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Singh 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
6880 Campbell Settler Court

Gurnek Singh Rupinder Singh, Assessed Persons/Appellants and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

Ontario Assessment Review Board

P. Andrews Member

Heard: February 7, 2012

Judgment: March 8, 2012

Docket: WR 114005

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

C. Mattat, for Municipal Property Assessment Corporation

No one for City of Mississauga

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

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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 7, 2012 in the City of Mississauga.

Issue

2 The subject property, 6880 Campbell Settler Court, is a two-storey detached house on an effective lot of 7,983 square feet, with an effective frontage of 60 feet and an effective depth of 135 feet. The house was constructed in 2004 and MPAC classifies its quality level as a 7.5. It has five bedrooms and a total building area of 4,821 square feet plus a 2,426 square foot unfinished basement. In addition it has a 610 square foot attached garage also constructed in 2004. The house has no renovations. The subject property is assessed at \$951,000 for the 2009, 2010 and 2011 taxation years.

3 Ms. Christeen Mattat, appearing on behalf of the Municipal Property Assessment Corporation (MPAC), called one witness Mr. Roger Leroux.

4 Mr. Leroux stated that the subject property had been assessed based on the evidence of the sales of comparable properties in the vicinity. In evidence Mr. Leroux provided the sales of two suggested comparable properties.

5 Mr. Robert **Baranowski**, appearing on behalf of the assessed persons Mr. and Mrs. Singh, provided the sale of one suggested comparable property, 7050 Old Mill Lane, which sold in December 2005 for \$690,000 or \$145 per square foot of building total area. Applying the \$145 per square foot value to the building total area of the subject property, 4,821 square feet, Mr. **Baranowski** derived a suggested value for the subject property of \$699,000.

6 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

7 For the reasons stated below and as directed by subsection 44.(3)(a) of the *Assessment Act*, R.S.O. 1990, 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 \$896,000.

8 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*.

9 Accordingly, the assessment of the subject property as at January 1, 2008, for the 2009, 2010 and 2011 taxation years, is reduced from \$951,000 to \$896,000.

Reasons for Decision

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10 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...*

11 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...*

12 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.

13 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.

14 Mr. Leroux provided the Board with sales of two properties which he suggested are the most similar properties to the subject property in the vicinity of the subject property. The properties were constructed in 2002 and 2004; have total building areas of 3,998 square feet and 3,508 square feet; have effective lot areas of 11,270 square feet and 14,688 square feet; and are assessed at values of \$865,000 and \$823,000. The properties sold in August 2008 and May 2007 at values of \$895,000 and \$850,000.

15 Mr. Leroux suggested that the sale values of his suggested comparable properties require adjustment so that they have the same features and are the same state and condition as the subject property. Mr. Leroux referred 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 are positive 10% and positive 16%. 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.

16 Mr. **Baranowski** challenged how the adjustments in Appendix A could 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 comparable properties would undermine the validity of the entire calculation. Further Mr. **Baranowski** questioned 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?

17 The Board agrees with Mr. **Baranowski** and places no weight on the evidence of Mr. Leroux as to the "Adjustment to Subject Percentages" and the "Adjusted Sale Amounts" (\$956,000 and \$1,009,000) shown of the Current Value Study - Exhibit 1 (Appendix A).

18 As stated above the Board prefers the evidence of arm's length and market tested sales of comparable properties. Mr. Leroux provided the sales of two suggested comparable properties and Mr. **Baranowski**

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provided the sale of one suggested comparable property.

19 The Board finds that MPAC Property No. 1 is not directly comparable to the subject property in as far as a property with a site area of 11,270 square feet and a total building area of 3,998 square feet is not directly comparable to a property with a site area of 7,983 square feet and a building total area of 4,821 square feet.

20 The Board finds that MPAC Property No. 2 is not directly comparable to the subject property in as far as a property with a site area of 14,688 square feet and a total building area of 3,509 square feet is not directly comparable to a property with a site area of 7,983 square feet and a building total area of 4,821 square feet.

21 The Board finds that the sale date, December 2005, of the suggested comparable property provided by Mr. **Baranowski**, 7050 Old Mill Lane, is too far removed from the valuation day, January 1, 2008, to be indicative of either the market or values on the valuation day. Further the Board finds that a property constructed in 1849 with a site area of 37,026 square feet is not directly comparable to a property constructed in 2004 with a site area of 7,983 square feet.

22 The Board finds that it is unable to determine current value of the subject property based on the sales of comparable properties in the vicinity of the subject property. As suggested by Mr. **Baranowski** the Board looks to determine the current value of the subject property based on the assessments of similar properties in the vicinity of the subject property.

23 Mr. **Baranowski** provided details of two very similar properties to the subject property - 6884 Campbell Settler Court (Campbell) and 6885 Early Settler Row (Early). Both properties have very similar site areas and site dimensions to the subject property. Both properties are of similar age to the subject property - constructed in 2001 and 2004. And both properties have five bedrooms and two bathrooms with unfinished basements. Campbell has a building total area of 3,999 square feet and Early has a building total area of 5,492 square feet. Campbell is assessed at \$669,000 and Early is assessed at \$896,000. Mr. **Baranowski** suggests that it is reasonable to presume that the subject property with a building total area of 4,821 square feet should have a value somewhere between the assessed values of these two properties. Applying the per square foot value of Early, \$163 per square foot, to the building total area of the subject property Mr. **Baranowski** suggests a value of \$785,000.

