



Tribunals Ontario

Assessment
Review Board

Tribunaux décisionnels Ontario

Commission de révision de
l'évaluation foncière

ISSUE DATE: January 25, 2022

FILE NO.: WR 175694

Assessed Person(s): Xerxes Wania; Charis Wania
Appellant(s): Xerxes Wania
Respondent(s): Municipal Property Assessment Corporation Region 15
Respondent(s): City of Mississauga
Property Location(s): 1324 Tecumseh Park Drive
Municipality(ies): City of Mississauga
Roll Number(s): 2105-020-029-04700-0000
Appeal Number(s): 3436910
Taxation Year(s): 2021
Hearing Event No.: 755764
Legislative Authority: Section 40 of the *Assessment Act*, R.S.O. 1990, c. A.31

APPEARANCES:

Parties

Representative

Xerxes Wania and Charis Wania

Robert Baranowski

Municipal Property Assessment Corporation

Zoe Moraitis

City of Mississauga

No one appeared

HEARD:

December 9, 2021 by video conference

ADJUDICATOR(S):

Pierre R. Lavigne, Member

DECISION

OVERVIEW

[1] Xerxes Wania and Charis Wania (“the Appellants”) appeal their assessment for the 2021 taxation year because it is too high and therefore incorrect. The Subject Property is a one-storey custom-built detached residential dwelling of 4,260 square feet (“sq. ft.”) built in 2002 on 0.84 acre lot. The dwelling is located at 1324 Tecumseh Park Drive (“Subject Property”) in the City of Mississauga in the Regional Municipality of Peel.

[2] The assessment for the 2021 taxation year was \$2,920,000. The Appellants state that the correct assessment should be \$1,900,000. The Municipal Property Assessment Corporation (“MPAC”) states that the correct assessment should now be \$2,939,000. 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 current value of the subject property;
2. Whether an equity reduction in the current value should be made?

Result

[4] The Board finds that the correct January 1, 2016 valuation day value of the subject property is \$2,139,000. The Board makes no reduction on account of equity.

ANALYSIS

Issue 1 - What is the correct current value of the subject property?

The Governing Statutory Provisions

[5] Section 19(1) of the *Assessment Act*, R.S.O. 1990, c. A.31 (“Act”) requires that “the assessment of land shall be based on its current value”.

[6] 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.

[7] 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.

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

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

MPAC’s Position

[10] Mr. George Kaldenbach, a property valuation analyst, gave evidence on behalf of MPAC. He indicated that finding comparable properties was a challenge because of the characteristics of the Subject Property since it was a large, one-storey, custom-built home. He presented two property sales which, in his view, had comparable

characteristics. The two sales are described in the following table:

MPAC – Market Analysis Grid

	Subject Property	Property #1	Property #2
Roll Number	210502002904700	210506013012921	210502001904200
Address	1324 TECUMSEH PARK DR	2415 DOULTON DR	932 TENNYSON AVE
Neighbourhood	A88 - 116	B09 - 124	A17 - 118
Property Code & Desc.	(301) Single-Family Detached (Not OnWater)	(301) Single-Family Detached (Not OnWater)	(301) Single-Family Detached (Not OnWater)
Distance in km		2.5376	1.2921
Valuation			
Current Value Assessment	\$2,920,000	\$3,292,000	\$2,163,000
Sale			
Sale Date		20160705	20160610
Sale Amount		\$3,600,000	\$2,178,000
Time Adjusted Sale Amount		\$3,289,881	\$2,017,110
		809.12	571.10
Site			
Effective Site Area (Acres)	0.84	0.75	0.41
Residential Structure			
Year Built	2002	2003	1964
Effective Year Built	2002	2003	1990
Quality of Construction	8	8.5	7.5
Full Storeys		1 Storey	1 Storey
Bedrooms	5	4	5
Baths	4	4	3.5
Building Total Area (SF)	4,260	4,066	3,532
Basement Area (SF)	4,237	4,066	3,235
Finished Basement Area (SF)		3,800	2,381
Secondary Structure(s) Structure Description	(108) Outdoor Pool	(102) Shed	(116) Attached Garage
Year Built	2002	2003	1999
Building Total Area (SF)	512	250	549
Quality of Construction	2	1	4
Structure Description	(116) Attached Garage	(116) Attached Garage	
Year Built	2002	2003	
Building Total Area (SF)	730	828	
Quality of Construction	4	4	
Structure Description		(108) Outdoor Pool	
Year Built		1994	
Building Total Area (SF)		648	
Quality of Construction		2	

[11] In his view, Property #1 was comparable because its total building area, lot size, and year built were quite close to that of the Subject Property. He calculated the cost per sq. ft. as \$809.12, by dividing the time adjusted sale price of \$3,289,881 by the total building area of 4,066 sq. ft.

