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Zullo Holdings Inc. v. Municipal Property Assessment Corp., Region No. 09

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 2010, 2011 and 2012 on premises known municipally as 630 The
Queensway

Zullo Holdings Inc., Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region No. 09
and the City of Toronto, Respondents

Ontario Assessment Review Board

I.A. Birnie Member

Heard: May 30, 2012

Judgment: November 21, 2012

Docket: WR 114932

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

S. Ladak, 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 — Commercial

Statutes considered:

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

Generally — referred to

s. 1(1) "current value" — considered

s. 19(1) — considered

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s. 19.2(1) ¶ 2 [en. 2004, c. 7, s. 3(1)] — considered

s. 40(17) — considered

s. 40(19) — considered

s. 44(3) — considered

s. 44(3)(a) — considered

I.A. Birnie Member:

1 These appeals came before the Assessment Review Board on May 30, 2012 in the City of Toronto.

Issues

Background

2 The appeals before the Assessment Review Board ("Board") are appeals by Zullo Holdings Inc. in respect of the assessment of the commercial property at 630 The Queensway, Toronto ("subject property") for the 2010, 2011 and 2012 taxation years.

3 The subject property is a one-storey 595 square foot fast food restaurant, built in 1957 on a 5,000 square foot lot, with a 50 foot frontage and a depth of 100 feet, located at the corner of The Queensway and McIntosh Avenue, with access from both streets.

4 For the 2010, 2011 and 2012 taxation years, it is classified in the commercial property class and is assessed at \$535,000 by the cost approach to value.

5 The Municipal Property Assessment Corporation ("MPAC") recommends that the assessment of the subject property for the 2010, 2011 and 2012 taxation years be reduced from \$535,000 to \$528,000.

6 The Appellant submits that the Board should determine the current value of the subject property to be \$329,000, find that an equity adjustment to \$306,000 is required, and reduce the assessment for all three taxation years from \$535,000 to \$306,000.

7 The task of the Board, in accordance with s. 44.(3) of the *Assessment Act* ("Act") is to determine the current value of the subject property and then to have reference to the value at which similar properties in the vicinity are assessed and to adjust the assessment of the subject property to make it equitable with that of similar properties in the vicinity, if such an adjustment would result in a reduction of the assessment.

Decision

8 The Board determines the current value of the subject property to be \$528,000. The Board finds that an adjustment to \$491,000 is required to make the assessment of the subject property equitable with that of similar properties in the vicinity. The Board reduces the assessment of the subject property for the 2010, 2011 and 2012 taxation years from \$535,000 to \$491,000.

Reasons for Decision

Legislation

9 For the 2010, 2011 and 2012 taxation years, in determining the value at which land shall be assessed, the Board must have regard to the following provisions of the Act:

10 Section 1 of the Act defines "current value" as follows:

"**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.

11 Section 19.(1) of the Act states:

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

12 Section 19.2(1)2 states:

19.2(1) Valuation days. — Subject to subsection (5)[\[FN1\]](#) , the day as of which land is valued for a taxation year is determined as follows:

2. For the period consisting of the four taxation years from 2009 to 2012, land is valued as of January 1, 2008.

13 Section 44.(3) states:

44.(3) Same, 2009 and subsequent years. — For 2009 and subsequent taxation years, in determining the value at which any land shall be assessed, the Board shall,

(a) determine the current value of the land; and

(b) 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 the land.

14 Section 40.(17) states:

40.(17) Burden of proof. — For 2009 and subsequent taxation years, where value is a ground of appeal, the burden of proof as to the correctness of the current value of the land rests with the assessment corporation.

15 Section 40.(19) states:

40.(19) Board to make determination. — After hearing the evidence and the submissions of the parties, the Board shall determine the matter.

Case for MPAC

16 Ms. I. Tsang, a Property Valuation Analyst with MPAC, gave evidence and presented the following documents:

- MPAC's Report.

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- Profile of Subject Property.
- Current Value Study, with Location Map, Time Adjustment Study, and an Appendix of Properties for her Equity Analysis.
- Photographs and Location Maps of MPAC's Comparable Properties.
- Current Value Study in regard to the Appellant's Comparable Properties.