24 The Board agrees with Mr. **Baranowski** that the assessments of these two properties provide a range of value within which the current value of the subject property should lie - between \$669,000 and \$896,000.

25 The Board does not agree with Ms. Mattat that such a range of value for the subject property is also provided by the two suggested comparable properties provided by Mr. Leroux. To create a range of value for a subject property it is necessary to have at least one property that is, for clear reason, less valuable than the subject property and one property that is, for clear reason, more valuable than the subject property.

26 One of Mr. **Baranowski's** suggested comparable properties is smaller than the subject property but otherwise similar in all respects and accordingly the subject property should have a current value no less than comparable property (Campbell). The other suggested comparable property is larger than the subject property but otherwise similar in all respects and accordingly the subject property should have a current value no greater than comparable property (Early).

27 The suggested comparable properties provided by Mr. Leroux are both smaller in building total area than the subject property, a factor that would indicate that the subject property should have a current value of a great-

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er amount that both these properties. However both the suggested comparable properties are larger in site area than the subject property, a factor which would indicate that the subject property should have a current value of a less amount than both these properties. Since the Board has no basis upon which to determine the relative value of these two attributes, site area and building total area, no range of value can be created.

28 The Board does not agree with Mr. **Baranowski's** suggested use of a per square foot value to directly compare the assessment of the subject property to the assessments of the suggested comparable properties. The current values of these properties were determined using the MPAC multiple regression mass appraisal model. The Board has no evidence that would allow it to determine the impact on the value of a property, derived from the model, of variations in attributes between the subject property and each suggested comparable property. The Board can go no further than to state that, because Early is larger than the subject property (building total area of 5,492 square feet versus 4,821 square feet for the subject property) all other attributes (including lot area) being similar, the current value of the subject property should not be greater than the current value of Early.

29 Accordingly the Board finds that the best evidence of the current value of the subject property is the assessment of 6885 Early Settler Row at \$896,000 which the Board finds is appropriate evidence that the assessed value as returned for the subject property at \$951,000 is incorrect and that the subject property should not have a current value greater than the current value of 6885 Early Settler Row.

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 \$896,000.

31 Mr. **Baranowski** argues that the increase in assessment of the subject property between the January 1, 2005 and January 1, 2008 valuation days, being \$192,000 or 25%, is excessive.

32 It is not the task of the Board, and the Board is wary of such attempts, to reconcile values between valuations days in as far as in attempting to make such a calculation the Board has no basis to determine if the previous current value of a property was correct or incorrect; what characteristics of the market and values have changed or remained the same between valuation days; or whether a percentage increase proposed or actual is appropriate or inappropriate.

33 Mr. **Baranowski** raised the proximity of the subject property to two schools and to Highway 401. At the same time he confirmed that he had no basis to present to the Board that would allow the Board to determine the impact, if any, in monetary terms of these factors upon the current value of the subject property.

34 *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.

35 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.*

36 To demonstrate equity, Mr. Leroux provided a study of the Assessment to Sales Ratios (ASR) of 71 residential properties in the vicinity of the subject property. The study has a range of individual ASRs from 0.85 to 1.13 and a median ASR of 0.99. Mr. Leroux suggests that a median ASR of 0.99 is indicative that similar properties in the vicinity of the subject property have been assessed at their current values.

37 The Board agrees with Mr. **Baranowski**. Clearly a range of ASRs between 0.85 and 1.13 does not indicate that similar properties are assessed at their current values. Following generally accepted appraisal principals, it is appropriate to accept that a ratio demonstrated by an ASR that falls within 5% of 1.00 is correct. Only 46 of Mr. Leroux's 71 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 0.99 may indicate that half the sale properties have been under assessed and 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.

38 Mr. **Baranowski** calculates that the ASR of the two properties suggested by MPAC as most similar to the subject property is 0.97. Accordingly he suggests that the current value as determined above be reduced by a factor of 0.97 to make it equitable with those properties. The Board does not agree. The Board has already determined that neither of the properties suggested by MPAC is directly comparable to the subject property and further the Board used neither property to determine the current value of the subject property.

39 The Board determined the current value of the subject property by reference to the assessment of similar properties in the vicinity of the subject property. The Board finds it reasonable to presume that if there is a systemic under valuation by the MPAC mass appraisal model of similar properties to the subject property such a systemic undervaluation will be reflected in the assessments used to determine the current value of the subject property and thus by extension in the current value determined for the subject property. In other words if assessments are the basis upon which the current value of a property is determined assessments cannot also be the basis upon which equity is determined without double counting the impact of any systemic over or under assessment.

40 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*.

41 The assessment of the subject property as at January 1, 2008, for the 2009, 2010 and 2011 taxation years is reduced from \$951,000 to \$896,000.

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