

2011 CarswellOnt 1460, 68 O.M.B.R. 314

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

Andrzej Szczepanski, Elzbieta Szczepanski, Assessed Persons/ Appellants and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

M. Sharma Member

Heard: November 15, 2010

Judgment: March 1, 2011

Docket: WR 99868

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Counsel: R. **Baranowski**, for Assessed Persons / Appellants

L. Reid, C. Mattat, for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

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

Authority to demand information — Assessment appeal — Current value — Use of sales information — Necessity of evidence to disregard — Necessity of evidence to warrant inspection request.

The owner appealed the assessment of a single detached residence on the basis of the estimate of current value and equity. The assessor had ignored a market sale within three months of the return of the assessment but had provided evidence of similar comparable property. The assessor had sought and been refused an inspection in preparation for the appeal. There was no challenge to the assessor's median and mean assessment to time adjusted sales ratios or the assessment of equity to similar real property in the vicinity.

Held: Appeal allowed; assessment reduced.

The best evidence of current value is a market tested relevant sale of the subject property in close temporal proximity to the valuation date. In the absence of an explanation of the reasons to exclude the sale, the onus shifts to the assessor to persuade the Board that the sale is not the best evidence of value. Demanding information and documents to enable the assessor to make the initial assessment is not a power that can be exercised at the ap-

peal stage. There was no issue with the test measures of equity.

Statutes considered:

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

Generally — referred to

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. 40(26) — referred to

s. 40(26)(b) — referred to

s. 44(3) — referred to

s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

APPEAL of assessment.

M. Sharma:

1 These appeals came before the Assessment Review Board on November 15, 2010 in the City of Mississauga.

Issue

2 The issue is whether the assessment as returned for the subject property for taxation years 2009 and deemed 2010 is at current value, and whether it is equitable with the assessments of similar lands in the vicinity?

Decision

3 The Board finds that the current value of the subject property located at 1537 Petrie Way, as of the valuation day January 1, 2008, is \$747,000.

4 Further, no evidence was presented to show that the assessment of the subject property is inequitably assessed in relation to similar lands in the vicinity, in accordance with subsection 44.(3)(b) of the *Act*.

5 Accordingly, the assessment of subject property as of January 1, 2008, is reduced from \$839,000 to \$747,000 for the taxation years 2009 and 2010.

Reasons for Decision

Description:

6 The subject property is located at 1537 Petrie Way and is a single-family, two storey detached building with an attached garage. It was built in 1967 and is situated on a 13,068.00 square foot lot (effective). The total building area is 3,000 square feet with a finished basement area of 1,208 square feet. The property has a positive three percent adjustment because it abuts a green space.

7 The assessment of the subject property was returned at \$839,000 for the 2009 and 2010 taxation years.

The Legislation

8 Subsection 19.(1) of the *Assessment Act (Act)* states:

19.(1) **Assessment based on current value.** — The assessment of land shall be based on Its current value.

9 Section 1 of the *Act* defines "current value" as:

"**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.

10 Subsection 19.2(1)2 states:

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.

11 Subsection 44.(3) states:

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.

12 Subsection 40.(17) states:

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.

13 Subsection 40.(19) states:

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

14 Subsection 40.(26)(b) states:

40.(26) **Deemed appeals, 2009 and subsequent years.** — For 2009 and subsequent taxation years, an appellant shall be deemed to have brought the same appeal in respect of a property,

(b) in relation to the assessment, including assessments under sections 32, 33 and 34, for a subsequent taxation year to which the same general reassessment applies, if the appeal is not finally disposed of before March 31 of the subsequent taxation year or, if an assessment has been made under section 32, 33 or 34, before the 90th day after the notice of assessment was mailed.

The Board's Analysis

15 The assessor presented the Board with a book of evidence which includes a Property Profile of the subject property, a Property Report containing six suggested comparable properties, a map of the area, a "Sales for price Change Over Time" table (Appendix B) and two Equity Analysis Studies (Appendix C and D) in support of the Municipal Property Assessment Corporation's (MPAC) position that the assessed value of the subject property is not inequitable under subsection 44.(3)(b) of the *Act*.

16 The representative for the appellant, Mr. Baranowsky, provided the Board with an "Issue and Calculation" page, an Amended Property Assessment Notice 2008 for the subject property and a Property Profile for the subject property generated from MPAC's computer system, dated January 20, 2010, showing a sale of the subject property in August 2008 in the amount of \$770,000.

17 The assessor drew the Board's attention to Page 8 of MPAC's submission which shows a subsequent sale of the subject property in May 2010 in the amount of \$802,000.

18 Under the *Act*, the Board is required to do two things in determining the amount for which the assessment should be made:

(1) Subsection 44.(3)(a) requires the Board to *determine the current value of the land*.

(2) Subsection 44.(3)(b) of the *Act* requires that the Board *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*.

(1) Current Value

19 The best evidence of current value is an arm's length and market-tested sale of the subject property on the valuation date, January 1, 2008, or close to it. If no such transaction has taken place, the Board looks to sales of comparable properties in the vicinity.

20 In determining whether properties are comparable or similar, case law has established that similar may include such things as design, size, age, amenities, construction, etc. When reviewing comparable property evidence, the Board looks to find as many of these criteria as possible.