17 MPAC's report, which was prepared by Ms. Tsang, states that the subject property was assessed by the market modified cost approach using the Automated Cost System ("ACS"), which values major building components "in place".

18 An estimated replacement cost of the building and land improvements is developed, a deduction made for depreciation and the land value added. Where appropriate, a Market Adjustment Factor ("MAF") is applied to the entire property, or economic obsolescence to the buildings.

19 In the case of the subject property, the assessment was determined as follows:

| | |
|--------------------------------------|-----------|
| Total Building: Replacement Cost New | \$ 96,964 |
| Less: Life Table Depreciation | \$ 67,873 |
| Total Building: Net Value | \$ 29,091 |
| Add: Total Land Value | \$506,896 |
| Property: Total Value | \$535,987 |
| Less: Rounding Down Adjustment | 987 |
| Assessment | \$535,000 |

20 Ms. Tsang stated that The Queensway is a major artery, with four to six lanes, close to the Lakefront recreation area; that there has been a lot of development on The Queensway that has affected the value of property in the area; and that corner lots sell for more than other lots.

21 In regard to current value, Ms. Tsang presented, as sales comparables, five similar properties in the vicinity that sold between January 2007 and December 2007. Details of the subject property and of the five comparables are set out in the following table (in which "Q" denotes "The Queensway"):

Table 1

| | 630 Q (<i>Subject</i>) | 630 Roy- al York Road | 1198 Q | 172 Q | 673 Q | 669 Q |
|----------------------------------|--------------------------|-----------------------------|---------|---------|---------|---------|
| Sale Price (\$) | | 550,000 | 820,000 | 550,000 | 386,000 | 399,000 |
| Sale Date | | 2007-02 | 2007-06 | 2007-01 | 2007-12 | 2007-06 |
| Time Adjusted Sale Price (\$) | | 614,469 | 879,501 | 620,609 | 388,155 | 427,952 |
| Lot Area (Sq. Ft.) | 5,000 | 4,640 | 4,213 | 3,920.4 | 2,602 | 2,590 |
| Frontage (Ft.) | 50 | 40 | 45.16 | 33 | 19.67 | 19.54 |

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| | | | | | | |
|-------------------------------|------|---------------------|---------|---------|---------|--------|
| Depth (Ft.) | 100 | 116 | 93.29 | 120 | 132.28 | 132.54 |
| Total Building Area (Sq. Ft.) | 595 | 2,675 | 3,086 | 2,828 | 2,136 | 2,136 |
| Year Built | 1957 | 1948 | 1957 | 1959 | 1968 | 1951 |
| Storeys | 1 | 2 | 2 | 1 | 2 | 2 |
| Corner Lot | Yes | Yes | Yes | No | No | No |
| Adjustment to Subject (%) | | -3.78 | -21.21 | -10.68 | +32.75 | +33.08 |
| Adjusted Sale Price (\$) | | 591,0006 692,000 | 554,000 | 515,000 | 569,000 | |

22 The time adjustments, Ms. Tsang explained, are based on a Sale to Assessment over Time Study of 210 sales of commercial properties in the subject property's neighbourhood and the adjacent neighbourhood from January 2007 to September 2008, which showed an increase of 1.12% per month over the 21 month sale period.

23 Ms. Tsang submitted that these five sales establish a range of value for the subject property from \$515,000 to \$692,000, and the \$535,000 assessment of the subject property is within this range. The average adjusted sale price was \$584,200 and the median was \$569,000.

24 In her opinion, the property at 172 The Queensway is the most similar to the subject property. It is on the same street and the structure is one-storey like the subject property, but larger.

25 Ms. Tsang stated that she inspected the subject property on May 7, 2012 and updated MPAC's measurements. As she was unable to determine the foundation of the building, she treated it as a floating structure, as claimed by Mr. **Baranowski**.

26 Following her inspection and review of MPAC's assessment, she is recommending that the current value assessment be reduced from \$535,000 to \$528,000.

27 In regard to equity, Ms. Tsang presented an equity study of 70 sales of commercial/industrial properties in the vicinity between January 2007 and September 2008, which she said were typical, arm's length transactions between willing buyers and sellers.

28 She stated that these sales have Assessment to Sales Ratios (ASRs) from 0.27 to 1.49, with a median ASR of 0.93, indicating that similar properties in the vicinity have been assessed lower than their current value, and that the subject property should receive an equity adjustment of 7.0%.

