Ontario

Assessment Review Board
Commission de révision de l'évaluation foncière

File No: WR 113994

Region Number: 05
Municipality: Township of Frontenac Islands
Roll Number: 1001-010-010-02900-0000
Hearing Numbers: 318664, 460362, 518637
Appeal Numbers: 2072003, 2332078 and 2676218

In the matter of Section 40 of the *Assessment Act*, R.S.O. 1990, c. A.31, as amended, and in the matter of appeals with respect to taxation years 2009, 2010 and 2011 on premises known municipally 222 Highway 96.

BETWEEN: Edward George Kenney
Gail Karen Kenney — Assessed Persons/ Appellants

- and -

The Municipal Property Assessment Corporation,
Region No. 05 and the Township of Frontenac Islands

Respondents

APPEARING:

G. Kenney E. Kenney	- the Assessed Persons/Appellants
S. Douglas (Schulze Douglas)	- Counsel for the Municipal Property Assessment Corporation
T. Fleming	- Counsel for the Municipality

DECISION OF THE ASSESSMENT REVIEW BOARD delivered by:

J. Laflamme and S.F. Mather

These appeals came before the Assessment Review Board on May 4 and May 5, 2011 on Wolfe Island, August 17 and August 18 2011 in the City of Kingston and October 4, and October 5, 2011 on Wolfe Island.

INTRODUCTION

The assessed persons/appellants' (the Kenneys) home is located on a 0.72 acre waterfront lot on the west end of Wolfe Island in the Township of Frontenac Islands. The Kenneys built their 1,440 square foot single-family bungalow in 1965 and have resided there since 1966. For the taxation years under appeal, the water frontage for the property is 237 feet. A 396 square foot barn, and a 775 square foot detached garage are also situated on the property.

The Municipal Property Assessment Corporation (MPAC) assessed the Kenney property at $357,000 for the 2009, 2010 and 2011 taxation years using a direct sales comparison approach to value. MPAC takes the position that $357,000 is the current value of the property for the taxation years under appeal, and that a reduction to the assessment is not required to make the assessment equitable with the assessment of similar lands in the vicinity.

The Kenneys argue that the assessment of their property at $357,000 does not take into account the effect on the current value of the Wolfe Island Wind Project (wind farm) located on the island. The wind farm is presently owned and operated by Trans Alta Energy Corporation. The first certificate of approval for the wind farm was issued by the Ministry of the Environment (MOE) on June 27, 2008. The certificate was subsequently amended on July 18, 2008 and further amended on September 8, 2008 and October 23, 2008. The wind farm went into commercial operation on June 26, 2009. This wind farm is the second largest wind farm in Canada, second to the Melancthon Wind Farm.

The Kenneys' position is that the construction and operation of the wind turbines has reduced the current value of their property to $283,000. They submit that their enjoyment of their property has been reduced and that they have suffered health consequences since the wind farm went into operation. In their view, the location of

their property “has been changed from a rural setting to being located next door to an industrial wind plant” (Page 1, Exhibit 14).

The Kenneys state that the numerous media reports, articles, books, symposiums, and testimonials supporting the assertion that negative health effects result from living in close proximity to wind turbines have eroded their confidence that their home is a healthy and safe place to live. They argue that the wind farm is a nuisance and annoyance that has resulted in a loss of enjoyment of their property and lowered its value.

The Kenneys have been concerned about the impact of the wind plant on the value of their home and the quality of life on the island since 2006. Mrs. Kenney is “still considered the Chair” of the group known as Wolfe Island Residents for the Environment (WIRE). WIRE is a group of citizens concerned with minimizing the impact that the wind farm will have on the community.

There are three wind turbines within 1 kilometre (km) of the Kenneys’ property, 14 within 2 km, and 27 within 3 km of the Kenneys’ home.

The Kenneys list the following factors as impacting on their property and way of life:

- Industrial noise;
- Industrial lighting;
- Industrial view shed;
- Health related concerns;
- Nuisance and Annoyance;
- Industrial traffic;
- Degradation of natural environment.

