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Kommatas-Vastis 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, 2011 and 2012 on premises known municipally as 389 Temagami Crescent

Katerina Kommatas-Vastis, Assessed Person/Appellant and The Municipal Property Assessment Corporation, Region No. 15 and the City of Mississauga, Respondents

Ontario **Assessment Review Board**

V. Stabile Member

Heard: October 19, 2011
Judgment: May 3, 2012
Docket: WR 113169

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

J. Fantetti, R. Leroux, 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 — Basis for reduction — Miscellaneous

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

s. 1(1) "current value" — referred to

s. 19(1) — referred to

s. 40(26) — referred to

s. 44(3)(a) — referred to

***V. Stabile Member*:**

1 These appeals came before the Assessment Review Board on October 19, 2011 in the City of Mississauga.

Issue

2 The subject property, 389 Temagami Crescent, is a single family detached two-storey residential home, built in 2004. The property consists of a total area of 4,978 square feet of living area on the main and second floor and a finished basement area of 2,322 square feet. It also has an attached two car garage. The home is situated on a lot with an effective area of 13,584.37 square feet. The property has been assessed at $2,262,000.

3 The Municipal Property Assessment Corporation (MPAC) valued the property using the direct sales comparison method and to support the assessment submitted the sale of four comparable properties considered by MPAC to be similar to and in the vicinity of the subject property. Based on the sales of these properties, time adjusted to the valuation day, January 1, 2008, and also adjusted for differences between each comparable and the subject property, MPAC has established a range of value for the subject property between $2,162,000 and $3,208,000. Because the assessment falls within this range of values, MPAC submits that the assessment as returned is correctly assessed as returned at $2,262,000.

4 Relying on a median Assessment to Sales Ratio (ASR) of 1.00 from a study of 66 properties, MPAC takes the position that similar properties in the vicinity have been assessed at their current value, thus no equity adjustment is required.

5 Mr. **Baranowski**, representing the appellant proposes five different comparable properties and a determination of current value based on a value per square foot.

6 Unique to the subject property is that MPAC's assessment includes two premiums, as follows:

a) Ravine (Type 1)	5 per cent
b) Waterfront (River)	26 per cent

7 Mr. **Baranowski** proposes to remove both premiums. In so doing, he proposes an assessment of approximately $1,675,000. Further, he states that conducting a current value analysis based on a value per square foot of building size or an equity analysis would yield similar results.

8 Additionally, Mr. **Baranowski** takes issue with time adjusted figures proposed by MPAC, arguing that there is no such provision in the *Assessment Act* (Act) and urges the Assessment Review Board (Board) to reject methodologies such as Sales Ratio Trend Analysis (SRTA) or Assessment to Sale Ratio (ASR), endorsed by the International Association of Assessing Officers (IAAO), since it is an American institution and accordingly not reliable in Canada.

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9 The issues to be determined, therefore, are:

1. What is the current value of the subject property as of the legislated valuation day, January 1, 2008?

2. Is the current value equitable when compared with the assessments of similar land in the vicinity?

3. Is the use of time adjustments appropriate in determining the accuracy of assessments in Ontario?

4. Is reliance upon IAAO standards appropriate in determining the accuracy of assessments in Ontario and is it appropriate in these circumstances?

Decision

10 The Board finds:

1. That the current value of the subject property is $1,673,000.

2. The current value, as determined above, is equitable; accordingly no further adjustments are required to achieve equity.

3. That the use of time adjustments may be appropriate in determining the accuracy of assessments in Ontario.

4. That reliance upon IAAO standards may be appropriate in determining the accuracy of assessments in Ontario and is appropriate in these circumstances.

11 The assessment is reduced from $2,262,000 to $1,673,000 for all three taxation years.

Evidence

12 This is one of a number of appeals on the Board's docket for the day. In an effort to save time, in this hearing, the parties have agreed that for all appeals:

1. MPAC has the onus of establishing that the proposed current value for the subject property is correct.

2. The Board is not adjudicating on the model used by MPAC at arriving at its proposed current value. Rather, the Board tests the performance of the model.

3. The Board relies on the evidence presented by the parties.

4. Specific details of the model therefore, although interesting, do not assist the Board in its considerations.

13 The Board prefers that the parties present evidence in support of their position, rather than demonstrating their advocacy skills by sustained cross-examinations which often lead to nothing more than increased animosity and lack of civility while taking up valuable time and resources.

14 Mr. **Baranowski** has a series of questions of the assessor which he generally poses on cross-examinations of assessors for individual appeals. They were posed during the hearing of the first set of appeals on this docket. Given the nature of the questions, the corresponding responses would be the same or similar on every appeal. Thus the Board gave Mr. **Baranowski** wide latitude during his first cross-examination. For subsequent cross-examinations, however, his scope of questions shall be narrowed, on the understanding that the answers given will apply to all appeals heard during the

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day.