[12] In his view, Property #2 was inferior because its total building area and lot size were significantly less than the Subject Property. Though initially constructed in 1964, this property had major renovations in 1997, which included the construction of a large addition at the rear-side of the property, which is now included in the total building area. He calculated the cost per sq. ft. as \$571.10, by dividing the time adjusted sale price of \$2,017,110 by total building area of 3,532 sq. ft.

[13] He arrived at the value of the Subject Property, \$2,939,000 (rounded), by multiplying the average cost per sq. ft. of his two submitted comparables, \$690.11, by the total building area of the Subject, 4,260 sq. ft.

[14] During cross-examination, Mr. Kaldenbach acknowledged that his proposed comparable properties were not in the same homogenous neighbourhood. He defined homogenous neighbourhood as homogeneous in terms of quality of construction, year built, and typically subject to the same market forces. He stated that while the properties were in different neighbourhoods, the Subject Property and his suggested comparable properties were all in prestige neighbourhoods. He stated that he made no further adjustment for the quality of neighbourhood. In his view, the challenge had been to find one-story custom homes.

The Appellant's Position

[15] Mr. Robert Baranowski testified on behalf of the Appellants. He presented four sales which he submitted were comparable to indicate the value of the subject. All sales were of properties in the same homogeneous neighbourhood as the Subject Property.

Their information is in the following Table:

APPELLANT – Market Analysis Grid P. 1

	Subject Property	Property #3	Property #4
Roll Number	210502002904700		
Address	1324 TECUMSEH PARK DR	1161 TECUMSEH PARK DR	1239 TECUMSEH PARK DR
Neighbourhood	A88 - 116	A88	A88
Property Code & Desc.	(301) Single-Family Detached (Not OnWater)	(301) Single-Family Detached (Not OnWater)	(301) Single-Family Detached (Not OnWater)
Distance in km			
Current Value Assessment			
	\$2,920,000	3,424,000	5,682,000
Sale Date			
		APRIL 2016	APRIL 2015
Sale Amount			
		2,550,000	3,240,238
Time Adjusted Sale Amount			
Effective Site Area (Acres)			
	0.84	27,878 S.F (0.64)	1.74
Year Built			
	2002	2008	2015
Effective Year Built			
	2002		
Quality of Construction			
	8	8.5	9.5
Full Storeys			
	1	2	2
Bedrooms			
	5	4	3
Baths			
	4	1	5
Building Total Area (SF)			
	4,260	5,996	7,692
Basement Area (SF)			
	4,237	3,843	4,417
Finished Basement Area (SF)			
Secondary Structure(s)Structure Description			
	(108) Outdoor Pool		
Year Built			
	2002		
Building Total Area (SF)			
	512		
Quality of Construction			
	2		
Structure Description			
	(116) Attached Garage		
Year Built			
	2002		
Building Total Area (SF)			
	730		
Quality of Construction			
	4		
Structure Description			
Year Built			
Building Total Area (SF)			
Quality of Construction			

APPELLANT – Market Analysis Grid P.2

Subject Property		Property #5	Property #6
Roll Number	210502002904700		
Address	1324 TECUMSEH PARK DR	1148 TECUMSEH PARK DR	1138 TECUMSEH PARK DR
Neighbourhood	A88 - 116	A88	A88
Property Code & Desc.	(301) Single-Family Detached (Not On Water)	(301) Single-Family Detached (Not On Water)	(301) Single-Family Detached (Not On Water)
Distance in km			
Current Value Assessment	\$2,920,000	3,245,000	1,782,000
Sale Date		NOV 2016	MAR 2016
Sale Amount		2,700,000	1,900,000
Time Adjusted Sale Amount			
Effective Site Area (Acres)	0.84	41M484 (0.95)	1.02
Year Built	2002	2005	1952
Effective Year Built	2002		
Quality of Construction	8	8.5	6
Full Storeys		2	1
Bedrooms	5	6	3
Baths	4	5	2
Building Total Area (SF)	4,260	5418	3,667
Basement Area (SF)	4,237	3,154	1,667
Finished Basement Area (SF)			
Secondary Structure(s) Structure Description	(108) Outdoor Pool		
Year Built	2002		
Building Total Area (SF)	512		
Quality of Construction	2		
Structure Description	(116) Attached Garage		
Year Built	2002		
Building Total Area (SF)	730		
Quality of Construction	4		
Structure Description			
Year Built			
Building Total Area (SF)			
Quality of Construction			

[16] The Appellants' principal submission was that properties on the same street should be used to indicate current value. Mr. Baranowski suggested the correct current

value should be \$1,900,000 based on the sale of Property #6, the only one-storey suggested sale. The Appellants submitted that if the Board did not accept this comparable sale, then the Board should not use MPAC's comparable properties because of the lack of adjustments for the difference in neighbourhoods and other elements of comparison such as total building area, finished basement and the pool. He submitted that in the alternative, the Board should decide on a current value of \$2,600,000 based on the average of his first two comparable properties, Sales 3 and 4.