29 Cross-examined, Ms. Tsang replied that:

- The current value of the subject property is \$528,000.
- The equity adjustment of 7% should be deducted from whatever the Board determines the current value to be.
- The building at 172 The Queensway had minor renovations in 2003.
- In terms of assessment per square foot of total building area, the assessment of \$535,000 on the subject property

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amounts to \$899, the recommended value of \$528,000 amounts to \$887, and the sale prices of her five comparables amount to \$229, \$285, \$219, \$182 and \$200 respectively, with the average sale price of the five sales being \$223.

- Applying the rate of the \$223 per square foot to the 595 square foot total building area of the subject property, indicates a current value of \$132,685, rounded to \$133,000.
- She adjusted the time-adjusted sale price of her comparable property at 1198 The Queensway to allow for differences from the subject property by multiplying it by the assessment of the subject property and dividing it by the assessment of the comparable property.

Case for the Appellant

30 The Appellant's representative, R. **Baranowski**, presented the following documents:

- Appellant's Statement of Issues, with copies of listings in respect of the Appellant's Comparable Properties and Detailed Property Reports in respect of two of them.
- Photographs of the Appellant's Comparable Properties.

31 Mr. **Baranowski** stated that the appellant takes the position that the assessment of \$535,000 is too high, but does not dispute the depreciated value of \$29,091 assigned by MPAC to the structure, which is not permanent and could be removed at any time.

32 In regard to current value, Mr. **Baranowski** presented the following properties as comparables:

- (a) 128 Thirtieth Street, which is 6,775 square feet of vacant land, listed at \$395,000 (\$58/sq. ft.).
- (b) 899 Kipling Avenue, which is a permanent, renovated structure of 1,250 square feet on a 7,620 square foot lot, listed at \$520,000 (\$68/sq. ft.), and which sold in February 2012 for \$496,500.
- (c) 27 Nashville Avenue, which is 6,500 square feet of vacant land, listed at \$389,000 (\$59/sq. ft.), and which sold in September 2006 for \$267,500.
- (d) 650-650A The Queensway, which is a 4,239 square foot three-storey building on a 2,618 square foot lot, listed at \$599,900, and which sold in January 2007 for \$415,000 (time-adjusted to \$468,120).
- (e) 10 Carson Street, which is 4.1 acres of vacant land, listed at \$585,000.
- (f) 2303 Stanfield Road, which is 7.7 acres of vacant land, listed at \$675,000.

33 Mr. **Baranowski** stated that the average listing price for the first three comparables is \$61 per square foot of lot area and the median is \$59, which applied to the subject property's lot area of 5,000 square feet, give current values of \$305,000 and \$295,000 respectively.

34 He proposed that the current value be \$300,000, being the midpoint of the range from \$295,000 to \$305,000, plus \$29,091, being MPAC's valuation of the structure, for a total of \$329,091, rounded down to \$329,000.

35 As regards equity, Mr. **Baranowski** submitted that based on MPAC's equity study showing that similar properties in the vicinity have an average ASR of 0.93, the Appellant's proposed current value of \$329,000 should be reduced by

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7% to \$305,970, rounded to \$306,000.

36 Cross-examined, Mr. **Baranowski** replied that:

- It was difficult to find properties comparable to the subject property.
- His comparables (a), (b) and (c) were most comparable to the subject property.
- In regard to his comparable at 10 Carson Street, he conceded that there was, in fact, a building on this property, and stated that he did not know if it was a plot of land severed from the 4.1 acres that was listed for sale at \$505,000, that he had no idea how far it is from the subject property, and that he did not know the date of its Multiple Listing Services (MLS®) listing. He withdrew this property as a comparable.
- In regard to his comparable at 128 Thirtieth Street, he conceded that it was not very close to the subject property, but stated that he expanded the vicinity to find this comparable property, which was vacant industrial land that was assessed at \$225,000 and had not sold.
- In regard to his comparable at 899 Kipling Avenue, he conceded that he had not visited the property, but stated that it is an improved industrial property which sold in February 2012 for \$496,500 and that, while he had not time-adjusted the sale price, he believed it would have sold for less on the April 1, 2008 valuation day.
- In regard to his comparable at 650-650A The Queensway, he stated that it was listed for sale at \$599,900 and sold in January 2007 for \$415,000 and re-sold in December for \$570,000; that it is a restaurant and bar with all kinds of extras on a 2,618 square foot lot; and that it is the most comparable to the subject property.

