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Beeden 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 6570
Twiss Road (Plan M356 Lot 4 BLK 13Pt)

John Anthony Beeden, Cheryl Ann Beeden, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Burlington, Respondents

Ontario Assessment Review Board

A. LaRegina Member

Heard: February 22, 2011

Judgment: April 13, 2011

Docket: WR 103365

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

R. Rakhra, C. Simmons, for Municipal Property Assessment Corporation

No one 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 — referred to

s. 1(1) "current value" — referred to

s. 19(1) — referred to

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- s. 19.2(1) [en. 1997, c. 5, s. 13] — referred to
- s. 19.2(1) ¶ 2 [en. 2004, c. 7, s. 3(1)] — referred to
- s. 40(19) — 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

A. LaRegina Member:

1 These appeals came before the Assessment Review Board on February 22, 2011 in the City of Burlington.

Issue

2 The issue before the Board for determination is whether the assessment for the subject property of \$1,670,000 for the 2009, 2010 and 2011 taxation years is at current value and whether the assessment is equitable with the assessment of similar lands in the vicinity.

Decision

3 The Board finds that the current value of the subject property to be \$1,637,000 for the 2009, 2010 and 2011 taxation years.

4 The Board finds that based on the evidence provided in the Equity Studies presented by MPAC and the appellant, the assessed value of \$1,637,000 requires no further adjustment to make the assessment equitable with the assessments of similar lands in the vicinity.

5 The decision of the Board is to reduce the assessment from \$1,670,000 to \$1,637,000 for the 2009, 2010 and 2011 taxation years.

Reasons for Decision

The Subject Property:

6 The subject property, built in 1988, is a detached single-family dwelling, located at 6570 Twiss Road, in the City of Burlington in homogeneous area C03. This residence is made up of 5,992 square feet of total building area with 2,827 square feet on the first floor, 3,165 square feet on the second floor and 2,876 square feet in the basement of which 2,170 is finished space. The subject lot is an irregular corner lot with effective frontage of 391.29 feet and effective depth of 508.86 feet. The effective lot area is 4.4 acres. The subject has an attached double garage an outdoor pool and a tennis court.

Legislation:

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7 The Board must have regard to section 1 and subsections 19.(1), 19.2(1), 40.(19) and 44.(3)(a) and (b) of the *Assessment Act (Act)* when determining whether or not the assessment under appeal is correct.

8 Section 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 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.

10 Subsection 19.2(1) of the *Act* 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 40.(19) of the *Act* states:

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

12 Subsection 44.(3) of the *Act* 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.

13 Subsection 40.(26)(b) provides that if an appeal for 2009 is not fully disposed of by March 31, 2010, the appellant is deemed to have made the same appeal for the 2010 and 2011 taxation years.

Determination of Current Value:

14 Subsection 44.(3)(a) of the *Act* requires the Board to determine the current value of the property.

MPAC's Evidence and Argument:

15 Mr. Simmons began by introducing Mr. Rakhra as the valuations officer and presented Mr. Rakhra's curriculum vitae requesting that Mr. Rakhra be considered an experienced witness. There was no objection to Mr. Rakhra's experience and therefore the Board accepted Mr. Rakhra as an experienced valuations officer and will put the appropriate weight on Mr. Rakhra's evidence based on its merits.

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16 Mr. Rakhra introduced three sales of comparable properties all of which were in the same vicinity and two were in the homogeneous area as the subject. The three comparables are as follows:

<i>Address</i>	<i>Assessed Value</i>	<i>Building Area (Sq. Ft.)</i>	<i>Lot Area Acres</i>	<i>Sale Price</i>	<i>ASR Adj Sale</i>	<i>Sale Date</i>	<i>Time Adjusted Sale Amount</i>	<i>Adjust To Subject</i>	<i>Adjusted Sale Amount</i>
<i>Subject</i> 6570 Twiss Road	\$1,670,000	5,992	4.04						
6810 Twiss Road	\$1,552,000	5,382	3.07	\$1,940,000	.81	2008/07	\$1,910,789	8%	\$2,056,000
6480 Twiss Road	\$1,483,000	4,741	3.18	\$1,480,000	1.02	2008/08	\$1,454,287	11%	\$1,637,000
5050 Appleby Line	\$1,930,000	4,693	27.8	\$1,949,000	.98	2007/07	\$1,973,831	-13%	\$1,707,000
<i>Average</i>					<i>.94</i>				

17 Note that all comparables have pools like the subject and comparable number 2 and 3 have tennis courts as does the subject. Comparable number 2 is a corner lot like the subject on the same street. Comparable number 3 is in a different homogeneous neighbourhood, C04.