They submit that their assessment has increased 79% between the 2008 and 2011 taxation years and yet in their view, the only changes to the property were the “many negative industrial impacts of the wind plant”.

MPAC disagrees with the Kenneys, arguing that there is no evidence to show that construction and operation of the wind turbines has reduced the current value of the Kenneys’ property.

The Township of Frontenac Islands (Township) takes the position that there is no evidence that the construction and operation of the wind turbines has reduced the saleability or current values of properties on Wolfe Island.

The construction and operation of the wind farm on Wolfe Island (Island) is a very contentious issue for many of the residents of the Island and the neighbouring islands. The construction and operation of wind farms is also a contentious issue in other areas of the Province where wind farms are located or have been proposed.

The hearing lasted six days and the degree of public interest in the outcome of the hearing was evident from the attendance of media representatives and other observers. The Kenneys represented themselves at the hearing while both MPAC and the Township were represented by legal counsel.

At the outset of the hearing, the Board made it clear to the parties that the Assessment Review Board (Board) is not the proper forum to deal with complaints about the wind farm industry. The Board asked the parties to focus their evidence on the determinations that the Board has the jurisdiction to make. The Board must determine the current value of the property as of January 1, 2008 and determine whether an assessment at current value is equitable with the assessments of similar lands in the vicinity.

DECISION

The Board finds the current value of the property to be $357,000 for the 2009, 2010 and 2011 taxation years.

The Board finds that there is no evidence to require the Board to reduce the assessment of the property below its current value to make it equitable with the assessments of similar lands in the vicinity.

The Board confirms the assessment for the 2009, 2010 and 2011 taxation years at $357,000.

REASONS FOR DECISION

The law

In determining if the assessment of a property requires a correction for a taxation year under appeal, the Board must follow the directions in the *Assessment Act*, R.S.O. 1990, c. A.31 as amended (Act).

Subsection 14.(1) of the Act requires MPAC to prepare an assessment roll for each taxation year which includes the current value of each property.

Subsection 14.(1) of the Act states:

> ***14.****(1)* ***Assessment Roll Contents. –*** *The assessment corporation shall prepare an assessment roll for each municipality, for each locality and for non-municipal territory and the assessment roll shall contain the following information as well as the information required under subsections (1.1) and (1.2):*

The Act requires the Board for each of the taxation years under appeal to determine the current value of the land and to adjust the assessment to make it equitable with the assessment of similar lands in the vicinity if such an adjustment would result in a reduction in the assessment of the land.

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.*

Section 1 of the Act defines “current value” as:

> ***“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.*

Subsection 19.2(1)2 provides:

> ***19.2(1) Valuation days. –*** *Subject to subsection (5), 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.*

Subsection 36.(1) provides:

> ***36. (1) Assessment. –*** *Except as provided in section 32, 33 or 34, assessments of land under this Act shall be made annually at any time between January 1 and the second Tuesday following December 1.*

Subsection 40.(19) provides:

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

Subsection 40.(22) provides:

> ***40.(22) Power to determine law and fact. –*** *The Assessment Review Board, as to all matters within its jurisdiction under this section, has the authority to hear and determine all questions of law or of fact and a decision of the Board under this section is final and binding, unless it is appealed under section 43.1.*

Subsection 44.(1) provides:

> ***44.(1) Assessment may be open upon appeal. –*** *Upon an appeal on any ground against an assessment, the Assessment Review Board or court, as the case may be, may reopen the whole question of the assessment so that omissions from, or errors in the assessment roll may be corrected, and the amount for which the assessment should be made, and the person or persons who should be assessed therefore may be placed upon the roll, and if necessary the assessment roll, even if returned as finally revised, may be opened so as to make it correct in accordance with the findings made on appeal.*

Subsection 44.(3) provides:

> ***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.

Evidence and analysis

The Board is left with no doubt that all of the parties to this appeal are concerned over the possible impact of wind farms on property values on the Island.

The Kenneys worry that the operation of the wind farm threatens not only their health and enjoyment of the property but also the financial security they derive from the value of the property (Page 2, Tab 1, Exhibit 14).

