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Eisenhardt 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 1011 Red Pine Crescent

Peter Dana Eisenhardt Daisy Eisenhardt, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

**Ontario Assessment Review Board**

V. Stabile Member

Heard: October 18, 2011

Judgment: February 15, 2012

Docket: WR 113170

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

J. Fantetti, 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

Generally — referred to

s. 1(1) "current value" — referred to

s. 19(1) — referred to

s. 44(3)(a) — referred to

#### ***V. Stable Member:***

1 These appeals came before the Assessment Review Board on October 18, 2011 in the City of Mississauga.

#### **Issue**

2 The subject property, 1011 Red Pine Crescent is a single family detached, two-storey residential home, built in 1983. The property consists of 2,222 square feet of living area on the main and second floor and a finished basement area of 1,000 square feet. It also has an attached two car garage. The home is situated on a lot with an effective area of 6,969.28 square feet. The property has been assessed at \$579,000.

3 The Municipal Property Assessment Corporation (MPAC) proposes using the direct sales comparison method and submitted the sale of six properties considered by MPAC to be similar to and in the vicinity of the subject property. Based on the sales of these properties, time adjusted to the legislated valuation day, January 1, 2008, MPAC has established a range of values for the subject property between \$551,000 and \$665,000; thus, supporting its position that the subject property is correctly assessed at \$579,000.

4 Relying on a median assessment to sale ratio (ASR) of 1.00 from a study of 47 sales of similar properties, MPAC takes the position that similar properties in the vicinity have been assessed at their current value, thus no equity adjustment is required.

5 Mr. **Baranowski**, representing the appellant, proposes three different comparable properties and relies on one property which was also proposed by MPAC. The appellant proposes a determination of current value based on a value per square foot. In so doing, the appellant proposes a current value for the subject property ranging from \$509,000 to \$537,000.

6 Using these properties, Mr. **Baranowski** submits that the average ASR is 0.91, indicating that comparable properties are assessed at values approximately 9% lower than values expressed in the market place and recommends that current value be reduced to a range of \$482,000 to \$487,000.

7 Additionally, Mr. **Baranowski** takes issue with time adjusted figures proposed by MPAC, arguing that there is no such provision in the *Assessment Act (Act)* and urges the Board to reject methodologies such as SRTA or ASR, endorsed by the IAAO, since it is an American Institution and accordingly, not reliable in Canada.

8 The issues to be determined, therefore, are:

- which valuation methodology is most appropriate to arrive at a correct current value for the subject property as of January 1, 2008;
- which properties are most similar to, and in the vicinity of, the subject property;
- the validity of time adjustments to sale prices in a market analysis and
- the relevance of IAAO standards in Ontario.

#### **Decision**

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9 The Board finds:

1. That the current value of the subject property is \$572,000.
2. That the current value, as determined above is inequitable and that a further adjustment to \$549,000.00 is necessary to achieve equity.
3. That the use of time adjustments may be appropriate in determining the accuracy of assessments in Ontario.
4. That reliance upon IAAO standards may be appropriate in determining the accuracy of assessments in Ontario and is appropriate in these circumstances.

10 The assessment is reduced from \$579,000 to \$549,000 for the 2009, 2010 and 2011 taxation years.

***MPAC's Evidence***

11 Mr. Fantetti, appearing as advocate for MPAC, called Roger Leroux to testify on how the current value of \$579,000 was determined. Mr. Leroux is a Valuation Review Specialist for residential properties with MPAC, where he has been employed since 1986, following his graduation from St. Lawrence College with a Diploma in Assessment Administration.

12 Mr. Leroux testified that the subject property was valued using the direct comparison approach. In Exhibit #1, he submits a current value study of six residential properties, all in the same A40 homogeneous neighbourhood as the subject property, which sold on the open market between December 2006 and June 2008. Prices are adjusted to account for differences between the sold property and the subject property and prices are also time adjusted to January 1, 2008. Time adjustments are based upon MPAC's analysis of price changes overtime based upon 126 sales and are supported in Exhibit #1. Based upon the open market sales, adjusted as above, Mr. Leroux submits a range of values between \$551,000 and \$665,000 and concludes that the assessment of \$579,000, which falls within this range, reflects current value.

