

2007 CarswellOnt 5063
Ontario Assessment Review Board

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

2007 CarswellOnt 5063, 57 O.M.B.R. 248

**In the matter of Section 40 of the Assessment
Act, R.S.O. 1990, c. A.31, as amended**

In the matter of complaint with respect to taxation year 2007
on premises known municipally as 1540 Pinetree Crescent

Newton Campbell Seawright Ellen Doris Seawright, Assessed Persons/Complainants and The
Municipal Property Assessment Corporation Region No. 15 and the City of Mississauga, Respondents

P. Andrews Member

Heard: June 29, 2007

Judgment: August 3, 2007

Docket: WR 61246

Counsel: C. Seawright, N. Seawright, for Assessed Persons / Complainants
F. Iannone, for Municipal Property Assessment Corporation
P. Kitney, for Municipality

Subject: Public; Tax — Miscellaneous; Property; Municipal

Headnote

Municipal law --- Municipal tax assessment — Valuation — Particular property — Buildings — Miscellaneous
Portion of residential dwelling used as home office — What constitutes home office dependent on scale and nature of activity
undertaken in residential property — Home office being component of residential property — Classification changed from
commercial to residential — Current assessment overvaluing relative impact of abutting Credit River and undervalues impact
of proximity to Queen Elizabeth Way — Current assessment reduced.

The complainant operated an "industrial electric service" business servicing clients' electrical equipment at the clients' place of
business. Administrative functions for the business were undertaken in the "home office" space. That portion of the residential
building used as "home office" was classified as commercial. The complainant and the Municipal Property Assessment
Corporation (MPAC) used different comparables for arriving at an assessed value with an assessment to sales ratios (ASR)
ranging from 1.03 and 1.17 by the complainant and 0.49 and 1.09 by MPAC.

Held: Current assessment value reduced based on complainant's ASR; "home office" commercial classification changed to
default residential.

The complainant's ASR values were more reflective of the relative value of the subject property. MPAC's current assessment
overvalued the relative impact of abutting the Credit River and undervalued the impact of proximity to the Queen Elizabeth
Way. The current assessment of the property was therefore decreased. With respect to the "home office", this space has become
a normal component of a residence. Many employees today are given computers by their employers and expected to undertake
part of their work from their homes. The issue was one of the scale and nature of the activity undertaken in a residential property.
Since the "home office" was used solely for the benefit of residents of the house, no revenue producing activity took place in
the space. Non-resident employees, clients, deliveries and salespeople were discouraged from coming to the space. The home
office space had no separate entrance, signage or visitor parking. The "home office" was therefore determined to be used for
residential purposes. The commercial classification was changed to residential.

Table of Authorities

Statutes considered:

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

Generally — referred to

s. 1 "current value" — considered

s. 7(1) — considered

s. 19(1) — considered

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

s. 19(2) — considered

s. 44(2) — considered

Regulations considered:

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

General, O. Reg. 282/98

s. 3(1) ¶ 1 ¶ i — considered

s. 3(1) ¶ 1 ¶ ii — considered

s. 3(1) ¶ 1 ¶ iii — considered

s. 5(1) ¶ 1 — considered

s. 5(1) ¶ 2 — considered

APPEAL of assessment.

P. Andrews Member:

1 This complaint came before the Assessment Review Board on June 29, 2007 in the City of Mississauga.

Issue

2 Is the subject property correctly assessed and is the subject property correctly classified as part in the residential property class and part in the commercial property class?

Decision

3 The assessment of the subject property is reduced from \$1,165,000 to \$1,059,000. The space occupied by the "home office" is removed from the Commercial Property Class and placed in the Residential Property Class resulting in the whole property being classified in the Residential Property Class.

Reasons for Decision

Facts

4 The complainant appealed the assessment of \$1,165,000 for the 2007 taxation year and the classification of the property of \$1,009,170 in the Residential Property Class and \$155,830 in the Commercial Property Class. Mr. Newton Seawright and Ms. Cheryl Seawright appeared for the complainants.