The possible impact of the wind farm on property values on the Island was a concern for the Township prior to the approval of the wind farm and remains a concern for the Township. This is evident from the fact that it retained Mr. Stephen Rayner, an accredited appraiser with S. Rayner and Associates Ltd., to track trends in property values on the Island. Mr. Rayner's report is essentially an update of a report the firm completed for Canadian Hydro Developers in 2007 as part of the approval process for the wind farm (Page 1, Tab 2, Exhibit 10).

MPAC has a statutory duty under subsection 14.(1) of the Act to return an annual assessment roll which includes the current value of each property. MPAC recognizes that "concern has been expressed that being in proximity to wind turbines negatively affects the sale prices of homes" (Page 1, Tab 8, Exhibit 4). MPAC acknowledges that the multiple regression model used to determine the current value of residential properties as of January 1, 2008 does not have a data element that identifies if a property abuts or is in close proximity to a wind farm.

The Board confirms the assessment of $357,000 as returned by MPAC for the reason that the Board finds there is no evidence before this panel of the Board to show the effect, if any, that these concerns have had on the current value of the Kenneys'

property for the taxation years under appeal. Further, the Board finds that there is no evidence before it requiring the Board to reduce the assessment of the property below current value to make it equitable with the assessment of similar lands in the vicinity.

The witnesses

The Board accepted the following witnesses to provide opinion evidence to the Board in the areas indicated. The role of an expert is to assist the Board in matters which require special knowledge beyond the knowledge of the tribunal. The duties of an expert witness are set out in the case of *R. v. Inco Ltd.,* 80 O.R. (3d) 594 and include:

- The expert evidence should be seen to be the independent product of the expert;
- An expert should provide independent assistance to the Board by an objective unbiased opinion as to matters within his or her expertise. An expert witness should never assume a role of advocate;
- An expert should state the facts or assumptions upon which the opinion is based and should not omit to consider material facts which detract from that opinion;
- An expert should make it clear when a particular questions or issue falls outside of the expert's expertise;
- If an expert's opinion is not properly researched because insufficient data is available, this must be stated with an indication that the opinion is no more than a provisional one.

Emily Hubert/Corsi

The MPAC assessor began the hearing as Emily Hubert and was married before the conclusion of the hearing changing her name to Emily Corsi.

Ms. Corsi was qualified by the Board to provide opinion evidence on the current value

and equity of assessment for residential properties on the Island. She was not qualified to offer opinion evidence as to the effect of wind turbines on property values on the Island.

Ms. Corsi's qualifications are found at Tab A of Exhibit 1. Ms. Corsi has worked for MPAC or its predecessor for 14 years and for five of the 14 years has assessed residential properties on Wolfe Island. Ms. Corsi testified that although she is employed by MPAC, she had the opportunity to form her own independent opinion of the value of the Kenneys' property. The Board was satisfied that Ms. Corsi was not assuming the role of an advocate for MPAC in the proceedings and that she acted independently in reviewing the assessment. The Board was satisfied that Ms. Corsi's opinions on the current values of Wolfe Island properties would be of some assistance to the Board having no familiarity with the real estate market on the Island.

The Board did not allow Ms. Corsi to offer opinion evidence on the effect of wind turbines on property values for the reason that the Board was not satisfied that she had the background or experience or that she had undertaken any research in this regard.

Jason Moore

MPAC asked the Board to qualify Jason Moore, the Valuation Manager, Assessment Standards and Mass Appraisal for MPAC, as an expert witness to give opinion evidence on the potential impact of wind turbines on current value. The Board refused to qualify Mr. Moore to give expert evidence on the potential impact of wind turbines on current value. The Board qualified Mr. Moore to give opinion evidence on MPAC's multiple regression model.

Mr. Moore began to work on contract for MPAC in 1996 and has worked for MPAC since that time rising to the position of Valuation Manager, Assessment Standards and Mass Appraisal. For the last assessment cycle, Mr. Moore coordinated the residential

MRA model-building activities. He presently has responsibility of tracking the wind turbine issue as it may or may not relate to property values for MPAC. His employment history and assessment experience is detailed in Exhibit 11.