15 The parties consent to this approach, thus the following evidence is deemed to have been elicited from the assessor on cross-examination:

1. The narrative report presented by the assessor, although presented in the first person, is based on an MPAC recommended template and customized for each property under appeal.

2. In establishing current value for residential and condominium properties, MPAC applies a sales comparison approach, subject to there being an adequate number of sales.

3. The sales comparison approach is recommended by various institutions, including the International Association of Assessing Officers (IAAO) from the USA and the Appraisal Institute of Canada (AIC). As well, it is recognized in a publication of the Appraisal Foundation, again from the USA, known as the Uniform Standards of Professional Officers (USPAP).

4. To apply the sales comparison approach to value in mass appraisal, MPAC utilizes a statistical tool known as *Multiple Regression Analysis* (MRA).

5. MRA is a multi-step process of:

a) Selecting which property characteristics influence value for a particular area, typically: location, building area, quality, age of building and lot size (frontage and depth).

b) Developing a specific market area model, using the characteristics noted above, to value properties within a specific market area.

6. The model is tested as to its performance by using a Sales Ratio Study by dividing the current value by its sale price, resulting in an assessment to sales ratio (ASR), looking for a target of 1.0.

7. MPAC proposes, based upon IAAO standards, that a 10 per cent margin of error, 0.5 per cent below to 0.5 per cent above the target of 1.0 is an acceptable margin of error.

8. Where the market is in a state of inflation or deflation, the sale price may be adjusted for time, to more accurately reflect market conditions,

9. There is no provision in the Act for time adjustments.

10. The assessor has complete discretion as to which properties are included or excluded in generating analysis or studies presented for purposes of current value or equity.

11. The assessor does not identify those properties which have been excluded, known as outliers, from the studies.

12. The assessor has complete discretion as to which properties are presented as comparable sales.

13. For purposes of a current value analysis the properties should be identical or substantially identical. When this is not the case, MPAC adjusts for the differences between the sold property and the subject property.

14. For purposes of equity analysis, the properties need to be of the same general nature or character, i.e. all residen-

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tial properties in the vicinity.

MPAC's evidence

16 Mr. Fantetti, appearing as advocate for MPAC, called Roger Leroux to testify on how the current value assessment of $2,262,000 was determined. Mr. Leroux is a Valuation Review Specialist for residential properties with MPAC, where he has been employed since 1986, following his graduation from St. Lawrence College with a Diploma in Assessment Administration.

17 Mr. Leroux testified that the subject property was valued using the direct comparison approach.

18 Mr. Leroux has inspected the subject property, as well as the surrounding area, including the rear of the subject property. Photographs are presented, showing the subject property as well as the property at the rear, along the river. He says, quite candidly, that most of the properties on this street, along with the subject property, are unique, thus making it difficult to find comparable properties.

19 Notwithstanding the difficulty in finding comparable properties, in Exhibit 1, he submits a current value study of four properties, all in the homogeneous neighbourhood as the subject property, which sold on the open market at prices ranging from $2,000,000 and $3,208,000, during the period from July 2004 to October 2007.

20 The sale prices have been time adjusted by using a study of 236 sales of residential properties in the same neighbourhood as the subject property.

21 Prices are adjusted to account for differences between the sold property and the subject property.

22 Prices are also time adjusted to January 1, 2008. Time adjustments are necessary to account for changes in price levels between the actual sale date of the comparable properties and the valuation day, January 1, 2008. Mr. Leroux presents an MPAC analysis of price changes over time based upon 236 sales, supported in Exhibit 1.

23 Based upon the open market sales, time adjusted, Mr. Leroux submits a range of value for the subject property between $2,162,000 and $3,208,000 and concludes that the assessment $2,262,000, which falls within this range, reflects current value.

24 The sale of $2,000,000 in July 2004 was the subject property.

25 Mr. Leroux maintains that the premiums added are reasonable since, in his view, the subject property enjoys the benefit of being on a type 1 ravine (5 per cent) and abuts a river front watercourse (26 per cent).

26 With respect to the issue of equity, the assessor presents two studies, also in Exhibit 1. The first study is of 116 sales of residential properties of the same general nature or character in the vicinity between January 2007 and December 2008.

27 The purpose of this study is to determine if properties in the vicinity have been assessed at their current values. To make this determination, the assessor compared the assessed values as of January 1, 2008 of the sold properties to their sale prices (or time adjusted sale prices). This study is commonly referred to as ASR study.