13 With respect to the issue of equity, the assessor presents, also in Exhibit #1, a study of 47 sales of residential properties of the same general nature or character and in the vicinity between January 2007 and December 2008. The study compares the assessed values as returned to time adjusted sale prices and results in ASRs ranging from 0.74 to 1.17, with a median ASR of 1.00. Relying on this study, Mr. Leroux states that equity has been achieved in that similar properties in the vicinity have been assessed at their current value. Thus, no adjustment is required to the current value of the subject property.

14 On cross-examination, Mr. Leroux acknowledged that:

- he had not inspected the subject property and has no information in his file about any inspection at all.
- his report is based upon an MPAC template customized to the subject property.
- he had no information as to how the quality class of the subject property had been set at 6.5 and a half quality class should be supplemented with an explanation.
- for purposes of his two studies presented, he had complete discretion as to which properties to exclude (outliers) and that those "outliers" have not been identified in his evidence.
- there is no reference in the *Act* and in particular subsection.19.(1) thereof, of "time adjustments".

- MPAC accepts a 10% margin of error, 0.5% below to 0.5% above the target of 1.00 in determining equity.
- The equity study presented, showing ASRs ranging from 0.74 to 1.17 results in a 43% difference in ASRs.

### *Appellant's Evidence*

15 Mr. **Baranowski** agrees that for residential homes, the direct sales approach is a good method of determining current value. He proposes four properties, one of which is common to MPAC. All four properties are on the same street as the subject property. Two of the properties have no sales history. One was sold in July, 2005. The last property is the common property at 991 Red Pine Crescent, which sold in October 2007.

16 In the absence of comparable sale data, the appellant proposes to determine current value for the subject property by using the value per square foot of the assessed value of comparable properties.

17 Mr. **Baranowski** states that the four comparable properties presented by him result in an average of \$229 per square foot, based on their assessed values, thus resulting in a current value of the subject property of \$509,000, rounded, since the subject property has a total building size of 2,222 square feet.

18 As a second option, using only three of the properties proposed by MPAC, results in an average of \$242 per square foot of assessed value, resulting in a current value for the subject property of \$537,000. Mr. Fantetti responds that this is "*an exercise in cherry picking*".

19 With respect to the issue of equity, Mr. **Baranowski** urges the Board to find an ASR of 0.91 using three properties presented by MPAC in its equity study of 47 properties. The suggested selected properties are all on the same street of the subject property and have ASRs of 0.83, 0.88 and 1.04, thus resulting in an average ASR of 0.91. Further, he submits that using the four comparable properties proposed by the appellant also results in an average ASR of 0.91.

20 On this basis, Mr. **Baranowski** submits that there ought to be an adjustment to his proposed current value of \$537,000 by 9% resulting in a current value of \$487,000, rounded.

### *Analysis*

21 The initial task for the Board is to determine the current value of the subject property as required by subsection 44.(3)(a) of the *Act...the Board shall...determine the current value of the land...* Subsection 19.(1) of the *Act* states that... *The assessment of land shall be based on its current value...* and section 1 of the *Act* current value is defined as... *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...*

22 The parties agree that the sales comparison approach, is appropriate to the subject property. The best evidence of current value is an arm's length and market tested sale of the subject property on or close to the valuation day, January 1, 2008.

23 In the absence of a valid sale of the subject property, the next best measure of current value is the arm's length and market tested sales of comparable properties in the same vicinity on or close to the valuation day. This measure acts as a gauge of the accuracy for the assessed value of the subject property as well as the comparable properties.

24 The assessor has proposed six comparable properties while the appellant has proposed four, of which one property, 991 Red Pine Crescent, is proposed by both parties. All of the properties are located in the vicinity. All of the prop-

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erties proposed by the assessor have been sold on the open market in arm's length transactions.

25 In addition to the common property, only one of the properties proposed by the appellant has been sold on the open market. That property, 1029 Red Pine Crescent, was sold in July 2005. The Board rejects the sale of this property as the sale is too far removed from the valuation day, January 1, 2008.