5 The subject property is a 3,633 square foot, residential property, built in 1958 with 2,493 square feet on the ground floor and 1,140 square feet on the second floor. The building area includes a 1,633 square foot addition, constructed in 1986. There is a basement area of 2,483 square feet of which 1,391 square feet is finished. The lot area of the property is 0.86 acres and it abuts the Credit River, an attribute for which a positive adjustment of 12% has been applied to the assessed value.

6 Included within the residence is an area used by the complainants as a "home office". The complainants operate an "industrial electrical service" business. The business services clients' electrical equipment at the client's places of business. Administrative functions for the industrial electrical service business are undertaken in the "home office" space. The Municipal Property Assessment Corporation (MPAC) assess the "home office" space as commercial and accordingly have classified the "home office" space, which they measure as 485 square feet, in the commercial property class.

7 Mr. Seawright argues that MPAC, in assessing his property, are placing too high a positive value on its proximity to the Credit River and too low a negative value on its proximity to the QEW highway. The subject property, by Mr. Seawright's estimate, is within 100 metres of the very busy QEW/Credit River bridge with "all the excess noise and pollution that comes with living in close proximity to a very busy highway with no barrier or walls." Mr. Seawright suggests that MPAC underestimate the detrimental impact of this factor and accordingly overvalue properties on Pinetree Crescent. In evidence, Mr. Seawright provides the assessed values and sale prices of five properties on Pinetree Crescent. The properties range in size from 1,509 to 2,166 square feet; are assessed at between \$549,000 and \$870,000; and sold between March 2004 and February 2006 at prices between \$470,000 and \$817,000. Mr. Seawright observes that the assessments of these properties are at values between \$19,000 and \$84,000 above the sale prices of the properties.

8 The Board notes that the assessment to sales ratios (ASR) of these properties range between 1.03 and 1.17 with an average ASR of 1.10.

9 Mr. Seawright further argues that placing the "home office" portion of his residence in the commercial property class is incorrect. In particular, Mr. Seawright notes that it is "common practice" for companies to provide employees with a computer and expect them to work, in part, from their homes. How, Mr. Seawright asks, is his situation significantly different?

10 Mr. Filipp Iannone, appearing on behalf of MPAC, argues that the subject property is best valued by reference to the sales of other properties that also abut the Credit River. In evidence, Mr. Iannone provides the sales of six such properties that range in size between 1,425 and 2,383 square feet; are assessed at between \$470,000 and \$1,267,000; sold at dates between May 2004 and October 2005 at prices between \$600,000 and \$1,225,000; and were built between 1918 and 1964.

11 The Board notes that the ASR of these properties range between 0.49 and 1.09, with an average ASR of 0.85.

12 Mr. Iannone further argues that the placing of the "home office" portion of the residence in the commercial property class is appropriate. Mr. Iannone states that when he inspected the subject property he noted four desks in the "home office" space together with four computers. Finally, Mr. Iannone produced a copy of Mr. Seawright's business card identifying the address of his "industrial electrical service" business as the subject property.

Provisions of the Assessment Act:

13 Subsection 19(1) of the *Assessment Act (Act)* provides:

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.

14 Subsection 19.1(1) of the *Act* provides:

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.

15 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.

16 Subsection 19(2) of the *Act* provides:

19(2) Regulations, special rule. — The Minister may make regulations,

(a) providing that the current value of eligible land be based only on current use if the land would otherwise have a higher current value because of other uses to which the land could be put;

(b) prescribing what land is eligible for a determination of current value based only on current use including prescribing how long the land must have been used for its current use to be eligible.

17 Subsection 44(2) of the *Act* provides:

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.

18 Subsection 7(1) of the *Act* provides:

7(1) Property Classes. — The Minister shall prescribe classes of real property for the purposes of this Act. 1997, c.5, s.5, part.