28 The study compares the assessed values as returned to time adjusted sale prices and results in ASRs ranging from 0.74 to 1.26, with a median ASR of 0.99.

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29 The second study is of 66 sales, which produced ASRs ranging from 0.76 to 1.21 with a median ASR of 1.0.

30 Relying on these studies, Mr. Leroux states that equity has been achieved in that similar properties in the vicinity have been assessed at their current value. Thus no adjustment is required to the current value assessment of the subject property.

Appellant's evidence

31 As a primary argument, Mr. **Baranowski** submits that the total premiums of 31 per cent added to the subject property are simply not factually supported. The photographic evidence, Exhibit 2, was reviewed. He submits that it is clear there from that the subject property is on a court. The home is generally oriented in a north south direction, with the front facing south. To the west is an un-opened road allowance which is in fact used by the region to access a pumping station located north-west of the subject property. To the east, is another residential home.

32 To the north, at the rear of the subject property is a vacant lot owned by the City of Mississauga. It was evidently transferred to the city as part of the original subdivision agreement. The lot is registered as "vacant residential land not on water". The parties agree that it is vacant lot, zoned residential and that it abuts the river front. They also agree that the description "not on water" is not correct, however since the city is tax exempt nothing turns on the error.

33 Mr. **Baranowski** submits, therefore, that the subject property is not on a ravine and does not abut along the riverfront and concludes that if the premiums are deducted from the assessed value proposed by MPAC, it would result in a correct current value of approximately $1,675,000.

34 Notwithstanding his primary argument in respect to the premiums, Mr. **Baranowski** agrees that for residential homes the direct sales approach is a good method of determining current value. He proposes five comparable properties in the vicinity which, he submits, offer many more similar characteristics to the subject property than those proposed by MPAC. The proposed comparable properties were sold in March 2007, May 2007, June 2007, November 2007 and January 2008.

35 Mr. **Baranowski** proposes to determine current value for the subject property by using the value per square foot of building derived from the sales of the comparable properties.

36 Based on this approach, Mr. **Baranowski** testifies that this results in an average of $337 per square foot, thus resulting in a current value of the subject property of $1,677,586, since the subject property has a total building size of 4,978 square feet.

37 With respect to the issue of equity, Mr. **Baranowski** suggests that the Board use the value per square foot of the assessed value of the comparable properties proposed by him. This would result in an average of $336.20 per square foot, thus resulting in the amount of $1,673,603.60.

38 As a further alternative, Mr. **Baranowski** suggests the use of the average ASR of 0.876 calculated from the comparable properties proposed by MPAC, removing from the list the subject property.

39 On this basis, Mr. **Baranowski** submits that there ought to be an adjustment to his proposed current value by approximately 14 per cent.

Analysis

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Legislation

40 The initial task for the Board is to determine the current value of the subject property as required by subsection 44.(3)(a) of the Act *...the Board shall...determine the current value of the land...*Subsection 19.(1) of the Act states that *...The assessment of land shall be based on its current value...* and in section 1 of the Act current value is defined 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...*

Current value

41 The best evidence of current value is an arm's length and market tested sale of the subject property on or close to the valuation day, January 1, 2008.

42 There was no sale of the subject property on or close to January 1, 2008. In the absence of a valid sale of the subject property, the next best measure of current value is the 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 gauge of the accuracy for the assessed value of the subject property as well as the comparable properties.

Premiums added

43 The Board finds that the subject property is not adjacent to a ravine because the photographic evidence clearly shows that to the west of the subject property the unopened road allowance is used by the region to control access to its pumping station.

44 The entrance is controlled by wrought iron gates. The road surface appears flat and paved. Accordingly, the Board rejects the premium of five per cent applied by MPAC.

45 The Board also finds that the subject property is not a waterfront property because the photographic evidence clearly shows that there is property (owned by the City) between the subject property and the water. Accordingly, the Board rejects the premium of 26 per cent applied by MPAC.

46 At the rear of the subject property is a sloping vacant lot with mature trees. Beyond is the riverfront. The grass on the vacant lot appears maintained. On the water appears a small dock with some chairs.

47 The assessor surmises that the dock and furniture belong to the owner of the subject property. As well, he believes that the grass is also maintained by the owner of the subject property. There is no direct evidence to support either assumption.

48 The Board finds that there is no ravine adjacent to the subject property. Further, the Board finds that no part of the subject property abuts the riverfront.

49 The mere maintenance of the city owned lands, even if it is maintained by the owner of the subject property, does not attract legal rights. Access is subject to being terminated by the city at will.