18 Mr. Rakhra's evidence included the sale price of each property as well as the time adjusted sale amount to reflect the January 2008 valuation. The adjustment to the subject represents the total quantified adjustment required to equalize the comparable properties to the subject property. The adjustment is determined by comparing the sum total of the valuation components for the subject property against those of the comparable sold properties. Comparables which are deemed superior to the subject require a negative adjustment while the inferior ones require a positive adjustment. The adjusted sale range of the three comparables was between \$1,637,000 and \$2,056,000 and Mr. Rakhra states that the assessment of the subject property at \$1,670,000 falls within that range.

19 Mr. Rakhra also introduced the Equity Analysis, Appendix C, which concludes that based on 22 sales within the vicinity the median ASR is .95. Mr. Rakhra concludes that .95 is within the acceptable range of .95 to 1.05 and therefore no further adjustment is required to current value.

20 Mr. Rakhra also introduced the Equity Analysis, Appendix D, which concludes the median assessment to sales ratio (ASR) of .98 based on the sale of five similar properties in the same vicinity as the properties in Appendix C which occurred between January 2007 and December 2008. Mr. Rakhra submits that the results of the Equity Analysis show that the MPAC valuation model is doing a very good job of determining current value as the median ASR of .98 is within the range of .95 to 1.05 ASR and once again no further adjustment is required.

21 Mr. Rakhra states that based on the comparables, his opinion is that the best comparables are numbers 1 and 2 (6570 and 6480 Twiss Road). Mr. Rakhra states that the two comparables have similar size lots and building areas to the subject property and are located on the same street and virtually neighbours to the subject.

MPAC's Summation:

22 Mr. Simmons summarized his argument by stating that the site area of the subject property is 4.4 acres and not

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3.68 acres as stated in the property profile which MPAC presented. This report was in error. Mr. Simmons submits that Mr. Rakhra presented three comparables of which comparable number 1 and 2 are the best comparables. Mr. Simmons further submitted that Mr. Rakhra then reviewed the differences of comparable properties to the subject property including lot size, building area and year built, reflecting those differences in the assessment of the comparable properties. Mr. Rakhra then divided the assessment of the subject by the assessment of the comparables and then multiplied by 100 to show the differences as a percentage. Mr. Simmons then submits that Mr. Rakhra then time adjusted the sales to reflect a January 2008 valuation date and finally adjusted for the market differences in the adjusted sale amounts. Mr. Simmons uses comparable number 1 as an example where the time adjusted sale of \$1,910,789 was adjusted by a plus 8% to equal \$2,056,000. Mr. Simmons submits that the range of the adjusted sale amounts for the two best comparables was between \$1,637,000 and \$2,056,000 and that the assessment as returned at \$1,670,000 is within that range and should be the current value of the subject property. Mr. Simmons further submits that Mr. Rakhra entered Exhibit C and D to support equity which indicated that the ASR's of similar sales in the vicinity was .95 and .98 respectively indicating that the assessments are slightly lower than the selling prices and therefore equitable with the assessments of similar properties in the vicinity. Mr. Simmons submits that these points fall within the acceptable range set by the assessing officers. Mr. Simmons submits that Mr. **Baranowski** produced no sales to support current value and therefore did not satisfy subsection 44.(3)(a) of the *Act*. Mr. **Baranowski** then presented and increase from the 2005 to the 2008 assessment which Mr. Simmons submits that this is not in the act as a requirement and should not be used by the Board. Mr. Simmons further submits that Mr. **Baranowski** then selected two sales from Exhibit D which were on Twiss Road and calculated an ASR of .915, requesting that this be the proper ASR to establish the assessment for properties on Twiss Road. Mr. Simmons submits that a sample of two properties is not sufficient to establish a high degree of confidence in the ASR value. Mr. Simmons sites the *Fairbanks* decision indicating that one property cannot be used to establish equity. Mr. Simmons concludes that based on Exhibit C and D showing that similar properties are assessed slightly lower then current value, MPAC is requesting the Board confirm the assessment of \$1,670,000.