Provisions of Ontario Regulation 282/98:

19 Subsection 3(1) of [Ontario Regulation 282/98 \(O. Reg. 282/98\)](#) provides:

RESIDENTIAL/FARM PROPERTY CLASS

3. (1) The residential/farm property class consists of the following:

1. Land used for residential purposes that is,

i. land that does not have seven or more self-contained units,

ii. a unit or proposed unit, as defined in the *Condominium Act*,

iii. land owned by a co-operative, as defined in the *Co-operative Corporations Act*, the primary object of which is to provide housing to its members or land leased by such a co-operative if the term of the lease is at least 20 years,

20 [Subsection 5\(1\)](#) of O. Reg. 282/98 provides:

COMMERCIAL PROPERTY CLASS

5. (1) The commercial property class consists of the following:

1. Land and vacant land that is not included in any other property class.

2. A care home, as defined in the *Tenant Protection Act, 1997*, to which that *Act* does not apply, that is operated with the intention of generating a profit and that does not have seven or more self-contained units.

Analysis:

21 The initial question before the Board is:

(A) What is the value of the subject property on the valuation day, January 1, 2005.

22 The best measure of "current value", the basis for assessment in Ontario, is an arm's length and market-tested sale of the subject property on the valuation day or close to it. If, as in this case, no such transaction took place, a further measure of "current value" is arm's length and market tested sales of comparable properties in the same vicinity and market. This measure acts as a benchmark and a gauge of the accuracy for the assessed value of the subject and comparable properties.

23 The Board finds that none of the sale properties provided by the parties are comparable to the subject property. In particular, the Board finds that properties, as provided by MPAC, that range in size from 1,425 to 2,383 square feet are not similar to the subject property with a total area of 3,633 square feet.

24 In reviewing all of the evidence provided to it, it is the view of the Board that the best evidence available as to the current value of the subject property is by review of the ASR of properties in the vicinity of the subject property.

25 Mr. Seawright argues that the dominant influence on value for the subject property is its proximity to the QEW. Accordingly, Mr. Seawright provides properties located on Pinetree Crescent all within similar proximity to the highway. Mr. Seawrights' properties have an average ASR of 1.10, which supports the argument that assessments on Pinetree Crescent underestimate the negative impact of the highway on value.

26 Mr. Iannone contests the applicability of the properties provided by Mr. Seawright that do not abut the Credit River. However, the Board notes that if the average ASR of the two properties provided by Mr. Seawright that do abut the river is calculated, it demonstrates a higher average ASR of 1.12, than the average ASR for all of the five properties. This does not support Mr. Iannone's contention.

27 Mr. Iannone further argues that his six properties, all of which abut the Credit River, are a better reflection of the correctness of assessments in the vicinity of the subject property. They have an average ASR of 0.85, which Mr. Iannone would argue suggests that properties, similar to the subject property, that abut the Credit River are, if anything, being under-valued.

28 Mr. Seawright argues that these properties, which, with the exception of one property on Pinetree Crescent, are located at distances that are from two to five times greater than that of the subject property from the QEW, are not reflective of values on Pinetree Crescent with its proximity to the QEW.

29 The Board prefers the ASR evidence provided by Mr. Seawright. The Board finds that the ASRs of properties located on Pinetree Crescent are more reflective of the relative value of the subject property than properties located further from the QEW. Further, the Board finds that the current assessments over-value the relative impact of abutting the Credit River and under-value the impact of proximity to the QEW. Accordingly, the Board applies the ASR of 1.10 derived from the five properties located on Pinetree Crescent, provided by Mr. Seawright, to the current assessment of the subject property, of \$1,165,000, to calculate a revised current value of \$1,059,000.

30 The second question before the Board is:

(B) Is the property correctly classified as part in the residential property class and part in the commercial property class?