50 Accordingly, the Board finds that the premiums added on are not justified and will be deducted.

51 Notwithstanding the findings in respect to ravine and abutting on riverfront, the Board recognizes that the subject property enjoys an uninterrupted view of the river and that a reasonable premium is five per cent.

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52 In the result therefore, 26 per cent ($588,120) shall be deducted thereby resulting in a current value of $1,673,880 rounded to $1,673,000.

Comparable properties

53 To satisfy the requirements of the Act, the Board will now examine the comparable properties presented by the parties.

54 All of the properties proposed by the assessor, Exhibit 1, have been sold on the open market in arm's length transactions. They have all been time adjusted

55 One of the comparable properties is the subject property. It was sold in July 2004. 1151 Mississauga Road was sold in September 2005; 429 Temagami Crescent was sold in November 2006. The Board rejects all three of these properties as the sales are too far removed from the valuation day, January 1, 2008.

56 The last property, 1179 Mississauga Road was sold in October 2007. This property has a site area almost three times greater than the subject property. The total building area is 740 square feet larger. The quality class 8.0 compared to the subject property being 8.5. Significantly, this property runs right to the riverfront. These are significant differences such as to make it dissimilar from the subject property. As a result, the Board rejects this property as well.

57 It is the Board's view therefore, that the comparable properties proposed by the assessor are not good indicators of the current values of properties in the area to assist the Board in determining current value for the subject property.

58 The appellant proposed five comparable properties in the vicinity, Exhibit 6, and proposes to use the value per square foot of the recorded sale of the comparable properties to determine the current value for the subject property.

59 Four of the proposed sales, #s 1, 2, 3 and 5, have not been time adjusted.

60 The Board prefers to rely on the actual sales, time adjusted, of the comparable properties and the common base of the total building area to determine the current value of the subject property. The Act directs that the assessment be reflective of current value and be equitable. The use of time adjustments and other IAAO recommended methodology is in pursuance of deriving a current value. As such, this methodology has relevance in Ontario and likely other jurisdictions relying upon a current value system of assessment.

61 Under the circumstances, the Board rejects the use of those four comparable properties proposed by the appellant.

62 The last property proposed by the appellant is 2190 Mississauga Road, #4. It sold in January, 2008 and has the same quality class as the subject property. It is however substantially larger, built ten (10) years earlier and appears to have been renovated.

63 Regardless of the similarities, the Board prefers a larger sample of comparable properties unless circumstances dictate otherwise. No such circumstances are found in this appeal, thus the Board rejects the use of a single comparable property to determine current value.

64 Without reliable and probative evidence of current comparable sales, the Board can only remove the premiums (but for five per cent) from the assessment as returned because MPAC's reliance on these premiums is factually incorrect.

65 Accordingly, the Board finds that the correct current value for the subject property is $1,673,000 rounded, as

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earlier noted.

Equity

66 Having established the current value of the subject property, the final issue for the Board to determine is whether an adjustment should be made to the current value of the subject property in order to make it equitable to the assessment of similar properties in the vicinity.

67 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.

68 Mr. **Baranowski** proposes an adjustment based the average ASR of the comparable properties. In the alternative, he urges the Board to utilize the average assessment per square foot of the comparable properties proposed by him.

69 The Board rejects the use of current value assessment per square foot as a valid test of equity between properties presented in this appeal and as proposed by Mr. **Baranowski** as this indicator does not take into account the relationship between a property's current value and its assessed value.

70 The Board has two ASR calculations for determining whether the current value for the subject property as determined above, is equitable with the assessments of similar properties in the vicinity.

71 The first is the average ASR of the four comparable properties proposed by the assessor. The average ASR for the four comparable properties is 0.86. This indicates that properties in the vicinity are being under assessed by an average of 14 per cent.

72 The second calculation is the assessor's analysis of 66 comparable properties sales shows that the ASR for these properties has a range of 0.76 to 1.21, with a median of 1.0.

73 The Board prefers a larger sample over a smaller sample and the use of a median ASR is clearly supported by the IAAO. Implicit in the Board's finding of the current value is that the Board accepts MPAC's methodology in arriving at the base current value of the subject property. The Board has rejected the added premiums based upon the facts.

74 The Board therefore finds that no further adjustment is required for equity.

Conclusion

75 The Board concludes that the subject property's correct assessment for the 2009, 2010 and 2011 taxation years is $1,673,000.

Deemed appeal for 2012

76 An appeal for the 2011 taxation year is presently before the Board. Subsection 40.(26) provides that the appellant is deemed to have made the same appeal for the subsequent taxation year if the appeal is not finally disposed of before March 31 of the subsequent taxation year. The Board has not disposed of the 2011 appeal before March 31, 2012. For that reason, this decision also applies to the 2012 taxation year.

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