

2008 CarswellOnt 1988,

2008 CarswellOnt 1988

Kim 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 complaints with respect to taxation years 2006 and 2007 on premises known municipally as 64
Elm Drive West

Hung Sik Kim Wee Suk Kim, Assessed Persons/Complainant and The Municipal Property Assessment Corpora-
tion, Region No. 15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

J. Wyger Member

Heard: March 10, 2008

Judgment: April 4, 2008

Docket: WR 67259

© Thomson Reuters Canada Limited or its Licensors (excluding individual court documents). All rights re-
served.

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

R. Leroux, for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous; Property

Municipal law --- Municipal tax assessment — Valuation — Basis for reduction — Overvaluation

Statutes considered:

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

s. 1 "current value" — considered

s. 19(1) — considered

s. 44(2) — considered

J. Wyger Member:

2008 CarswellOnt 1988,

1 These complaints came before the Assessment Review Board on March 10, 2008 in the City of Mississauga.

Issue

2 Whether the subject property is correctly assessed.

Decision

3 The assessment is reduced from \$411,000 to \$378,000 for the 2006 and 2007 taxation years.

Reasons for Decision

The Facts:

4 The subject property is a 1,374 square foot, two-storey home, built in 1951, and situated on a .37 acre lot at 64 Elm Drive West in the City of Mississauga. It abuts a school and a commercial building, but receives no adjustment for these.

The Legislation:

5 In forming its decision, the Board is governed by the following provisions of the *Assessment Act (Act)*.

6 Section 1 of the *Act* defines current value:

"**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 Subsection 19(1) of the *Act* provides:

19(1) Assessment based on current value. - The assessment of land shall be based on its current value.

8 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.

Analysis:

9 Mr. Robert **Baranowski** presented the case for the owner, and put into evidence an aerial photograph of the subject neighbourhood. The subject property is at what appears to be the corner of a future road, which is currently a construction lane for a condominium building going up behind the subject property. The property is not considered a corner lot by the Municipal Property Assessment Corporation (MPAC). The school parking lot abuts this lane. There is a commercial building immediately behind the subject property, but the property does not receive the usual 3% to 5% adjustment for this. The new multi-residential building is being constructed beside this commercial building. Indeed, the subject property appears to be surrounded by devaluing influences, but is not adjusted for any. The Board finds this oversight, by itself, indicates that the property's assessed value is too high.

2008 CarswellOnt 1988,

10 Mr. **Baranowski** advised that the assessed value for the previous assessment was \$275,000. The subject assessment represents a 50% increase in the 18 months between the two evaluation dates. While the Board does not employ per cent increases over previous assessments in calculating assessments, it can on occasion be helpful in determining whether the subject assessment is in a correct range. The Board takes the view that any substantial percentage increase of the magnitude of 50% requires justification by MPAC, and corroboration by sales evidence.

11 Mr. **Baranowski** presented six comparable properties in the general neighbourhood that differed from the subject property in two important ways. The year-built of the homes was in the mid-1980's, some 33 to 35 years newer than the subject property. Two of the properties had lots over 6,000 square feet smaller, while the other four had lots over 10,000 square feet smaller than the subject property. These comparable properties were not comparable at all. The Board finds that Mr. **Baranowski's** method of using value per square foot and applying it to the subject, simply breaks down where there are such wide variations in key aspects of similarity.

12 The assessor's comparable properties were marginally more similar in that the structures were of the same early 1950's era, and the lot sizes were closer, although still over 4,000 square feet smaller. The largest variations were in structure size, with the subject two-storey dwelling being from 300 to 500 square feet larger than the comparable bungalows. Where none of the comparable properties is very similar, the Board sometimes falls back on the assessment to sale ratio (ASR) to test the accuracy of MPAC's model. The average and median ASR of 1.09 and 1.15 respectively for the assessor's comparables, would seem to suggest that the model may be overstating values in this vicinity.

13 The assessor provided an analysis which adjusted the subject property down by approximately \$30,000 for its second storey and garage to compare it to the bungalows he presented. This analysis rendered a value of \$367 per square foot for the subject property. Both the average and the median value for the five bungalows came in at \$349 per square foot rounded. The higher value for the subject is apparently justified because of its larger lot size. The Board would normally agree, were the subject lot not surrounded by various devaluing features. On the premise that these features negate any value for the extra depth of the lot, the Board calculates the value on the basis of \$349 per square foot, adds back the \$30,000 deductions and arrives at a new value that is 4.6% less than the subject property's original assessed value.

Conclusion:

14 The Board has found that the subject property is assessed 4.6% too high using the assessor's own analysis. The ASR indicates the MPAC model is over-valuing homes in this vicinity by approximately 9% to 15%. The subject property received a 50% increase in its assessed value from the previous assessment cycle. Taken together, all of these factors persuade the Board that the subject property is assessed for more than it could obtain in an open market sale in January 2005. The assessor advised that a corner lot adjustment would normally be 3%, and abutting commercial could range up to 5%. The Board finds that the property is at the corner of what is currently a construction road, and will in future be a public road or lane. The property is also located adjacent to current institutional, commercial and future multi-residential uses. These factors are evident to any purchaser and the Board has no doubt that they lessen the value that the property would otherwise obtain. The Board has found that the assessed value is overstated and determines that a total 8% adjustment for corner lot and abutting commercial/institutional is clearly warranted. This would reduce the subject's assessment to \$378,000. The Board concludes that this value more correctly represents the amount the subject could have sold for in accordance with subsection 19(1) of the *Act*, and places the property in a more reasonable relationship to the assessments of

2008 CarswellOnt 1988,

all the comparable properties presented pursuant to subsection 44(2) of the *Act*.

END OF DOCUMENT