

2007 CarswellOnt 2485,

2007 CarswellOnt 2485

Cunningham 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

And In the Matter of a complaint with respect to taxation year 2006 on premises known municipally as 1580 Hampshire Crescent

Brian Philip Cunningham (Assessed Person / Complainant) and The Municipal Property Assessment Corporation Region No. 15 and the City of Mississauga (Respondents)

Ontario Assessment Review Board

J. Emerson Member

Heard: December 14, 2006

Judgment: April 20, 2007

Docket: WR 55041

© Thomson Reuters Canada Limited or its Licensors (excluding individual court documents). All rights reserved.

Counsel: B. **Baranowski** (Agent) for Assessed Person / Complainant

I. Thow 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

Municipal law --- Municipal tax assessment — Valuation — Basis for reduction — Nuisance

Cases considered by J. Emerson Member:

Munro v. Municipal Property Assessment Corp., Region No. 15 (2005), [2005 CarswellOnt 9362](#) (Ont. Assess. Review Bd.) — considered

Statutes considered:

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

2007 CarswellOnt 2485,

s. 19(1) — referred to

s. 19.1(1) [en. 1997, c. 5, s. 13] — referred to

s. 19.2(1) ¶ 5 [en. 2004, c. 7, s. 3(1)] — referred to

s. 40(11) — referred to

s. 44(2) — referred to

J. Emerson Member:

1 This complaint came before the Assessment Review Board on December 14, 2006 in the City of Mississauga.

Issue

2 The issue for determination is whether the current value assessment (CVA) of the subject property for the 2006 taxation year in the amount of \$713,000 is correct.

Decision

3 The assessment of the subject property is reduced from \$713,000 to \$696,000 for the 2006 taxation year.

Reasons for Decision

4 The subject property is located at 1580 Hampshire Crescent In the City of Mississauga. The lot has an effective lot size of 57.48 feet frontage and 100.39 feet depth for a total size of 5,770.41 square feet.

5 The house has two storeys, was built in 1997 and is detached. It has a total building area of 3,362 square feet. The first floor area is 1,857 square feet and the second floor is 1,593 square feet. The basement is 1,595 square feet with no finished area. The Municipal Property Assessment Corporation (MPAC) has rated the property as a Quality Class Code 7 using their own rating system.

6 The property is located in a subdivision which was built in two stages — part in 1985 and part in 1997. The subject property is built of brick and stone exterior, and has arched window casings, nine feet ceilings on both floors, crown mouldings, and hardwood floors in the family room and living room.

The Complainant's Evidence

7 Mr. **Baranowski**, the representative for the complainant, stated that the property should be rated as a Quality Class Code 6.5 and not a 7.

8 He stated that there is an abutting nuisance of a church parking lot and an allowance should be applied. His evidence is that there is noise from people and cars at all times, even late at night and there is constant parking lot lighting.

9 The property is in immediate proximity to the Queen Elizabeth Way (QEW) highway and the exit ramp at Hurontario Street; and it was Mr. **Baranowski's** opinion that a traffic noise nuisance allowance should be applied.

10 Mr. **Baranowski** submitted three suggested comparables as follows:

2007 CarswellOnt 2485,

	172 Donnelly	1408 Brackencrest	1527 Hampshire Crescent
Assessment	\$632,000	\$822,000	\$708,000
Year Built	1985	1958	
Sale Date	April 2004	April 2004	January 2005
Sale Amount	\$450,000	\$680,000	\$660,000
Sale as of January 1, 2005	\$473,000	\$714,000	\$655,000
Frontage (feet)	100	80	57
Total Area(sq.ft.)	2,352	3,420	3,189
Lot size (sq.ft.)	12,192	11,200	5,843
Assessment per square foot	\$201	\$209	\$205
Over-assessment	\$182,000	\$108,000	\$53,000

11 Mr. **Baranowski** stated that the CVA for the subject property should be \$641,000. This value is calculated based on the sale price per square foot of 172 Donnelly Drive, at \$201 (which is a Quality Class Code 6.5), and by applying a 5% negative adjustment for the church and QEW nuisance. (\$201 multiplied by the 3,352 square footage of the subject property less 5% is \$641,000). The evidence is that 1527 Hampshire Crescent is a Quality Class 7 and has a sale price per square foot rate of \$205 and is over-assessed by \$53,000. His evidence is that 1527 Hampshire Crescent has a slate roof and is not subjected to the level of noise nuisance as does the subject property.

The Assessor's Evidence

12 Mr. Thow stated that when 1408 Brackencrest sold, it was a bungalow building of 1,822 square feet at the time of sale.

13 He also presented a land transfer statement showing that the sale of 172 Donnelly Drive, was a sale from Annette Bagby to Margaret Ann Bagby and therefore, Mr. Thow considered this to be a family sale and not an arm's length transaction.

14 Mr. Thow testified that MPAC does not test unique properties on a sale price per square foot basis. He submits that you can only test the current values using the Assessment to Sale Ratio (ASR). He stated that the features of the subject property, nine foot ceilings, crown moldings, large window areas, and architectural exteriors of brick and stone make it a property a Quality Class "7".

15 Mr. Thow submitted to the Board *Munro v. Municipal Property Assessment Corp., Region No. 15, [2005] O.A.R.B.D. No. 62* (Ont. Assess. Review Bd.)(ARB File No. 36181) by Member V. Inglis. In this case the Board found that for unique properties it was appropriate to look at ASR's.