31 The *Act* defines the residential property class as "land used for residential purposes". Further, the *Act* defines the commercial property class as "Land...that is not included in any other property class". Accordingly, the Commercial Property Class is sometimes referred to as the "default" property class. If the use of a property, or part of a property, does not fit within any other property class then by "default" it must fall within the Commercial Property Class. The issue before the Board, is therefore, is the current use of the "home office" a use "for residential purposes?" There is no argument that if the Board finds the current use of the "home office" not "for residential purposes" then the area of home office should be classified in the Commercial Property Class.

32 Mr. Seawright argues that his home office is no different from a large number of other "home offices" in his neighbourhood, none of which are classified in the Commercial Property Class. In effect, what Mr. Seawright is arguing is that "home offices" have become a normal component of a residence and as such, space used as a "home office" is appropriately classified in the Residential Property Class. The Board sees merit in this argument. As Mr. Seawright states, many employees these days are given computers by their employers and expected to undertake part of their work from their homes. The Board asks, are all such activities to be classified as "not for residential purposes?"

33 The Board would suggest that the issue is one of the scale of and nature of the activity undertaken in a residential property. At one end of the scale might be a desk and computer in one corner of the living room used, as with the phone, primarily for household activities but occasionally for work related functions. The Board would have difficulty in finding such a use as being not a normal component of a residential property. At the other end of the scale might be a fully functional office, such as, as suggested by Mr. Iannone, that of a lawyer, a doctor or an accountant, with non-resident employees, a separate entrance, separate client parking and signage visible from the road. The Board would have difficulty finding such a use as being a normal component of a residential property.

34 Mr. Iannone argues that in the case of the subject property the scale and intent of the subject property's "home office" demonstrates that it is specifically a commercial operation and thus, not a normal component of a residential property. He notes that the office contains four desks, with four computers and that Mr. Seawright intends that the office be a business office as evidenced by the use of his home address as the address on his business cards. Mr. Iannone argues, accordingly, that such an office is little different from the lawyer, the doctor or the accountant working out of their homes.

35 Mr. Seawright does not agree. He argues that:

- His "home office" is used solely by the residents of the house.
- His "home office" is used, only in part, to undertake administrative functions for the family industrial electrical service business. He distinguishes from the lawyer, doctor and accountant in as far as no employees of the family electrical business are employed to work in the space and additionally, all the revenue producing work of the business is undertaken at customer facilities with no revenue producing work performed at the residence.
- There is no external signage for the business, there is no separate entrance for the business and no separate visitor parking space is provided. Further, Mr. Seawright states "we actively discourage non-resident employees, clients, deliveries or salespeople from coming to this location."

36 The Board finds that the "home office" space within the subject property is a "use for residential purposes" as envisioned under the *Act*.

37 The Board places little weight on the evidence of the number of desks or computers, which it finds of no special significance in itself. Surely, the Board asks, isn't the question one of the use of a desk, or number of desks, rather than a question of their existence? Further, the Board finds no special significance to the address on the business card. The Board asks, what part of the residence would not be a use for residential purposes if the only evidence presented was that of an address on a business card? Surely, the use of the residence address on a business card is nothing more than as a convenience to the residents.

38 The Board suggests that only by weighing a number of criteria, in terms of the scale and the nature of the activity undertaken within a specific space, can a reasoned conclusion be arrived at as to the appropriateness of the use as being a use for residential purposes.

39 Mr. Seawright has proposed a number of criteria. The Board finds the criteria proposed by the complainant to be appropriate to assess the applicability of the use in question for inclusion or exclusion from the Residential Property Class. The Board is persuaded by the complainant's argument that the "home office" is a use for residential purposes on the basis that the "home office" space is used solely for the benefit of residents of the house; that no revenue producing activity takes place in the space;

that non-resident employees, clients, deliveries and salespeople are discouraged from coming to the space; and finally, that the "home office" space has no separate entrance, signage or visitor parking.

40 Accordingly, the assessment of the subject property is reduced from \$1,165,000 to \$1,059,000 and the space occupied by the "home office" is removed from the commercial property class and placed in the residential property class.

Appeal allowed.