26 The comparable properties proposed by the assessor are good indicators of the current values of properties in the area and thereby, provide the best evidence of the subject property's current value.

27 The Board finds that the time adjustments proposed by MPAC provide a reasonable method of determining current value as of January 1, 2008 and the Board will rely upon these time adjustments. Conversely, the Board rejects the sales evidence of the appellant because of the failure of Mr. **Baranowski** to provide time adjustments.

28 The assessor proposes time adjustments to account for changes in price levels between the actual sale date of the comparable properties and the valuation day, January 1, 2008 and supported the time adjustments with a study of area sales resulting in a reasonable time adjustment factor.

29 Mr. **Baranowski** took issue with the entire approach to time adjustments, but provided no evidence to discredit the use of such adjustments, except to say that time adjustments are not mandated in the *Act*. It is illogical to rely upon this representation because the *Act* directs that the assessment be reflective of current value and be equitable. The use of time adjustments and other IAAO recommended methodology is in pursuance of deriving a current value and as such, this methodology has relevance in Ontario and likely in any other jurisdiction relying upon a current value system of assessment.

30 Accordingly, the Board prefers to rely on the actual sales time adjusted, of the comparable properties and the common base of the total building area to determine the current value of the subject property.

31 In establishing current value, the Board considers location, general character, number of storeys, structure, building size, proximity of sale date to valuation day and overall quality rating of the proposed comparable properties to determine whether the properties are sufficiently similar to the subject property to provide a valid indicator of its current value.

32 By applying the above comparability criteria, the Board finds 1000 Cutler Court., is not a valid comparable because it was renovated in 1995 and the total area size is substantially larger than the subject property (approximately 1,000 square feet).

33 The Board finds that the following properties meet the comparability criteria and are sufficiently similar to the subject property to provide a valid indicator of the subject property's current value:

<i>Property</i>	<i>Sale Date</i>	<i>Price Level Adjusted Sale Amount</i> (\$)	<i>Building Area</i> (sq.ft.)	<i>Sale Amount/Square feet</i> (\$)	<i>ASR</i>
991 Red Pine	Oct/07	551,171	2,517	219.00	1.04
1075 Red Pine	Dec/06	622,706	2,172	286.69	0.87
996 Cutler	June/08	549,390	2,086	263.37	0.98
1049 Spence	July/07	630,218	2,283	276.05	0.90

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1055 Spence	August/07	614,378	2,520	243.80	1.01
<i>Average</i>				257.78	0.96

34 The average adjusted sale price per square foot of building for the comparable properties is \$257.78. By applying this value indicator to the subject property's total area of 2,222 square feet, the Board finds that the current value of the subject property is \$572,787.16, rounded to \$572,000.

35 Having established the current value of the subject property, the final issue for the Board to determine is whether an adjustment should be made to the current value of the subject property in order to make it equitable to the assessment of similar properties in the vicinity.

36 The *Act* requires the Board to lower an assessment below current value if required to make the assessment equitable with the assessments of similar properties in the vicinity.

37 Mr. **Baranowski** proposes an adjustment based the average ASR of the comparable properties. In the alternative, he urges the Board to utilize the average assessment per square foot of the comparable properties proposed by him.

38 The Board rejects the use of current value per square foot as a valid test of equity between properties presented in this appeal and as proposed by Mr. **Baranowski** because his evidence lacks reliable sales evidence for a suitable number of properties in the vicinity.

39 An ASR of above 1.00 would indicate that similar properties in the vicinity may be over-assessed. An ASR of below 1.00 would indicate that properties may be underassessed.

40 The Board has the average ASR of 0.96 for the five comparable properties utilized to establish the current value for the subject property and the analysis of 47 sales with ASRs ranging from 0.74 to 1.17, with a median of 1.00.

41 While the Board normally prefers a larger sample over a smaller sample, the Board is troubled by the wide range of the ASRs and the 43% margin of error. As a result, the Board relies upon the ASRs of the five comparable properties and finds that the current value as found above is not equitable. The Board will adjust the current value to  $(0.96 \times \$572,000)$  \$549,000 (rounded).

42 The assessments for all three taxation years are reduced from \$579,000 to \$549,000.

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