

2012 CarswellOnt 3446,

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Kaur 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
1721 Village Vie Place

Nirmaljit Kaur, Assessed Person/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 19, 2012

Docket: WR 114033

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

J. Fantetti, 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 comparative property

Municipal law --- Municipal tax assessment — Valuation — Method of assessment — Similar real property in vicinity

Municipal law --- Municipal tax assessment — Valuation — Uniformity, equity and equality — Miscellaneous

Statutes considered:

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

Generally — referred to

2012 CarswellOnt 3446,

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, 1721 Village Vie Place, is a two-storey detached house with an effective site area of 7,797 square feet, an effective frontage of 50 feet and an effective depth of 121 feet. The house was constructed in 1989 and the Municipal Property Assessment Corporation (MPAC) classified its quality level as a 7.0. It has four bedrooms and a building total area of 3,032 square feet plus a 1,633 square foot unfinished basement. In addition it has an attached two-car garage; also constructed in 1989. The subject property is assessed at \$571,000 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 of the subject property be reduced from \$571,000 to \$559,000 to provide the subject property with the benefit of a two per cent 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 three suggested comparable properties.

7 Mr. Robert **Baranowski**, appearing on behalf of the assessed person Mr. Nirmaljit Kaur, also provided the sales of three suggested comparable properties one of which, 5489 Shorecrest 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 \$491,000.

2012 CarswellOnt 3446,

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 the valuation day January 1, 2008 is reduced from \$571,000 to \$491,000 for the 2009, 2010 and 2011 taxation years.

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 neighbourhood 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 three 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 1989 and 1995; have total building areas between 3,002 square feet and 3,397 square feet; have effective lot areas between 4,647 square feet and 8,286 square feet; and are assessed at values between \$539,000 and \$600,000. The properties sold between March 2007 and November 2007 at values between \$515,000 and \$539,500.

17 Ms. Declerk suggests that the sale values of her suggested comparable properties require adjustment so that they have the same features and are of 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 five per cent to positive six per cent. 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 Mr. **Baranowski** challenges how the adjustments in Appendix A can be relied upon given that an error in either the assessment as returned of the subject property or in the assessments as returned of the suggested com-

2012 CarswellOnt 3446,

parable properties would undermine the validity of the entire table. Further Mr. **Baranowski** questions how a table that presumes as a starting position that the current value of the subject property is correct, can be useful in answering the question at issue, namely, what is the correct current value of the subject property?

19 The Board agrees with Mr. **Baranowski** and places no weight on the evidence of Ms. Declerk as to the "Adjustment to Subject Percentages" and the "Adjusted Sale Amounts" (\$536,000 and \$571,000) 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 three properties provided by Ms. Declerk, Mr. **Baranowski** provided the sale of three 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 between 3,015 square feet and 3,238 square feet; have effective lot areas between 5,010 square feet and 7,420 square feet; and are assessed at values between \$494,000 and \$544,000. The properties sold between November 2007 and June 2009 at values between \$505,000 and \$515,000.

22 The Board finds that the sale, in June 2009, of the suggested comparable property 5516 Shorecrest Crescent, provided by Mr. **Baranowski**, is too far removed from the valuation day, January 1, 2008, to be indicative of either the market or values on the valuation day. The Board disregards this sale.

23 The Board finds that MPAC Property #1 is not directly comparable to the subject property in as far as a property with a site area of 4,647 square feet is not directly comparable to a property with a site area of 7,797 square feet.

24 The Board finds that MPAC Property #2 (Appellant Property #1) is directly comparable to the subject property in as far as it has a similar site area of 7,420 square feet versus 7,797 square feet for the subject property; a similar total building area of 3,238 square feet versus 3,032 square feet for the subject property; was constructed in 1989 as was the subject property; and as does the subject property it has a quality level 7.0 and is two-storey. Property #2 backs on to a medium traffic pattern street which MPAC characterizes as having a negative impact on value of four per cent. The subject property is a corner lot which MPAC characterize as having a negative two per cent impact on value. Property #2 is assessed at \$549,000 and sold in November 2007 for \$515,000 or \$159 per square foot. Adjusting the per square foot sale value of Property #2 by the addition of two percent (plus four percent for the medium traffic pattern and minus two percent for the corner lot) the Board calculates a comparable value to the subject property of \$162 per square foot.

25 The Board finds that MPAC Property #3 is not directly comparable to the subject property in as far as a property with a 70 foot frontage and a 1,212 square feet area of finished basement is not directly comparable to a property with a 50 foot frontage and an unfinished basement.

26 Appellant Property #2 is very similar to the subject property in as far as it has a similar site area to the subject property - 6,659 square feet versus 7,797 square feet; a similar total building area of 3,015 square feet versus 3,032 square feet for the subject property; was constructed in 1987 versus 1989 for the subject property; and is two-storey. Property #2 is assessed at \$494,000 and sold in September 2008 for \$505,000 or \$167 per square foot.

2012 CarswellOnt 3446,

27 Mr. Fantetti argues that Appellant Property #2 is not comparable to the subject property in as far as it is classified by MPAC as a quality 6.5 property as opposed to the subject property which is classified as a quality 7.0 property. No evidence as to the impact on value of the difference between property classes was presented to the Board. Accordingly the Board prefers to utilize the sales of only quality 7.0 properties to determine the current value of the subject property. The Board disregards the sale of Appellant Property #2.

28 The Board finds that the best evidence of the current value of the subject property is the sale in November 2007 of MPAC Property #2 (Appellant Property #1), 5489 Shorecrest Crescent, for an adjusted sale value of \$162 per square foot.

29 Applying the adjusted sale value of \$162 per square foot, to the building total area of the subject property, 3,032 square feet, the Board derives a current value for the subject property of \$491,000.

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 \$491,000.

31 The *Act* was amended for taxation years beginning with 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.

32 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.*

33 To support the equity of assessment of the subject property, Ms. Declerk provided two studies of the Assessment to Sales Ratios (ASR) of 102 residential properties in the vicinity of the subject property. The studies both have ranges of individual ASRs from 0.87 to 1.14 and median ASRs of 1.01. Ms. Declerk suggests that a median ASR of 1.01 is indicative that similar properties in the vicinity of the subject property have been equitably assessed at their current values.

34 Clearly ranges of ASRs between 0.87 and 1.14 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 five per cent. Accordingly a similar leeway is afforded to ratios demonstrated by an ASR being that if such a ratio falls within five per cent of 1.00 the assessment can be accepted as being correct. Only 61 of Ms. Declerk's 102 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 1.01 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.

35 Mr. **Baranowski** provided no argument or evidence under subsection 44.(3)(b) of the *Act*.

36 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*.

37 The assessment of the subject property as at the valuation day January 1, 2008, is reduced from \$571,000

2012 CarswellOnt 3446,

to \$491,000 for the 2009, 2010 and 2011 taxation years.

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