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Cappuccitti 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 701 St. Nicholas Court

Michael Cappuccitti Olga Gutierrez-Roca, Assessed Persons/Appellant and The Municipal Property Assessment Corporation, Region No.15 and the City of Mississauga, Respondents

Ontario **Assessment Review Board**

I. Oliveira Member

Heard: June 2, 2011
Judgment: August 19, 2011
Docket: WR 108315

Counsel: R. **Baranowski** (Agent), for Assessed Persons / Appellant

P. Alves, J. Fantetti, for Municipal Property Assessment Corporation

No one for Municipality

Subject: Public; Tax — Miscellaneous

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

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

s. 40(17) — referred to

s. 40(19) — referred to

s. 40(26)(b) — referred to

s. 44(3) — referred to

s. 44(3)(a) — referred to

s. 44(3)(b) — referred to

***I. Oliveira Member*:**

1 These appeals came before the Assessment Review Board on June 2, 2011, in the City of Mississauga.

Issue

2 The issue before the Board for determination is whether the subject property's assessment for the 2009, 2010 and 2011 taxation years is at current value and whether the assessment is equitable with the assessment of similar lands in the vicinity.

3 The subject's assessment is established using the direct sales comparison approach to value. The Municipal Property Assessment Corporation (MPAC) takes the position that the assessment of $1,089,000 not only reflects current value but is also fair and equitable.

4 Mr. **Baranowski**, representative for the appellant, is of the opinion that the assessment as returned on the roll is not at current value. He submits that an assessment increase of 21% between valuation dates is not reflective of the actual market trends for the area. He proposes that MPAC's rate of change (percentage increase) over time should be used to establish current value, or as an alternative, one of MPAC's sold properties with an adjustment for the lot size could be used in direct comparison; on the equity analysis, Mr. **Baranowski** proposes that the subject's assessment should be set in accordance with the assessment of a neighbouring property on a per square foot basis.

Decision

5 The Board finds the current value of the subject property to be $1,055,000 for the 2009, 2010 and 2011 taxation years.

6 The Board finds that based on the evidence provided in the equity studies presented by MPAC and the appellant, the assessed value of $1,055,000 requires no further adjustment to make the assessment equitable with the assessments of similar lands in the vicinity.

7 The Board reduces the subject property's assessment from $1,089,000 to $1,055,000 for the 2009, 2010 and 2011 taxation years.

Reasons for Decision

The Subject Property

8 The subject property, built in 2004, is a detached single family dwelling, municipally known as 701 St. Nicholas Court, in the City of Mississauga. The two-storey structure has a total building area of 3,932 square feet (2,188 square feet on the first floor and 1,744 square feet on the second floor) and an unfinished basement area of 2,188 square feet. There is an attached two car garage of 507 square feet. The effective site area is 8,000 square feet or an effective frontage and depth of 64 × 125 feet. The last registered sale of the subject property occurred in September of 2004 for the amount of $840,443.

Relevant Legislation

9 For the 2009 taxation year, in determining the value at which land shall be assessed, the Board must have regard to the following provisions of the *Assessment Act (Act):*

10 Subsection 19.(1) of the *Act* states:

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

11 Section 1 of the *Act* states:

> **"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.

12 Subsection 19.2(1)2 of the *Act* 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 Subsection 44.(3) *Act* 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 Subsection 40.(17) *Act* 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 Subsection 40.(19) *Act* states:

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

16 Subsection 40.(26)(b) *Act* states:

> **40.(26) Deemed appeals, 2009 and subsequent years.** — For 2009 and subsequent taxation years, an appellant shall be deemed to have brought the same appeal in respect of a property,
>
> > (b) in relation to the assessment, including assessments under sections 32, 33 and 34, for a subsequent taxation year to which the same general reassessment applies, if the appeal is not finally disposed of before March 31 of the subsequent taxation year or, if an assessment has been made under section 32, 33 or 34, before the 90th day after the notice of assessment was mailed.

Determination of Current Value

17 Subsection 44.(3)(a) of the *Act* requires the Board to determine the current value of the property.

MPAC's Evidence and Arguments

18 Mr. Alves began by introducing Mr. Leroux, a senior assessor and valuation review specialist officer with MPAC, as an experienced witness. Mr. Leroux would be presenting evidence with respect to current value and equity analysis.

19 Mr. Leroux presented a brief description of the subject property, its location and an explanation of how the subject's assessment of $1,089,000 was arrived at.