Appellant's Evidence and Argument:

23 Mr. **Baranowski** began his evidence by stating that he will present four approaches to determine a fair value for the subject property.

Approach #1:

24 Mr. **Baranowski** entered into evidence the property assessment notice for the subject property which indicated that the increase between 2005 and 2008 valuation for the subject was 24.4%. Mr. **Baranowski** claims that if one applies the average municipal increase of 24.22% to the subject property the assessed value would be \$1,645,000 and not \$1,670,000.

Approach #2:

25 Mr. **Baranowski** claims that if one accepts MPAC's current value of \$1,670,000 and an ASR of .95 also presented by MPAC, the adjustment to current value reduces the assessment to \$1,565,000 to bring the assessment for the subject in line with the assessments of similar properties in the vicinity. MPAC's evidence shows a reduction to the current value is warranted and yet they are not recommending this reduction.

Approach #3:

26 Mr. **Baranowski** in Approach 3 indicates that if one takes the two sales of properties which sold on Twiss Road as per Appendix C and D the average ASR of these sales is .915, which Mr. **Baranowski** claims is accurate for sales on

the subject street. Applying this ASR based on the current value of \$1,670,000 translates into an assessment of \$1,528,000.

Approach #4:

27 Mr. **Baranowski** introduces one comparable in support of equity which is 6540 Twiss Road. This property has a lot size of 3.03 acres and a building size of 6,185 square feet. Mr. Baranowski claims that this property is almost identical in size to the subject and the lot size is only slightly smaller. Mr. **Baranowski** concludes that based on an assessment value per square foot of building area of \$273 for the comparable the assessment of the subject should be \$1,635,000 which is \$35,000 lower than the current \$1,670,000.

Appellant's Summation:

28 Mr. **Baranowski** then summarizes his argument by stating that subsection 44.(3)(a) states that current value must be established but not necessarily by the appellant. Mr. **Baranowski** submits that the roll of MPAC is to be supportive and helpful to the taxpayer and they should accept the facts even if the facts point to a reduced assessment. Mr. **Baranowski** states that it is incumbent on MPAC to establish the current value and in this case they did at \$1,670,000. Mr. **Baranowski** agrees with the current value of \$1,670,000.

29 With regard to equity, Mr. **Baranowski** submits that the MPAC's own CEO, Mr. Isenberg, clearly states that the minimum sample size for equity is 12 to 24 properties not three or five. Mr. **Baranowski** further submits that a range of .95 to 1.05 is a 10% range that translates into \$200,000 for a \$2,000,000 property and that while the median ASR may be within that range and acceptable to the assessing officers, it is not acceptable to the taxpayer that an adjustment will not be made. Mr. **Baranowski** submits that he took two sales of properties on Twiss Road from Appendix C and D and calculated an average ASR of .915. Based on a current value of \$1,670,000 and an ASR of .915, the current value should be adjusted to \$1,528,000.

30 Mr. **Baranowski** further submits that based on 6540 Twiss Road, the one comparable which he submitted in support of equity, the assessed rate per square foot was \$273. Applying this rate to the subject property equates to an assessment of \$1,635,000.

31 Mr. **Baranowski** concludes his summation by agreeing with MPAC that the current value is \$1,670,000 and he also agrees with MPAC that the median ASR for equity purposes is .95 as per Appendix C. Mr. **Baranowski** submits that based on the .95 ASR an adjustment should be made to the current value to reduce it to \$1,586,000. Mr. **Baranowski** submits that he will accept an assessment for the subject of \$1,635,000 which is in line with the assessment of 6540 Twiss Road as being a fair assessment.