21 In this case, there were two sales of the subject property, one occurred in 2008 and another in 2010. In his testimony, Mr. Baranowsky indicated that MPAC had not provided an explanation for excluding the 2008 sale of the subject property as a valid sale and that he was at a loss to understand why they had chosen instead to request an inspection of the subject property. The assessor indicated that since there were two sales of the subject property in a span of two years, MPAC wanted to establish whether there were issues with the property of which MPAC was not aware. The inspection was, however, refused by the homeowner. Mr. **Baranowski** stated that in his view the homeowner's refusal for the inspection was justified since the sale was an open market sale and if MPAC had concerns, there was ample opportunity since the time of the sale to investigate. He also cited case law from the Court of Appeal of Manitoba: Coram: *Scott C.J.M. Huband and Helper J.J.A.* Docket Nos. AI98-30-03881 and AI98-30-03882, to support his position that the demand for information and documents is to enable the assessor to make the initial assessment. It is not a power that can be exercised at the appeal stages. While the issues are different in the cited case, the Board is of the same view that, in general, the demand for information and documents is to enable the assessor to make the initial assessment. However, this does not prevent the assessor from making reference to information or documents beyond those which were considered in making the initial assessment. This, however, is not the case here. The Board finds Mr. **Baranowski's** arguments reasonable in that MPAC had ample time to investigate or challenge the validity of the 2008 sale rather than opting to do so just before the hearing date. The Board finds that the assessor did not provide sufficient proof to show a linkage between the sales and the need for the inspection. In fact, MPAC, as one of its sales presented in Appendix D, shows the sale of the subject property in 2008.

22 In support her position, the assessor submitted a previous Board decision *Pyke v. Municipal, Property Assessment Corp., Region No. 7*, [2006] O.A.R.B.D. No. 215(ARB File No. 49892) in which Member Wyger states:

When the evidence presented to the Board includes the sale price of the subject property, this evidence is not to be discarded lightly. The courts have established the precedent that an open market arm's length sale of the subject itself is the best evidence for its value. This does not mean that the sale price must always be accepted as the value that the assessment must be placed at. The Board seeks some corroboration or support from the market itself, or some reasonable explanation for a seemingly low value. The circumstances surrounding the sale itself should be scrutinized to see if, in fact, it represents the actual market value. The list price, time on the market, motivation of the vendor, and relationship between the parties are all factors to be considered.

23 However, the decision goes further and states the following:

In a market value assessment system, when the market speaks, it is incumbent on the Board to listen. The complainant points to a sale value only three months removed from the evaluation date. When presented with a contemporaneous sale of the subject itself, the onus shifts to the assessor to persuade the Board that the sale is not the best evidence for value. The threshold is high and requires the assessor to make a convincing case that the sale should not be used, on the basis of some of the factors outlined above.

24 While the Board is not bound by previous Board decisions and evidence and facts of each case are not

identical and may not necessarily result in the same outcome, in this case, the Board agrees with Member Wyger's conclusion that a convincing case needs to be presented (by the assessor) that the sale should not be used. The Board finds that the assessor provided no basis to support her contention that there could have been issues which may have influenced the sales of the subject property. In the absence of any such proof, the Board finds the sale of the subject property in August 2008 to be a valid sale and is the best indicator of the current value of the subject property. The Board agrees with Mr. Baranowski that the 2010 sale is too far removed from the valuation date of January 2008 and should not be considered. When MPAC's time adjustment factor is applied to the August 2008 sale, it brings the current value of the subject property as of January 1, 2008 to \$747,000 (rounded). The Board finds that the current value of the subject property as of January 1, 2008 is \$747,000.

25 Mr. **Baranowski** presented further arguments in an effort to convince the Board that the assessment of the subject property should be reduced to \$729,000. To support his position he made reference to the Amended Property Assessment Notice 2008 which shows the average phased-in assessment of residential properties in the subject municipality was 5.29 percent. He believes this should be applied to the subject property. The Board rejects this position since the average within the municipality takes into account all types and sizes of residential properties and not only properties that are similar to the subject property, as required by the *Act*.

(2) Equity with Similar Lands in the Vicinity

26 As mentioned above, subsection 44.(3)(b) of the *Act* requires that the Board 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.

27 Exhibit 1, page 26, contains a document entitled "Appendix D: Equity Analysis — Study 2". This is an analysis of all arm's length sales of two storey residences in the vicinity of which there were 45. The analysis is based upon time adjusted sale prices and assessments as returned. MPAC presented the median Assessment to Time Adjusted Sales ratio of 0.98 as proof that the assessment of the subject property is in line with that of similar properties in the area claiming that the extreme ratios were removed to prevent them from unduly influencing the calculated level of appraisal. The Board looked at both the median and mean of the Assessment to Time Adjusted Sales ratios and finds that both yield almost identical results (0.98 and 0.99 respectively). Applying either method results in the conclusion that MPAC is assessing properties in the area within a two percent range of sale values that the Board considers a reasonable range. There was no other evidence presented to suggest that a further reduction is required for equity.

Conclusion:

28 Deemed Appeal for 2010: The appellants appealed the assessment for the 2009 taxation year. The general reassessment for the 2009 taxation year applies to the 2010 taxation year. The Board has not disposed of the 2009 appeal before March 31, 2010. Subsection 40.(26) provides that the appellant is deemed to have made the same appeal for the 2010 taxation year. For that reason, this decision applies to both the 2009 and 2010 taxation years

29 The Board finds that the current value of the subject property, as of the valuation day January 1, 2008, is \$747,000.

30 Further, no evidence was presented to show that the assessment of the subject property is inequitably assessed in relation to similar lands in the vicinity, in accordance with subsection 44.(3)(b), of the *Act*.

31 Accordingly, the assessment of subject property as of January 1, 2008, is reduced from \$839,000 to \$747,000 for the taxation years 2009 and 2010.

Appeal allowed.

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

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