Mr. Moore testified that he began to look at the wind turbine issue for MPAC in November 2008 and that he had no prior experience in looking at wind turbines. He stated that he was not given any directions or instructions by his supervisor and that he developed the methodology as he began to study the issue.

Mr. Moore identified properties in the province with wind turbines and went to look for residential properties that were located in the vicinity of the wind turbines.

In response to questioning from the Board, Mr. Moore testified that his results have not been put to a test but made him more knowledgeable.

While the Board is satisfied that Mr. Moore has considerable experience in applying MPAC's multiple regression model and that Mr. Moore, as an employee of MPAC, is not advocating for MPAC or not presenting an independent opinion, the Board is not satisfied that Mr. Moore has the experience or expertise to opine on the potential impact of wind turbines on the current values of properties. Mr. Moore admits that while he picked up knowledge doing the study, the results have not been put to a test. He has not shared his work with anyone and it has not been recognized as conclusive.

In the Board's view a short study, only undertaken since November 2008, on a recent development where the witness admits that his research has not been put to a test does not qualify the witness to give expert evidence on the effect of wind turbines on current value before this tribunal.

The Board qualified Mr. Moore to give opinion evidence on MPAC's multiple regression model. Mr. Moore was allowed to give factual evidence of the study he undertook.

Stephen Rayner

The Township sought to qualify Stephen Rayner to provide expert evidence in real estate appraisal.

The Board accepted Mr. Rayner to provide opinion evidence in real estate appraisal. Mr. Rayner's *Curriculum Vitae* is found at Tab1, Exhibit 9. Mr. Rayner is the President and General Manager of S. Rayner & Associates Ltd., a Kingston based firm offering real estate and appraisal consulting and market study services.

He is an accredited appraiser with the Accredited Appraiser Canadian Institute (AACI) with over 30 years' experience in the appraisal field.

Mr. Rayner has testified before the Board as an expert witness before, as well as before the Ontario Municipal Board and the Courts.

The Board was satisfied that Mr. Rayner's expertise in real estate appraisal might be of some assistance to the Board. It was further satisfied that although Mr. Rayner was retained by the Township's solicitors, he formed his opinions independently.

Mr. Rayner, like Mr. Moore and Ms. Corsi was not qualified by the Board to give opinion evidence on the effect of wind turbines on the current value of properties on Wolfe Island.

John Harrison

The Kenneys asked the Board to qualify Dr. John Harrison, PhD. to give opinion evidence on the likelihood of the wind turbine noise at the Kenneys' property.

Both MPAC and the Township objected to Dr. Harrison being qualified to give opinion evidence on the probable noise levels at the Kenneys' property.

The Board refused to qualify Dr. Harrison to give opinion evidence on the probable noise levels at the Kenneys' property.

Dr. Harrison is a professor emeritus of physics at Queens University. He has presented talks to the World Wind Energy Conference in 2008, the annual conference of the Canadian Acoustics Association in 2009, and the International Symposium on the Adverse Health Effects of Wind Turbines (October 2010). He is a member of the Ontario Ministry of the Environment Focus Group on Wind Turbine Noise Regulation.

In response to questions by Mr. Fleming, Dr. Harrison testified he did his PhD dissertation in metal physics and his primary area of research during his tenure at Queen's was low temperature physics, the properties of liquid helium and of sound waves at interfaces. Dr. Harrison's work at Queen's did not involve any noise studies or noise modeling. Dr. Harrison testified that his evidence would be as to the probability that the noise level at the Kenneys' property could be in excess of the predictions of the acoustics where the environmental assessment was done.

The Board refused to qualify Dr. Harrison because the Board was not satisfied that the probability of the noise level at the Kenneys' residence exceeding the legislative standard was helpful (relevant) to the Board in determining the current value of the property.

In response to questions from the Board, Dr. Harrison confirmed that he had undertaken no noise studies at the Kenneys' property and that he had undertaken no studies as to how noise from the wind turbines would affect the value of the property.

