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Kang 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
471 Baggetta Crescent

Harbans Kang Baljeet Kang Ravinder Kang, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

P. Andrews Member

Heard: February 14, 2012

Judgment: March 20, 2012

Docket: WR 114034

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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

s. 44(3)(b) — referred to

P. Andrews Member:

1 These appeals came before the Assessment Review Board on February 14, 2012 in the City of Mississauga

Issue

2 The subject property, 471 Baggetta Crescent, is a two-storey detached house with an effective site area of 8,748 square feet, an effective frontage of 70 feet and an effective depth of 115 feet. The house was constructed in 1990 and the Municipal Property Assessment Corporation (MPAC) classifies its quality level as a 6.5. It has four bedrooms and a building total area of 3,185 square feet plus a 1,622 square foot basement of which 811 square feet is finished. In addition it has an attached two-car garage also constructed in 1990. The subject property has a 4% negative adjustment in assessed value for abutting medium traffic patterns. The subject property is assessed at \$551,000 for the 2009, 2010 and 2011 taxation years.

3 Mr. Joseph Fantetti, appearing on behalf of MPAC, called one witness Ms. Denise Declerk.

4 MPAC recommends that the assessed value be reduced from \$551,000 to \$540,000 to provide the subject property with the benefit of a 2% corner lot value reduction.

5 Ms. Declerk states that although she did not prepare the MPAC evidence package Exhibit 1 she has reviewed the package and supports the conclusions therein.

6 Ms. Declerk states that the subject property has been assessed based on the evidence of the sales of comparable properties in the vicinity. In evidence Ms. Declerk provided the sales of four suggested comparable properties.

7 Mr. Robert **Baranowski**, appearing on behalf of the assessed persons, provided the sales of four suggested comparable properties one of which, 5239 Micmac Crescent, is a duplicate of a property provided by Ms. Declerk.

8 The Board must determine both the correct current value for the subject property and whether the assessment of the subject property is equitable with the assessments of similar properties in the vicinity of the subject property.

Decision

9 For the reasons stated below and as directed by subsection 44.(3)(a) of the *Assessment Act*, R.S.O. 1990, c. A.31, as amended (the *Act*), the Board finds that the current value of the subject property, as at the valuation day January 1, 2008, is \$540,000.

10 Further the Board finds that there is no evidence before it leading to the conclusion that the current value of the subject property, as determined above, requires a further adjustment in accordance with subsection 44.(3)(b) of the *Act*.

11 Accordingly, the assessment of the subject property as at January 1, 2008, for the 2009, 2010 and 2011 taxation years, is reduced from \$551,000 to \$540,000.

Reasons for Decision

12 The initial task for the Board is to determine the current value of the subject property as required by subsections 44.(3)(a) of the *Act* ...*the Board shall...determine the current value of the land...*

13 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* defines current value 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...*

14 The best test of current value is an arm's length and market tested sale of the subject property on the valuation day, January 1, 2008 or close to it. If, as in this case, no such transaction took place, the next best measure of current value is arm's length and market tested sales of comparable properties in the same vicinity and market on or close to the valuation day. This measure acts as a benchmark and a gauge of the accuracy for the assessed value of the subject and comparable properties.

15 To enable an estimate of value for the subject property to be derived from a comparable property there must be sufficient elements of similarity, in terms of physical factors such as total building area, land area, land frontage, age of construction, physical condition, etc; and in terms of neighborhood characteristics such as access to amenities, type and nature of housing etc, so as to enable a direct comparison to be made between the comparable property and the subject property.

16 Ms. Declerk provided the Board with sales of four suggested comparable properties which she suggests are the most similar properties to the subject property in the vicinity of the subject property. The properties were constructed between 1987 and 1999; have total building areas of between 2,713 square feet and 3,098 square feet; have effective lot areas of between 4,066 square feet and 9,324 square feet; and are assessed at values of between \$487,000 and \$563,000. The properties sold between February 2007 and July 2008 at values of between \$500,000 and \$560,000.

17 Ms. Declerk suggests that the sale values of her suggested comparable properties require adjustment so that they have the same features and are the same state and condition as the subject property. Ms. Declerk refers to Exhibit 1 (Appendix A) - Current Value Study which shows Adjustments to Subject Percentages which MPAC has calculated as the "appropriate" percentage change to the actual sale value of a suggested comparable property to make that suggested comparable property directly comparable to the subject property. The percentage adjustments range from negative 4% to positive 11%. The adjustments are calculated by deducting the assessment as returned for the subject property from the assessment as returned for the suggested comparable property and expressing the answer as a percentage of the assessment as returned for the suggested comparable property.

18 The Board questions how the adjustments in Appendix A can be relied upon give that an error in either the assessment as returned of the subject property or in the assessments as returned of the suggested comparable properties would undermine the validity of the entire table. Further the Board asks how can a table that presumes as a starting position that the current value of the subject property is correct, be useful in answering the question at issue. Namely: - What is the correct current value of the subject property?

19 The Board places no weight on the evidence of Ms. Declerk as to the "Adjustment to Subject Percentages" and the "Adjusted Sale Amounts" (\$504,000 and \$556,000) shown of the Current Value Study - Exhibit 1 (Appendix A).

20 As stated above the Board prefers the evidence of arm's length and market tested sales of comparable properties. In addition to the four properties provided by Ms. Declerk, Mr. **Baranowski** also provided the sale of four suggested comparable properties including a duplicate of one of Ms. Declerk's suggested comparable properties.

21 Mr. **Baranowski's** properties were constructed between 1987 and 1989; have total building areas of between 2,799 square feet and 3,295 square feet; have effective lot areas of between 4,667 square feet and 7,924 square feet; and are assessed at values of between \$499,000 and \$568,000. The properties sold between February 2007 and November 2008 at values of between \$460,000 and \$500,000.