16 Mr. Thow provided the Board with information on seven properties to consider as comparables to the subject property as set out as follows:

Address	Year Built	Assessed Value	Sale Date	Sale Price	Time Adjusted Sale	Lot Size	Building Size
----------------	-------------------	-----------------------	------------------	-------------------	---------------------------	-----------------	----------------------

2007 CarswellOnt 2485,

Address	Year Built	Assessed Value	Sale Date	Sale Price	Time Adjusted Sale	Lot Size (Acres)	Building Size
1527 Hampshire Crescent Quality Class 7	1985	\$708,000	January 2005	\$660,000 ASR 1.07		5,805.67	3,189 square feet
1591 Hampshire Crescent Quality Class 7	1995	\$786,000	November 2004	\$780,000 ASR 1.01	\$803,400 Time adjusted ASR .978	5,619.76	2,861 square feet
1550 Hampshire Crescent Quality Class 8	1994	\$851,000	July 2005	\$900,000 ASR .95	\$851,000 Time adjusted ASR 1	5,767.75	3,010 square feet
262 Indian Valley Trail Quality Class 6	1947	\$687,000	April 2004	\$634,750	\$671,800 Time adjusted ASR 1.02	.35	1,521 square feet
76 Mineola Road West Quality Class 8.5	1992	\$1,730,000	July 2004	\$1,700,000	\$1,766,100 Time adjusted ASR .98	.57	4,457 square feet
349 Indian Valley Trail Quality Class 7.5	1944	\$1,424,000	August 2005	\$1,450,000	\$1,404,490 Time adjusted ASR 1.014	.70	2,170 square feet
1305 Stavebank Road Quality Class 8.5	2003	\$1,321,000	November 2004	\$1,300,000	\$1,316,000 Time adjusted ASR 1.003	.37	4,332 square feet

17 Mr. Thow stated that 1591 Hampshire Crescent is closer to the busy street of Hurontario Street.

The Law

18 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 or average current value, as determined under section 19.1.

19 Subsection 19.1(1) of the *Act* states:

19.1(1) Assessment, single years and averages. — Subject to subsections (2) and (3), land shall be assessed for a taxation year at the current value of the land for the taxation year.

20 Subsection 19.2(1)5. of the *Act* states:

19.2(1) Valuation days — Subject to subsections (2) and (5), the day as of which land is valued for a taxation year is determined as follows:

5. For the 2006 and subsequent taxation years, land is valued as of January 1 of the year preceding the taxation year.

2007 CarswellOnt 2485,

21 Subsection 44(2) of the *Act* states:

44(2) Reference to similar lands in the vicinity. — In determining the value at which any land shall be assessed, reference shall be had to the value at which similar lands in the vicinity are assessed.

22 Subsection 40(11) of the *Act* states:

40(11) Board to make determination — After hearing the evidence and the submissions of the parties, the Board shall determine the matter and, in complaints involving current value, shall determine the amount of the assessment as necessary to reflect corrections to the current value.

The Decision

23 The best evidence the Board can consider is a sale of the subject property or sales of similar properties in the vicinity of the valuation date of January 1, 2005.

24 The complainant's representative presented the Board with three sales of properties in the vicinity. Number 172 Donnelly Drive was built in 1985 and has a larger lot of 12,192 square feet as compared to the subject property's age of 1997 and a lot of 5,770.41 square feet. Number 1408 Brackencrest Road was built in 1958 and has a larger lot of 11,200 square feet and a building size at the time of the sale of 1,822 square feet and not the 3,420 square feet shown. The subject property has a building size of 3,362 square feet. Number 1527 Hampshire Crescent was built in 1985, and is 10 years older than the subject, with a similar size lot of 5,805.67 and a similar building size of 3,189 square feet. It is also a Quality Class Code 7 the same as the subject property. The representative had time adjusted the sale to \$655,000 from \$660,000 but the sale was in January 2005, which is the base year and did not require a time adjustment. The sale per square foot is \$206 with no time adjustment.

25 Mr. **Baranowski** also stated that the subject property had nuisances of a church parking lot, and proximity to the Queen Elizabeth Way (QEW) and Hurontario Street. Mr. **Baranowski** did not present evidence as to how these nuisances would affect the assessment of the subject property. There is a sale of 1591 Hampshire Crescent, which is a property closer to Hurontario Street than the subject property. The sale price was \$780,000 in November 2004. The assessment is \$786,000 for 2006 taxation. This sale suggests that the property's proximity to Hurontario Street did not affect the sale price.

26 Mr. Thow of MPAC presented the Board with seven sales. The Board gives weight to only the properties at 1527 and 1591 Hampshire Crescent. Number 1550 Hampshire Crescent had a similar size lot and house but is a Quality Class Code 8 and the Board does not consider this a comparable property to the subject property. The other four sales are of properties with larger lots, older houses, smaller and larger buildings and different Quality Class Codes.

27 Number 1527 Hampshire Crescent and 1591 Hampshire Crescent are the most comparable to the subject property. Both are Quality Class Code 7. Number 1527 Hampshire Crescent sold in the base year of January 2005 for \$660,000 with an ASR of 1.07. This property has a smaller building, older house and comparable lot.

28 Number 1591 Hampshire Crescent sold in November 2004 for \$780,000 with a smaller lot and smaller building with an ASR of 1.01 (not time adjusted) or .978 time adjusted.

29 Based on the evidence of these two sales, the Board is satisfied that a correction to current value is necessary. The Board accepts the position of MPAC that the ASR is a useful tool to consider if a correction is required. A review of the ASR's both time adjusted and not time adjusted indicates that MPAC appears to have slightly over-assessed the proper-

2007 CarswellOnt 2485,

ties. The average ASR of the two most comparable properties (using the time adjusted sale for 1591 Hampshire Crescent) is 1.024. Applying this ASR to the assessment of the subject property results in a value of \$696,000. Based on this evidence the Board reduces the assessment of the subject property from \$713,000 to \$696,000 for the 2006 taxation year.

END OF DOCUMENT