



Tribunals Ontario

Assessment
Review Board

Tribunaux décisionnels Ontario

Commission de révision de
l'évaluation foncière

ISSUE DATE: January 25, 2022

FILE NO.: WR 175693

Assessed Person(s):	Barry Donald Butwell; Deanna Isabel Butwell
Appellant(s):	Barry Butwell
Respondent(s):	Municipal Property Assessment Corporation Region 15
Respondent(s):	Town of Halton Hills
Property Location(s):	12282 Eighth Line
Municipality(ies):	Town of Halton Hills
Roll Number(s):	2415-070-003-20110-0000
Appeal Number(s):	3438368
Taxation Year(s):	2021
Hearing Event No.:	755468
Legislative Authority:	Section 40 of the <i>Assessment Act</i> , R.S.O. 1990, c. A.31

APPEARANCES:

Parties

Representative

Barry Donald Butwell and
Deanna Isabel Butwell

Robert Baranowski

Municipal Property
Assessment Corporation

Nikita Ramjeawan

Town of Halton Hills

No one appeared

HEARD:

December 10, 2021 by video conference

ADJUDICATOR(S):

Pierre R. Lavigne, Member

DECISION

OVERVIEW

[1] Barry Butwell and Deanna Butwell (the “Appellants”) appeal their assessment for the 2021 taxation year because it is too high and is therefore incorrect. The Subject Property is located at 12282 Eighth Line in a country-side part of the Town of Halton Hills in the Regional Municipality of Halton. The Subject Property is a two-storey detached residential dwelling of 2,719 square feet (“sq. ft.”) built in 1983 on a 2.66 acres lot with a road frontage of 160 feet (“ft.”) and a depth of 778.55 ft.

[2] The assessment for the 2021 taxation year was \$852,000. The Appellants view is that the correct assessment should be \$730,000. The Municipal Property Assessment Corporation (“MPAC”) states that the correct assessment should be \$913,000. Pursuant to Rule 28 of the Assessment Review Board’s (the “Board’s”) *Rules of Practice and Procedure* (“Rules”), MPAC has given notice to the Appellants that it is seek a higher assessment than the original assessment.

Issues for the Hearing

[3] At issue in this proceeding is:

1. The determination of the correct current value of the Subject Property;
2. Whether an equity reduction in the correct current value should be made pursuant to s. 44(3)(b) of the *Assessment Act*, R.S.O. 1990, c. A.31 (the “Act”)?

Result

[4] The Board finds that the correct current value at the valuation day of January 1,

2016 is \$752,000. The Board makes no adjustment for equity.

ANALYSIS

Issue 1 - The determination of the correct current value of the Subject Property:

The Governing Statutory Provisions

[7] Section 19(1) of the Act requires that “the assessment of land shall be based on its current value”.

[8] Section 1(1) of the Act defines current value as follows:

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.

[9] Section 19.2 of the Act stipulates that January 1, 2016 is the day as of which land shall be valued for the 2017 to 2020 taxation years. Section 48.6 of *Ontario Regulation* (“O. Reg.”) 282/98 extended this valuation day to the 2021 taxation year.

[10] Section 40(17) of the Act places the burden of proof as to the correctness of the current value upon MPAC.

[11] Section 44(3)(b) of the Act requires the Board to reduce the assessment if that value is inequitable when compared to the assessment of similar lands in the vicinity.

MPAC's Position

[12] Mr. Raj Rakhra, a property valuation analyst, presented evidence on behalf of MPAC. He presented three sales of property which, in his view, had comparable characteristics, though he judged each of the sales to be of inferior overall quality. The

three sales as described in the following Table:

MPAC – Market Analysis Grid

	Subject Property	Property #1	Property #2	Property #3
Roll Number	241507000320110	241507000383800	241507000384901	241507000319392
Address	12282 EIGHTH LINE	20 THOMPSON DR	4 HARRISON PL	12097 EIGHTH LINE
Neighbourhood	E30 - 81	E31 - 81	E31 - 81	E30 - 81
Property Code & Desc.	(301) Single-Family Detached (Not On Water)	(301) Single-Family Detached (Not On Water)	(301) Single-Family Detached (Not On Water)	(301) Single-Family Detached (Not On Water)
Distance in km		3.4729	3.6045	0.567
Valuation				
Current Value Assessment	\$852,000	\$748,000	\$840,000	\$660,000
Sale				
Sale Date		20150806	20160715	20150709
Sale Amount		\$791,000	\$945,000	\$732,500
Time Adjusted Sale Amount		\$814,681	\$906,920	\$759,482
Site				
Effective Frontage (F)	160	99.48	96.72	125
Actual Frontage	160	99.48	96.72	125
Effective Depth (F)	778.55	182.94	185.76	161
Actual Depth	778.55	182.94	185.76	161
Effective Site Area (Acres)	2.0	0.49	0.65	0.46
Actual Site Area (Acres)	2.66	0.49	0.65	0.46
Abuts Variable(s)	(K) Traffic Pattern - Light	(R) Abuts Railway		(F) Abuts Farm
Proximity Variable(s)			(R) Proximity To Railway	
On Site Variable(s)	(83) Official Plan Designated - Natural Heritage System , (85) Official Plan Designated - Agricultural		(M) No Sidewalk On Street , (C) Corner Lot	(M) No Sidewalk On Street , (L) No Street Lighting , (K) No Curbs And Gutters
Residential Structure				
Year Built	1983	1989	1989	1976
Effective Year Built	1983	1997	1989	1976
Quality of Construction	6.5	6.5	6.5	6.5
Full Storeys		2 Storeys	2 Storeys	2 Storeys
Building Total Area (SF)	2,719	2,586	2,427	2,384
Basement Type		Finished Basement - Average Quality	Recreation Room -Average Quality	Recreation Room -Average Quality
Basement Area (SF)	1,594	1,526	1,353	1,192
Finished Basement Area (SF)		1,000	1,082	596
Modifications		B, (Year) 2005		
Secondary Structure(s)				
Structure Description	(101) Detached Garage	(116) Attached Garage	(108) Outdoor Pool	(116) Attached Garage
Year Built	1991	1989	2005	1976
Building Total Area (SF)	676	480	575	480
Quality of Construction	3	3	2	3
Structure Description	(116) Attached Garage		(116) Attached Garage	
Year Built	1983		1989	
Building Total Area (SF)	480		480	
Quality of Construction	3		3	
Structure Description	(108) Outdoor Pool			
Year Built	1985			
Building Total Area (SF)	512			
Quality of Construction	2			
Time Adjusted Sale/sf(building)		\$315.04	\$373.68	\$318.57
Average Time Adjusted Sale/sf	\$335.76			
Opinion of Value	\$912,939.86	\$913,000 (rounded)		

[13] He judged Property Sale 1 to be inferior, principally because of its smaller lot and structure size, proximity to a rail line, the lack of a detached garage and pool, when compared to the Subject Property.

[14] He judged Property Sale 2 to be inferior, principally because of its smaller corner lot, smaller structure size, proximity to a rail line and the lack of a detached garage, when compared to the Subject Property.

[15] He judged Property Sale 3 to be inferior, principally because of its smaller lot size, it was an older structure and did not have a detached garage and pool, when compared to the Subject Property.

[16] He calculated the average time adjusted sale price per sq. ft. of the building area of the above three comparable properties to be \$335.76 per sq. ft. He applied this rate to the Subject Property's building area of 2,719 sq. ft. to arrive at \$913,000 (rounded). In his view, that is the correct January 1, 2016 current value.

[17] In cross-examination MPAC's analyst acknowledged that his comparable sales of Property 1 and 2 were not in the same homogenous neighbourhood as the Subject Property. He stated that in his view there were no good comparable properties in the neighbourhood. He also agreed that using a rate per sq. ft. is difficult if there are no quantitative adjustments for differences.

Appellant's Position

[18] Mr. Robert Baranowski represented the Appellants. He presented the sales in the following table as comparable. Both MPAC and the Appellants had the Property Sale 3 at 12097 Eighth Line in common, therefore, it is not included in the Table below.