20 Mr. Leroux, with respect to the current value submits, that the best way to determine the subject property's 2008 current value is to review the selling prices of other properties that are in the same market as the subject property. He adds that most of these properties will not be identical to the subject property and, therefore, their selling prices will have to be adjusted accordingly.

21 In addition to the physical differences, Mr. Leroux stated that sales have to be adjusted for differences in market conditions between the sale date and the valuation date. Sales were reviewed for the period from November 2006 to December 2008.

> My analysis indicates that house prices increased approximately 17.4% over this time frame in the subject property's neighbourhood.

22 MPAC introduced four sales of selected properties all of which are in the same homogeneous neighbourhood as the subject, known as A83 (Watercolours/Mineola neighbourhood). These suggested comparable properties show as being sold between November 2006 and August 2008 with sales prices from $1,005,000 for the lowest to $1,400,000 for the highest. Time adjusted sales show a range between $1,046,342 and $1,443,897. The "adjustments to the subject" are from 1% (sale #4, 1294 Infinity Street) to a -20% (sale #2, 627 Cranleigh Court).

23 It is MPAC's position that a range of value has been established for the subject property between

$1,061,000 and $1,151,000. The subject property has been valued at $1,089,000. Mr. Leroux concluded that the subject property's value is correct because it is within the range of adjusted sale prices.

24 Mr. Leroux also introduced the Equity Analysis, Appendix C, which concludes that based on 122 sales within the vicinity, the median assessment to sales ratio (ASR) is .98. Mr. Leroux further submitted that the median ASR should fall between .95 and 1.05 and, therefore, the median of .98 shows that no further adjustment is required to be at current value.

25 Mr. Leroux further introduced Appendix D, which shows a median ASR of 1.00 based on the sale of 71 properties in the same vicinity. These sales occurred between November 2006 and December 2008. In this study, the ASR's range from .77 to 1.21. Mr. Leroux submitted that the results of the Equity Analysis show that the MPAC valuation model is doing a very good job of determining current value.

26 Mr, Leroux, in closing, further submitted that his four sold properties (Appendix A) are very good indicators of the subject's value in that they are all located within the same homogeneous neighbourhood and the differences between them and the subject property are + or — 10% in total building areas.

27 Therefore, MPAC submitted that the subject assessment of $1,089,000 as of January 1, 2008, based on current value, is fair and equitable and requires no further adjustment.

Appellant's Evidence and Arguments

28 Mr. **Baranowski** began his evidence by stating that through Minutes of Settlement for the 2007 taxation year (2005 valuation date), the subject property's assessment was reduced from $926,000 to $899,000, a $27,000 reduction. The same result applied to the 2008 taxation year. Mr. **Baranowski**, in this case, submits the Ombudsman recommendations #15 and #17 (Exhibit #3), suggest that assessment reductions should be carried over to future years. Therefore, he requests the $27,000 previous reduction be applied to the 2009 and subsequent taxation years.

29 Mr. **Baranowski** submitted that there are two main issues which support his argument that the subject's assessment is not at current value and it should be reduced to $1,018,000. The first is that the subject's assessment increase between January 1, 2005 and January 1, 2008 is more than real estate values for the same period. He states that "the increase in assessment by 21% is against any logic and does not correlate to the actual real estate trend in the area for the residential market." He submitted that based on MPAC's rate of value change (percentages) per month should show an increase of approximately $40,000 per year (times three years) and not $63,000 per year. The second issue is that, "based on the analysis of assessments of comparable properties, the average calculated rate of $259 per square foot of living area, should be taken under consideration ($259/sq. ft. × 3,932 sq. ft. = $1,018,000)."

30 Therefore, Mr. **Baranowski** proposes a market value of $1,018,000 based on the above indicated reasons.

The Board's Deliberations and Conclusions

(a) Determination of Current Value — subsection 44.(3)(a)

31 Subsection 19.(1) provides that current value is the basis for assessed value.

32 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 date of January 1, 2008. If no transaction has taken place, the Board looks to sales of comparable properties in the vicinity to determine if the sales evidence suggests that the current value requires correction.

33 MPAC presented a current value study with appendix "A." The four suggested comparable properties sold in 2006, 2007 and 2008. These sales are time adjusted to January 1, 2008. MPAC's position is that the subject property's assessment, based on the direct sales comparison approach to value, is at current value.