22 The Board finds that MPAC Property No. 1 is directly comparable to the subject property in as far as it has a similar site area of 9,324 square feet versus 8,748 square feet for the subject property; a similar frontage 67 feet versus 70 feet for the subject property; was constructed in 1987 versus 1990 for the subject property; and as does the subject property it has a quality level 6.5 and is a two-storey. Although Property No. 1 has a smaller building total area of 2,820 square feet versus 3,185 square feet for the subject property it has a larger finished basement area 1,242 square feet versus 811 square feet for the subject property. Property No. 1 has very similar locational characteristics to the subject property being a corner lot adjoining McLaughlin Road. Property No. 1 is assessed at \$525,000 and sold in July 2008 for a time adjusted value of \$489,541 or \$173 per square foot of building total area.

23 The Board finds that MPAC Property No. 2 (Appellant Property No. 3) is directly comparable to the subject property in as far as it has a similar site area of 7,924 square feet versus 8,748 square feet for the subject property; a similar building total area of 3,038 square feet versus 3,185 square feet for the subject property; was constructed in 1987 versus 1990 for the subject property; and as does the subject property it has a quality level 6.5 and is two-storeys. Property No. 2 backs on to McLaughlin Road with similar traffic patterns to the subject property. Unlike the subject property it has a pool. Property No. 2 is assessed at \$550,000 and sold in February 2007 for a time adjusted value of \$550,830 or \$171 per square foot of building total area.

24 The Board finds that MPAC Properties Nos. 3 and 4 are not directly comparable to the subject property in as far as a property with a 40 foot frontage constructed in 1999 is not directly comparable to a property with a 70 foot frontage constructed in 1990.

25 The Board finds that appellant Property No. 1 is not directly comparable to the subject property in as far as a property with a 40 foot frontage is not directly comparable to a property with a 70 foot frontage.

26 The Board finds that appellant Property No. 2 is not directly comparable to the subject property in as far as a property with a building total area of 2,799 square feet and no finished basement is not directly comparable to a property with a building total area of 3,185 square feet and 811 square feet of finished basement area.

27 The Board finds that appellant Property No. 4 is not directly comparable to the subject property in as far as a property with a site area of 4,667 square feet is not directly comparable to a property with a site area of 8,748 square feet.

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28 Accordingly the Board finds that the best evidence of the current value of the subject property is the sale in July 2008 of MPAC Property No. 1 - 434 Ceremonial Drive, for a time adjusted value of \$489,500 or \$173 per square foot and the sale in February 2007 of MPAC Property No 2 (appellant Property No. 3) - 5239 Micmac Crescent at a time adjusted sale value of \$520,800 or \$171 per square foot.

29 Applying the average of the two per square foot sale values, \$172 per square foot, to the building total area of the subject property, 3,185 square feet, the Board derives a current value for the subject property of \$547,000 which the Board finds is appropriate evidence of the correctness of the current value of the subject property as recommended by MPAC of \$540,000.

30 For the reasons stated above and as directed by subsection 44(3)(a) of the *Act* the Board finds that the current value of the subject property, as at the valuation day January 1, 2008, is \$540,000.

31 An alternate approach to testing the correctness of the assessment as returned of a property is the Assessment to Sale Ratio (ASR) approach. The ASR approach is primarily used when the evidence of the sales of directly comparable properties does not provide sufficient evidence to arrive at a finding of value. The concept is to test the accuracy of the MPAC mass appraisal model by reviewing the relationship of predicted assessments against actual sale values. If such an analysis demonstrates that the model is over assessing properties then it may reasonably be assumed that the subject property has been over assessed and reduce the assessment as returned accordingly. However as stated above the best test of current value is the sale of the subject property on or around the valuation day or the sales of directly comparable properties. In this appeal the Board has evidence of the sale of directly comparable properties and accordingly the Board prefers that evidence.

32 The *Act* was amended for taxation years beginning with to 2009 to require 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.

33 Subsection 44.(3)(b) of the *Act* states that ... *the Board shall... 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 land.*

34 To support the equity of assessment of the subject property, Ms. Declerk provided two studies of the ASRs of 296 and 192 residential properties in the vicinity of the subject property. The studies both have ranges of individual ASRs from 0.85 to 1.16 and and median ASRs of 1.00. Ms. Declerk suggests that a median ASR of 1.00 is indicative that similar properties in the vicinity of the subject property have been equitably assessed at their current values.

35 Clearly ranges of ASRs between 0.85 and 1.16 do not indicate that similar properties have been assessed equitably at their current values. Appraisal is not an exact science. Generally accepted appraisal principals accept a degree of latitude being that values are estimated within a tolerance of 5%. Accordingly a similar leeway is afforded to ratios demonstrated by an ASR being that if such a ratio falls within 5% of 1.00 the assessment can be accepted as being correct. Only 191 of Ms. Declerk's 296 sales and 131 of Ms. Declerk's 192 sales fall within the ASR range of 0.95 to 1.05 and can therefore be characterized as having been assessed at their current values. However, at the same time, while a median ASR for the properties of 1.00 may indicate that up to half the sale properties have been under assessed and up to half the sale properties have been over assessed it does not indicate a systemic under assessment of similar properties in the vicinity of the subject property.

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36 Mr. **Baranowski** provided no argument or evidence under subsection 44.(3)(b).

37 Accordingly the Board finds that there is no evidence before it leading to the conclusion that the current value of the subject property, as determined above, requires a further adjustment in accordance with subsection 44.(3)(b) of the *Act*.

38 The assessment of the subject property as at January 1, 2008, for the 2009, 2010 and 2011 taxation years, is reduced from \$551,000 to \$540,000.

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