[17] Mr. Baranowski also submitted the following cases in support: *Canada v. Scheller*, [1976] 1 F.C.480 at para. 26; *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; *Hamill v Municipal Property Assessment Corp*, Region No 15, [2014] O.A.R.B.D. No. 59 (WR 118782); *Collier v Municipal Property Assessment Corp* Region No 15, [2012] O.A.R.B.D. No. 71; *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.

Findings – Issue 1

Physical Comparability

[18] MPAC's two proposed comparable sales were not in the same neighbourhood of the Subject Property. They were located 1.3 and 2.6 kilometres away. The explanation given by Mr. Kaldenbach was that he sought sales of custom built, one-storey homes as comparable properties and that there were none in the neighbourhood of the Subject Property. For this reason, he sought sales which met these criteria in similar neighbourhoods.

[19] A proposed comparable sale need not be physically identical to the Subject Property. To be comparable, properties must be competitive, in the sense that they would be considered reasonable substitutes by the same buyers that would consider purchasing the Subject Property. In the Board's view, typical purchasers considering buying the Subject Property, would consider dwellings in the neighbourhood that offered similar utility, quality and value of housing. They would not, unless they were atypically motivated buyers bound and determined to only purchase a one-story custom-built home, eliminate from consideration competitive properties that were more than one-storey or not custom-built. Current value is based on the motivations of typically, not atypically, motivated buyers.

[20] The Board finds that MPAC's search criteria of one- storey custom-built homes was too narrow such that it eliminated competitive, and comparable, sales in the neighbourhood.

Locational Comparability

[21] The Appellants relied upon the Board's decision in *Pyke* at p. 4 for the proposition that MPAC often stresses the importance of using only comparable properties sharing the same homogenous neighbourhood code. 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.

[22] 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.

[23] 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.

[24] MPAC's Properties #1 and #2 are some distance from the Subject Property. MPAC's evidence of the similarity of neighbourhoods submitted as comparable was that they were all "prestige neighbourhoods". While this was some evidence of economic and locational similarity, the Board is of the view that, in this case, the evidence of locational similarity is not as strong as that provided by the Appellants' comparable sales in the same neighbourhood.

Value Determination

[25] For the above reasons, the Board finds that the sales suggested on behalf of the Appellants are comparable because they are competitive with the Subject Property. They are preferred because they are in the same neighbourhood, and because MPAC has not established that its suggested sales were as locationally similar.

[26] Where adjustments have not been made for substantial differences in the elements of comparison of the comparable sales, such as lot size, age of structure, quality, etc., an average rate per square foot of building area of the comparable sales is not an appropriate value indication to apply to the Subject Property. In such a case, the preferred method of deriving value is by bracketing. This method compares the proposed sales qualitatively to determine if a value range or bracket can be developed. The Subject Property's current value should be between the sale price of inferior properties and that of superior properties. This is how the Board will proceed in this appeal.

[27] Property #6 is clearly inferior to the Subject Property with respect to the year built

(1952), quality of construction (6), and living area (3,667 sq. ft.). It sold in March 2016 for \$1,900,000. As MPAC's time adjustment factors were not contested, it is appropriate to use MPAC's March 2016 time adjustment factor of 0.965 to produce a time adjusted price of \$1,833,500. This is the lower end of the current value bracket. The Subject Property, superior to Property #6, would have sold for more than \$1,833,550.

[28] Properties #3, #4, and #5 are all superior to the Subject Property based on living area size and quality of construction. Property #3 had the lowest price of these superior sales at \$2,550,000 in October 2016. Using MPAC's October 2016 time adjustment factor of 0.879 produces a time adjusted rounded price of \$2,241,000. This is the upper end of the current value bracket. The Subject Property, inferior to Sale 3, would have sold for less than \$2,241,000.

[29] The Board finds that the Subject property is closer in overall quality, based principally on quality class and age, to Property #3, the superior property, than Property #6 the inferior property. The Subject has a quality class of 8 and was built in 2002. Property # 6 has a quality class of 6 and was built in 1952. Property #3 has a quality class of 8.5 and was built in 2015. For this reason the Board determines that the Subject Property is valued at 75% of the current value bracket. This produces the following calculation: $\$1,833,550 + 75\% \text{ of } (\$2,241,000 - \$1,833,550) = \$2,139,138$. The Board finds the January 1, 2016 current value of the Subject Property is \$2,139,000 (rounded).

[30] With respect to the other cases submitted by the Appellants, the Board has not found them to be of any assistance. The cases cited by the Appellants were in support of the proposition that MPAC, the Assessor, may not contest his own assessment by seeking a higher assessment at the taxpayer's appeal. The Divisional Court of Ontario, who's 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.

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

[31] 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

[32] The Board finds that the correct current January 1, 2016 value for the Subject Property is \$2,139,000.

ORDER

[33] The Board orders that the assessment for the 2021 taxation year be reduced from \$2,920,000 to \$2,139,000.

"Pierre R. Lavigne"

PIERRE R. LAVIGNE
MEMBER