34 Mr. **Baranowski** presented no sales evidence. In cross-examination, Mr. **Baranowski** argued that the subject's assessment, in determining current value, should be set in accordance with the increase in value between the valuation days of 2005 and 2008. MPAC analysis shows that house prices in the subject's area increased approximately 17.4% (0.70% per month) between November 2006 and December 2008. Mr. **Baranowski** argued that if one understands MPAC's trend line as shown in the chart (page 21 of Exhibit #1), the average rate of change over the sales period equates to a monthly increase of .52%. Based on this percentage increase, Mr. **Baranowski** proposed the subject's assessment should be set at $1,018,000.

35 Mr. **Baranowski** argued that MPAC's sold properties, with the exception of one, require large value adjustments for the lot sizes in that sale #1 has a 27% larger lot, sale #2, 20% and sale #3, 11%. As an alternative, Mr. **Baranowski** proposed a direct comparison between the subject property and sale #4, 1294 Infinity Street, a property which requires 1% adjustment as per MPAC's Appendix "A". He submitted that if one discounts the sale price by approximately $30,000 for the lot size difference, the sale price per square foot is $270, which if applied to the subject total building area would result in a revised assessment of $1,064,000.

36 With respect to MPAC's sold properties and the appellant's argument of adjusted values, the Board finds that it encountered some difficulty in understanding MPAC's adjustments to the time adjusted sales in that it shows positive and negative percentage adjustments but there is no account of the allocated values in actual dollars. In this regard, the Board concurs with Mr. **Baranowski** that without proper explanation of the values attributed to the differences, said percentages could be "influenced" either way.

37 With respect to Mr. **Baranowski's** alternative in using sale #4 in direct comparison to the subject property, the Board finds that the use of one property in order to determine current value may not be the best approach.

38 Evidence shows that the subject property suffered no physical change between valuation dates. MPAC's evidence shows that "house prices increased approximately 17.4% between November 2006 and December 2008 in the subject property's neighbourhood". In this respect, the Board finds that there is no evidence showing that the "house price increase" between January of 2005 and January of 2008 would have been much different.

39 As such, based on the assumption that the subject property increased in value between the two valuation dates by approximately 17.4%, the Board adjusts the subject's assessment by increasing the 2005 assessment of $899,000 by the said 17.4% value increase.

40 Therefore, based on this evidence, the Board sets the current value of the subject property at $1,055,000.

(b) Is the Assessment of the Property Equitable with the Assessment of Similar Lands in the Vicinity?

41 Subsection 44.(3)(b) of the *Act* requires the Board to determine if the assessment of a property at current value is equitable with the assessments of similar lands in the vicinity and to lower the assessment below current value if required to achieve equity.

42 As part of the equity analysis, MPAC presented equity evidence with Appendix "C" showing time adjusted sales of 122 properties, which sold between November 2006 and December 2008 in the homogeneous neighbourhoods known as A83, A82 and A79. The median time adjusted ASR is .98. There is also Appendix "D" (a second Equity Analysis study), which shows a median ASR of 1.00 using 71 sales.

43 Mr. **Baranowski** raised the issue of the "outliers" and stated that if they were included in these studies, they most likely would distort the median ASR. Mr. Leroux in his reply was not able to identify those properties but believes the ASR's results would be identical. Mr. **Baranowski** further questioned the discrepancy in the accuracy of MPAC's model in attributing equitable assessments when the high's and low's of the ASR's in both equity studies show such a disparity.

44 Mr. **Baranowski** in support of his equity argument submitted that the subject property should be compared to the assessment of 837 Canyon Street, which is assessed at $978,000 or at $259 per square foot. Mr. Baranwonski submitted this property is similar to the subject in most material aspects and if the assessed value per square foot is applied to the subject's building area the assessment of the subject property would be calculated at $1,018,000.

45 In this regard, the Board is somewhat reluctant to draw equity analysis from a single property either in direct comparison to its assessment or by using an ASR from a single property in order to determine equity. Case law presented by MPAC addresses this issue.

46 The Board did not find MPAC's equity studies particularly helpful in that there is some disparity between the lowest ASR of .74 to a high of 1.26 in the first study (122 sales) in the locational neighbourhood A83, A82 and A79 and the ASR range of .77 to 1.21 in Appendix "D".

47 If the intent of the equity test is to ensure that the residential tax burden is distributed fairly, then the discrepancy between the low and high end of the ASR's contradicts that notion, it shows that some ratepayers are paying too little while others are paying too much.

48 Based on all the evidence presented in support of equity, there is no basis for the Board to make any further adjustment to current value.

Conclusion

49 Therefore, based on the best available evidence provided to the Board, the assessment of the subject property is reduced from $1,089,000 to $1,055,000 for the 2009, 2010 and 2011 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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