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Nedungat Holdings Ltd. v. Municipal Property Assessment Corp., Region No. 14

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

And In the Matter of an appeal with respect to taxation year 2009 on premises known municipally as 20805 Dalton Road

Nedungat Holdings Limited (Assessed Person / Appellant) and The Municipal Property Assessment Corporation, Region No. 14 and the Town of Georgina (Respondents)

Ontario **Assessment Review Board**

J. Wyger Member

Heard: November 4, 2009
Judgment: December 11, 2009
Docket: WR 78465

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

P. Hockley for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

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

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Similar real property in vicinity

Statutes considered:

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

s. 1(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. 40(17) — referred to

s. 40(19) — referred to

s. 44(3) — referred to

s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

***J. Wyger Member*:**

1 This appeal came before the Assessment Review Board on November 4, 2009 in the Town of Georgina.

Issue

1. The first issue for the Board to determine is whether the Municipal Property Assessment Corporation (MPAC) has met its burden of showing that the subject property's assessment is based on its current value.

2. After determining the current value of the subject property, the Board must determine if that value is equitable compared to the assessments of similar lands in the vicinity, and if it is not, to make an adjustment to correct the inequity.

Decision

1. The Board has determined the current value to be $344,000.

2. After having reference to the assessments of similar lands in the vicinity, the Board concludes that the current value of $344,000 is equitable compared to those assessments. The assessment is reduced from $375,000 to $344,000.

Reasons for Decision

The Facts

2 The subject property is a 3,084 square foot, two-storey home, built in 1923, and situated on an irregular 29,840 square foot lot at 20805 Dalton Road, in the Town of Georgina. It underwent a renovation in 1972 and is assessed for $375,000 for the 2009 taxation year.

MPAC's Position

3 The assessor contended that her analysis of the few sales of comparable properties, and the assessment to sale ratios (ASR's) revealed by a level study, show that the subject assessment is both based on current value and is equitable with the assessments of similar properties in the area.

The Appellant's Position

4 Mr. R. **Baranowski**, representing the assessed owner, maintained that the level study had no evidentiary value, and the subject's current value should be lowered to $258,000 based on his analysis of the sale of a single comparable property.

The Legislation

5 Subsection 19.(1) of the *Assessment Act* (*Act*) states that "the assessment of land shall be based on its current value". Current value is defined in section 1 of the *Act* to mean, "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".

6 Subsection 19.2(1)2 of the *Act* provides that for the period consisting of the four taxation years from 2009 to 2012, land is valued as of January 1, 2008.

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

8 Subsection 40.(17) of the *Act* provides that, 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.

9 After hearing the evidence and the submissions of the parties, the Board shall determine the matter pursuant to subsection 40.(19).

The Evidence

10 The assessor presented a Property Report with six comparable properties that sold between January of 2006 and May of 2008. None of the properties was very similar to the subject. The assessor also provided a Level of Assessment Study which provided ASR information from 2005 to 2008 sales in three different sized areas labelled "Market", "Locational Neighbourhood" and "Homogeneous Neighbourhood".

11 Mr. **Baranowski** introduced a Property Report to challenge the Level Study. This document showed three properties in the vicinity with ASR's of 1.51, 1.08 and 1.14. Mr. **Baranowski** argued that this shows that the level study is meaningless. Mr. **Baranowski** presented no other evidence.

Analysis - Current Value

12 For the reasons outlined below, the Board does not accept the submissions/conclusions regarding current value.

13 The MPAC Property Report sets out the various differences between the comparable properties and the subject in terms of lot size and frontage, age and size of structure and basement finish. For each comparable, a "market value differential" set out in dollars the difference between the sale price for each and the subject assessment of $375,000. There were no dollar values assigned to the variables, and the assessor was unable to show a direct correlation between the variables and the market value differential. The Board infers that there is no connection, because it is very unlikely that what should be very disparate values would add up precisely to

the subject's assessed value of $375,000 for each comparable property. It would be difficult to reconcile values for these variables because five of the comparable structures are much smaller by 1,296 square feet and more. On the opposite side of the adjustment ledger is the age of the same five houses being some 39 to 75 years newer than the subject structure. All five are on much smaller lots as well. The Board therefore finds that to perform a direct comparison, adjusting these five sale values to determine the subject CVA is not reasonably possible, because the properties are so dissimilar.

14 Only one comparable property submitted in evidence could be considered somewhat similar to the subject property because like the subject, it is a large, older home situated on the same street at 20868 Dalton Road. This property is Comparable #4, and is situated on a substantially smaller lot than the subject, but does have a detached garage and indoor pool. It sold for $369,000 in February of 2007 and is assessed at $434,000. Mr. **Baranowski** calculates a sale value of $93.50 per square foot and applies this directly to the subject's structure size to arrive at a figure of $288,000. From this, he deducts $30,000 for the detached garage and pool to arrive at his suggested assessed value of $268,000.

15 The Board has problems with Mr. **Baranowski** analysis. The first concern is that employing a straight value per square foot to find current value only works where properties are reasonably close in size due to economies of scale. Comparable #4 is a 28% larger structure and would expect to have a lower sale value per square foot. In addition, the $93.50 per square foot would also reflect the fact that the lot size of Comparable #4 is 80% smaller than the subject property. Finally, using a single sale from 10 months prior to the January 2008 valuation day may skew the result. It is preferable to use sales that are balanced on either side of the valuation date, if available. Toward that end, the Board calculated the ASR for all the sales in evidence within 18 months either side of the valuation day. These included two 2008 sales in the same neighbourhood, code P30, that are found on Mr. **Baranowski's** Property Report. The average ASR is 1.16 while the median ASR is 1.09. This analysis would appear to show that MPAC's model may be valuing properties higher than their sales values, despite what MPAC's level study says. The level study shows a 95% "confidence interval" that the 209 sales in P30 from 2005 to 2008 result in a median 0.97 ASR. The Board would have more confidence in this figure if it could review a representative sampling of the sales behind this chart, particularly in 2007 and 2008.

16 In the absence of other evidence, the MPAC level study could support a conclusion that sales values and assessed values are within a reasonable range of each other for the purpose of either supporting current value or equity. However, where as here, there are sufficient sales to suggest that in the immediate neighbourhood, the range of assessed values is at a higher level than the range of sales values, this direct evidence is more persuasive. The Board finds further support of this trend in the other three sales from early 2006 which had ASR's of 1.19, 1.21 and 1.22. Based on the median ASR of 1.09 of the more timely sales, the Board infers that the subject assessment created by the same model is also assessed higher than its likely sale value by a factor of 1.09. Dividing the subject assessment by 1.09 results in a current value of $344,000. The Board determines this value to be its best estimate of a likely sale value or current value as of January 2008.

Analysis - Equity

17 Having determined the current value, the Board is required to review the assessments of similar properties to determine if the current value is equitable compared to the assessments of similar properties. The Board has already found that the assessments of all the properties in evidence are higher than their sales values. The subject property was and would be more equitable at a higher level, perhaps at the returned value of $375,000. However, the Board is directed to calculate an equity adjustment only where it results in a reduction. In effect, it

will be in most cases, the lesser of the current value or the equitable value. In this case, the current value as determined by the Board of $344,000 is the lesser value. Pursuant to both subsection 19.(1) and subsection 44.(3), the Board reduces the assessment from $375,000 to $344,000.

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