Appellant – Market Analysis Grid

	Subject Property	Property #4	Property #5	Property #6
Roll Number	241507000320110			
Address	12282 EIGHTH LINE	12133 EIGHTH LINE	12210 EIGHTH LINE	22 SIDE RD
Neighbourhood	E30 - 81	E-30	E-30	E-30
	(301) Single-Family Detached (Not On Water)	(301) Single-Family Detached (Not On Water)	(301) Single-Family Detached (Not On Water)	(301) Single-Family Detached (Not On Water)
Property Code & Desc.				
Distance in km				
Current Value Assessment	\$852,000	\$857,000	\$771,000	664,0000
Sale Date		2016 June	2015 Aug	2016 Dec
Sale Amount		\$750,000	\$825,600	\$692,000
Time Adjusted Sale Amount				
Effective Frontage (F)	160	142	232.61	0
Actual Frontage	160			
Effective Depth (F)	778.55	150	0	0
Actual Depth	778.55			
Effective Site Area (Acres)	2.0	21,300sf	2.98 ac	8..44 ac
Actual Site Area (Acres)	2.66	0.47 ac	3.98 ac	8.44 ac
Abuts Variable(s)	(K) Traffic Pattern - Light			
Proximity Variable(s)				
	(83) Official Plan Designated - Natural Heritage System , (85) Official Plan Designated - Agricultural			
On Site Variable(s)				
Year Built	1983	1946	1948	1939
Effective Year Built	1983			
Quality of Construction	6.5	6.5	6.5	5.5
Full Storeys	2	1.5	1.75	1.5
Building Total Area (SF)	2,719	3,048	2,499	1,549
Basement Type				
Basement Area (SF)	1,594	1,167	832	0
Finished Basement Area (SF)				
Modifications				
Secondary Structure(s)				
Structure Description	(101) Detached Garage			
Year Built	1991			
Building Total Area (SF)	676			
Quality of Construction	3			
Structure Description	(116) Attached Garage			
Year Built	1983			
Building Total Area (SF)	480			
Quality of Construction	3			
Structure Description	(108) Outdoor Pool			
Year Built	1985			
Building Total Area (SF)	512			
Quality of Construction	2			
Time Adjusted Sale/sf(building)				
Average Time Adjusted Sale/sf				
Opinion of Value				

[19] Mr. Baranowski submitted that MPAC's Property Sales 1 and 2 should be rejected as comparable properties since they are not in the same homogenous neighbourhood. Mr. Baranowski's proposed comparable properties are for sales in the same homogeneous neighbourhood.

[20] The Appellants submit the correct value should be determined from Property Sales 3 and 6, either by value per sq. ft. or by using the average value of these two sales.

[21] The Appellants also submitted the following cases in support: *Canada v. Scheller*, [1976] 1 F.C.480 at para. 26 ("*Scheller*"); *Edmonton East (Capilano) Shopping Centres Ltd v Edmonton (City)*, [2013] AJ No 979, 2013 ABQB 526, 14 MPLR (5th) 252, 570 AR 208, 2013 Carswell Alta 1745 at paras. 23, 30 and 55; *Les Immeubles B.P. Ltée v. Ville d'Anjou et al.*, [1978] J.Q. no 278 at para. 21; *Pyke v Municipal Property Assessment Corp*, Region No 7, [2006] O.A.R.B.D. No. 215 ("*Pyke*") (WR 49892 at p. 4). Most of these cases deal with the Assessor's ability to seek an increased assessment upon a taxpayer's appeal. These cases will be addressed in the discussion below.

Discussion

[22] The Appellants submitted that the Board should not consider Property Sales 1 and 2 proposed by MPAC, as they were not in the same neighbourhood, and were 3.5 kilometres ("kms") away on average. The Appellant relied upon the Board's decision in *Pyke* at p. 4 for this proposition. This decision simply observes that MPAC often stresses the importance of using only comparable properties sharing the same homogenous neighbourhood code. It does not stand for the proposition that only sales in the same homogenous neighbourhood may be used.

