodology represents a valid approach for establishing a common valuation base for the properties identified as comparables to the subject property. The problem with MPAC's evidence is that the Board, and by extension, the appellant, is unable to examine how the value adjustments attributed to any of the comparable characteristics used in the analysis are arrived at and whether, in fact, the adjustment values represent the current values since the calculations are based on a comparison between the assessed values of the properties which are not necessarily the same as the current values. Furthermore, the appellant raises the issue that the adjustments are not complete, that MPAC has not made adjustments for all of the significant differences.

However, the Board finds that it cannot determine the current value based on the original sales because they occurred too far from the valuation date. Furthermore, the Board will not rely on the time-adjusted sale values for 72 Park Avenue and 63 Second Street as they are quality 8 and 7.5, respectively and for that reason the Board does not find them to be comparable.

32 As a result, the Board is left with one sale on which it can rely to determine the current value, 27 Park Avenue. It has a smaller residence and slightly smaller lot but the lot width is quite similar at 95 feet compared to the subject at 97 feet. Furthermore, the Board finds this property to be similar in that the residence is a quality 7. The adjusted sale price is $2,788,000. The Board notes that 27 Park Avenue is heated by a forced air system and that during the course of cross-examination, Ms. Bennett stated she has not adjusted the sale price for this difference and that the value of the subject property's hot water heating system is — $47,000. As a result, the Board finds that the current value of the subject property as of the January 1, 2008 valuation date is $2,741,000 ($2,788,000 - $47,000).

Determination of Equity:

33 The second issue is whether an adjustment to the assessed value is required to make it equitable with similar lands in the vicinity. The task before the Board is not to determine the overall accuracy of MPAC's model but to determine how it has performed with regard to similar properties in the vicinity.

34 In making such a determination, Mr. **Baranowski** proposes that the Board utilize the average assessment per square foot of his suggested comparables. The Board rejects the use of assessment per square foot as a valid test of equity between properties as it does not take into account the relationship between a property's current value and its assessed value. To use the average assessment per square foot assumes that the assessments of similar lands in the vicinity are below their current values. In order to reduce an assessment to make it equitable with the assessments of similar lands in the vicinity, the Board must be satisfied that similar lands in the vicinity are assessed below their current values.

35 Mr. **Baranowski** also argues that the subject property's assessment should be reduced by 15% to make it equitable with the assessment of 52 First Street, which received such an adjustment. The Board rejects this argument. No evidence as to why this reduction was given was provided to the Board. The Board cannot apply such an adjustment, whether to the current value or the equitable value, without knowing the reason for the reduction and whether the reason for the reduction applies to the subject property.

36 For the determination of equity, the Board prefers using the Assessment to Sales Ratio (ASR). The ASR is a useful tool to determine whether the MPAC valuation model is tending to either over-value or under-value a particular type of property in a vicinity. The ASR is determined by dividing the assessed value by the sale price of a property. An ASR above 1.00 would indicate that similar properties in the vicinity are being over-assessed and an ASR below 1.00 would indicate that similar properties are being under-assessed.

37 The Board cannot determine an ASR for the sales submitted by the appellant because the sale dates are too far from the valuation dates to be relevant.

38 The average ASR of the three time adjusted sales submitted by MPAC (Appendix A, Exhibit #1) is 1.02. An average ASR of 1.02 based on three sales does not support a reduction to achieve equity.

39 The Board also considered the equity studies presented by MPAC (Appendix C and D, Exhibit #1). Of

these two studies, the Board prefers the contents of Appendix D. Appendix C lists all residential sales in the vicinity whereas Appendix D lists only sales of 1.5, 1.75 and two storey homes in the vicinity. From Appendix D, the Board considered the actual (not time-adjusted) sales of two storey homes which occurred in the year prior to and following the valuation date. There are 16 sales of two storey homes during this period, nine sales in 2007 and seven sales in 2008. The average ASR is 1.01 and the median ASR is 1.00.

40 All three ASR's analyses considered by the Board indicate that properties in the vicinity are being assessed within an acceptable range of current value and, therefore, no reduction below current value is warranted for the purpose of equity.

FN1 Subsection 5 permits the Minister to prescribe a different valuation day. A different day has not been prescribed.

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