Board's Analysis and Conclusions:

32

1. Subsection 19.(1) provides that current value is the basis for assessed value.
2. The best evidence the Board can receive of current value is sales evidence for the subject property or comparable properties in the vicinity near the valuation day. For the 2009 taxation year properties are valued as at January 1, 2008.
3. As a result of reviewing the comparables presented by MPAC, the Board will accept comparable number 2, 6480

Twiss Road, as the best comparable to the subject property. This comparable is located on the same side of the street, is on the opposite corner lot and has a pool and tennis court just like the subject. Based on the adjusted sale amount and the adjustments made for market differences, the Board will accept the adjusted sale amount of 6480 Twiss Road at \$1,637,000 as the current value for the subject property. These adjustments take into consideration that the size of the lot and building area for the subject are slightly larger than the comparable property. The Board will not accept comparable number 1, 6510 Twiss Road as a good comparable as it had an addition to the property in 2001 and the assessor did not know what portion of the overall building area included the addition. The subject had no additions and therefore not directly comparable. The Board will not accept 5050 Appleby Line because the lot size was almost 28 acres while the subject only had 4 acres and therefore not directly comparable.

4. The appellant did not present any comparable sales or any other market evidence in support of current value.

5. Therefore, based on the best available evidence, the Board sets the current value of 6570 Twiss Road at \$1,637,000 for the 2009, 2010 and 2011 taxation years.

Is the Assessment of the Property Equitable With the Assessment of Similar Properties in the Vicinity?

33 Subsection 44.(3)(b) of the *Act* requires the Board to determine if the assessment of a property at current value is equitable with the assessments of similar lands in the vicinity and to lower the assessment below current value if required to achieve equity. The remainder of the evidence provided was all relating to equity.

34 Mr. **Baranowski** provided three approaches relating to equity.

35 Approach number 1 applies the average municipal increase to the 2005 current value and concludes that the assessment should be lower. The Board does not accept this approach as a valid approach to establishing the assessed value based on a January 1, 2008 valuation date in that assessments for 2008 are not based on 2005 assessments but rather the sales approach to equity.

36 In approach number 3, Mr. **Baranowski** took only two sales on the subject street and calculated the ASR for the street indicating that the current value as established by MPAC should be reduced to reflect this ASR value of .915. The Board rejects this approach because the sample size is too small as indicated by Mr. Simmons and also by Mr. **Baranowski** when he referred to Mr. Isenberg's comments on sample sizes.

37 In approach number 4, Mr. **Baranowski** applied the assessed rate of \$273 per square foot which he calculated using the only comparable he presented in evidence, 6540 Twiss Road, to establish the value of the subject property. Once again the Board will not use the assessment of one property under equity to establish whether the subject is equitably assessed.

38 MPAC presented two equity studies to support that the assessments are at current value and no further adjustment is required.

39 In study number 1 MPAC presented 22 sales in Exhibit C with a median ASR of .95. The Board accepts the approach but rejects the conclusion that a median ASR of .95 translates into the conclusion that the subject is fairly assessed at current value and no further adjustment is required. First of all, of the 22 sales only 32% of the sales fall between .95 and 1.05 acceptable range and the other 68% fall within a 40% range from about .79 to 1.19. The range of dispersion is too great for the Board to accept these conclusions. In addition, it is noted in the exhibits relating to these studies that the outliers have already been removed and if this is true then even a smaller percentage of overall sales fall

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within the acceptable range of .95 to 1.05. This would indicate that the vast majority of sales are, in fact, not remotely in line with the assessments as MPAC is attempting to portray.

40 In study number 2, MPAC extracts five sales from Exhibit C into Exhibit D and calculates a median ASR of .98. It is not clear from the oral evidence presented or the written evidence why five properties have been extracted to establish a revised ASR. It appears from the document presented that the properties in Exhibit D are from the same area as Exhibit C, and therefore the area does not change. It is also not clear that these five properties have characteristics which would warrant that they be extracted from Exhibit C. Finally, this is a very small sample which according to the document has had the outliers extracted and only has two sales within the acceptable range making it very difficult for the Board to make any final conclusions from this evidence.

41 Therefore, based on all the evidence presented in support of equity, there is no basis for the Board to make any further adjustment to current value.

Conclusion:

42 Based on the best available evidence provided to the Board, the assessment of the subject property is reduced from \$1,670,000 to \$1,637,000 for the 2009, 2010 and 2011 taxation years.

[FN1](#) Subsection 5 permits the Minister to prescribe a different valuation day. A different day has not been prescribed.

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