[23] Properties in the same neighbourhood are subject to similar economic and locational characteristics by virtue of their proximity to each other. If they have

sufficiently similar elements of comparison, they are considered reasonable substitutes by a potential purchaser and are therefore comparable.

[24] Sales not located in or close to the same neighbourhood may be comparable if they are subject to similar economic and locational characteristics as the Subject Property or if adjustments can be made for locational differences. If they have other sufficiently similar elements of comparison, they would be considered reasonable substitutes by a potential purchaser.

[25] Sales 1 and 2 are several kilometres from the Subject Property. The map in evidence indicates that they are south of Georgetown, while the Subject Property and Property Sales 3 to 5 are located on the same street north-west of Georgetown. In this appeal, MPAC presented no evidence that Sales 1 and 2 were subject to similar economic and locational characteristics, despite their distance from the Subject Property. Accordingly, there was insufficient evidence to consider them locationally similar. For this reason, Sales 1 and 2 are not comparable to the Subject Property.

[26] Sales 3 to 5 are comparable. They are country-side properties on the same street, in the same general area as the Subject Property, and therefore subject to the same locational and economic influences by virtue of their relative proximity.

[27] The Board finds that Sale 6 is not comparable because the structure was much smaller and was also of quality class 5.5, whereas other proposed comparable properties were of quality class 6.5. In addition, the land area at 8.44 acres was much larger than the Subject Property. Viewed together, these characteristics render Sale 6 so dissimilar as to be not comparable.

[28] The Board retains Sales 3, 4, and 5 as sales of properties comparable to the Subject Property. MPAC submitted that Sale 3 was inferior based on the effective lot area. By this element of comparison, Sale 5 is a superior comparative property at 2.98

acres. However, Sale 3 is superior based on the year built. Sale 4 is superior in structure area. The Board finds that the relative advantages and disadvantages of each sale balance each other out such that overall, by all elements of comparison, neither is inferior nor superior to each other.

[29] The Appellants did not dispute MPAC's time adjusted values. In these circumstances the Board finds that the average time adjusted price of Sales 3, 4 and 5 is the best indication of the January 1, 2016 current value of the Subject Property.

[30] The time adjusted sale price of Sale Property 3 was \$759,482. Applying MPAC's time adjustment factor of 0.966 to the June 2016 \$750,000 sale price of Sale Property 4 produces a time adjusted value of \$724,500. Applying MPAC's time adjustment factor of 1.03 to the August 2015 \$750,000 sale price of Sale Property 4 produces a time adjusted value of \$772,500. The average of these three time adjusted prices is \$752,160. The Board finds that the correct current value of the Subject Property was \$752,000 (rounded) at the January 1, 2016 valuation day.

[31] With respect to the other cases submitted by the Appellants, the Board has not found them to be of assistance. The cases cited by the Appellants were in support of the proposition that MPAC, the Assessor, may not contest its own assessment by seeking a higher assessment at the taxpayer's appeal. The Divisional Court of Ontario, whose decisions are binding on this Board, has decided in *Merivale-Gilmour Manor Ltd. v. Municipal Property Assessment Corporation Region No. 3 et al*, 2021 ONSC 6240 (CanLII) at paras 33-34, that seeking a higher assessment at the taxpayer's appeal is permitted.

Findings on Issue 1

[32] The Board finds that the correct current value of the Subject Property as of the January 1, 2016 valuation day is \$752,000.

Issue 2 - Is an equity reduction in the correct current value should be made pursuant to s. 44(3)(b) of the Assessment Act?

[33] At the hearing, the parties presented no evidence or submissions with respect to the equity of assessment. Accordingly, there is no basis upon which the Board may make an equity reduction.

CONCLUSION

[34] The Board finds that the correct current value of the Subject Property is \$752,000 at the January 1, 2016 valuation day. No equity reduction of this value is made.

ORDER

[35] The Board orders that the assessment for taxation in the year 2021 be reduced from \$852,000 to \$752,000.

"Pierre R. Lavigne"

PIERRE R. LAVIGNE
MEMBER