Analysis

Current Value

37 The Board's first task, in accordance with s. 44.(3)(a) of the Act, is to determine the current value of the subject property.

38 The Courts have held that the best evidence of current value is an arm's length sale of the subject property on or close to the valuation date or, if there is no such sale, arm's length sales of similar properties in the vicinity on or close to the valuation date.

39 In this case, there was no sale of the subject property close to the January 1, 2008 valuation date, but MPAC has presented, as sales comparables, five similar properties in the vicinity that sold close to the valuation date.

40 The Board places considerable weight on the five sale comparables presented by MPAC, because:

- They are located fairly close to the subject property.
- They sold in 2007, within one year of the April 1, 2008 valuation date, and had their sale prices adjusted to that date.
- They had their time-adjusted sale prices adjusted for differences from the subject property.

41 The Board places no weight on Mr. **Baranowski's** valuation of the subject property based on the average and me-

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dian listing price per square foot of lot area of his first three comparable properties, because:

- Listing prices are not reliable indicators of current value as they are not "the market talking".
- Direct comparisons on a value per square foot basis are not reliable unless the properties being compared are roughly similar and, in this case, the comparable structures are not roughly similar to the subject property in that none of them are corner lots and one of them has a structure twice the size of the subject structure.

42 The Board also places no weight on Mr. **Baranowski's** valuation of the subject property based on the assessment per square foot of total building area of MPAC's five comparable properties because direct comparisons based on value per square foot of total building are not reliable unless the properties being compared are roughly similar and, in this case, the comparable structures are from three-and-a-half to five times larger than the subject structure, and two of the comparables have lots little more than half the size of the subject lot.

43 The Board places little weight on the sales of the three of the Appellant's comparable properties which sold, because:

- The February 2012 sale of the property at 899 Kipling Avenue is too far removed from the January 1, 2008 valuation date to be reliable evidence of current value as of that date. Moreover, its sale price was not time-adjusted or adjusted for differences from the subject property.
- The sale of the property at 27 Nashville Avenue took place in September 2006, but its sale price has not been time-adjusted or adjusted for differences from the subject property.
- The sale price of the property at 650-650A The Queensway has not been adjusted for differences from the subject property, although its total building area is more than seven times that of the subject property, it has three storeys and the subject property has one, and its lot size is little more than half the size of the subject property's lot size.

44 Ms. Tsang has given evidence that the correct current value of the subject property is \$528,000 and that this valuation is based on her review of the assessment following her inspection of the subject property on May 7, 2012, when she updated MPAC's measurements.

45 As Ms. Tsang's valuation of \$528,000 was based on her recent inspection and as it falls within the range of value indicated by MPAC's five sales comparables, the Board finds it to be the best evidence before it as to the current value of the subject property. Her evidence concedes that the current value of the subject property is not greater than \$528,000 and the sales evidence does not warrant any lesser current value.

46 As almost all the value of the subject property is in the land, the Board would have liked to have had some evidence as to the sale of vacant land in the vicinity, but no such sales were presented by MPAC or the Appellant, apart from the sale of the land at 27 Nashville Avenue in September 2006, which was too far removed from the January 1, 2008 valuation day to be reliable evidence of current value as of that date, when the sale price was not time-adjusted.

47 The Board determines the current value of the subject property to be \$528,000.

Equity

48 MPAC's Equity Study shows that similar properties in the vicinity have a median ASR of 0.93, and applying 0.93 to the current value of \$528,000, so that the subject property has the benefit of the same under-assessment, lowers it to

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\$491,048 rounded down to \$491,000.

Conclusion

49 The Board determines the current value of the subject property to be \$528,000; finds that an adjustment to \$491,000 is required to make the assessment of the subject property equitable with that of similar properties in the vicinity; and reduces the assessment of the subject property from \$535,000 to \$491,000 for the 2010, 2011 and 2012 taxation years.

[FN1](#) Subsection 5 permits the Minister to prescribe a different valuation day. A different day has not been prescribed.

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