Dr. Harrison is not qualified to offer opinion evidence to the Board on the issue that it must decide – the current value of the Kenneys' property after the wind farm went into operation.

The Board was also not satisfied that Dr. Harrison could give an objective opinion to the Board because Dr. Harrison is an active opponent of wind turbines and actively lobbies against the construction of wind farms.

Janet Grace

The Kenneys asked the Board to qualify Janet Grace to give opinion evidence to the Board on the effect of wind turbines on property values on Wolfe Island. They were seeking for the Board to allow Ms. Grace to opine on the market adjustment that was required to account for the presence of the wind turbines on the Island.

Both MPAC and the Township objected to Ms. Grace providing opinion evidence on the effect of wind turbines on property values on the Island.

The Board refused to qualify Ms. Grace to give opinion evidence on the effect on property values of the wind turbines on the Island. The Board did, however, qualify Ms. Grace to give opinion evidence on the comparability of waterfront residential properties on the Island.

Ms. Grace has had a real estate licence since 2002 and has been a real estate broker since 2006. She has served as both the Vice-President (2008) and the President (2009) of the Kingston and Area Real Estate Association. Ms. Grace is a resident of neighbouring Amherst Island and specializes in the sale of waterfront properties.

Ms. Grace testified that while she is not active in WIRE, she is active in opposing wind turbines on Amherst Island. She has no scientific knowledge when it comes to wind

turbines and stated that she is not an expert on anything to do with turbines and has no expertise in medical matters. Ms. Grace has not undertaken an analysis with respect to the effect of wind turbines on property values. She indicated that she has had six listings on Wolfe Island since 2002 but has never sold an Island property.

The Board qualified Ms. Grace to give opinion evidence on the comparability of waterfront residential properties on the basis that she has had experience selling island properties since 2002 and has done many comparative sales analyses for waterfront island properties. The Board is satisfied that this experience would be of some assistance to the Board in determining which waterfront properties should be considered as comparable properties for the purpose of a sales comparison approach to value.

Gerald Blacker

The Kenneys asked the Board to qualify Gerald Blacker, a real estate broker, to offer an opinion on the difference between sale values of properties on the east side versus the west side of the island and to give his opinion on the reason for the differences.

The Board refused to qualify Mr. Blacker to give opinion evidence.

Mr. Blacker has 26 years experience buying and selling properties and doing some appraisal work. He was not being paid by the Kenneys to provide his evidence to the Board. He stated that he had a discussion with the Kenneys about the value of their property and offered to write a letter to the Board for the purpose of getting their assessment reduced. He testified that he has worked on Wolfe and Simcoe Island since 2009 and thinks he has sold one property. He did all of his research for his opinions using the Multiple Listing Service (MLS).

In response to questioning by MPAC, Mr. Blacker confirmed that he was not retained to conduct a study of the impact of wind turbines on the Island and that he has never done an appraisal report for any Island residential property.

The Board is not satisfied that Mr. Blacker has any expertise which would be of assistance to the Board. Unlike Ms. Grace, he has not specialized in the sale of island waterfront property and he has only been involved in the Island real estate market since 2009.

Mr. Blacker did give the factual evidence with respect to his search of the MLS records.

Documentary evidence

On the second day of the hearing, MPAC's counsel objected to the Board accepting a document included in the appellant's Exhibit Book.

The document (Page 116, Tab 7, Exhibit 16) is a copy of an April 5, 2011 letter addressed to "WHOM IT MAY CONCERN".

The author of the letter states that he purchased property on the Island in the year 2000 and that he would not have invested in property had the wind turbines been there or if he had known that the west end of the island was to become an industrial park. He goes on to state that while he cannot see any turbines from his property, "anecdotal" evidence would indicate that his property value is not what it would have been had the turbine development not taken place.

Ms. Douglas objected to the evidence on the basis that it is hearsay, and that the author of the letter is not available for MPAC and the Township to cross-examine and for the Board to assess the credibility of the witness. She did not object to the evidence on the basis that it was not relevant to the matter to be determined by the Board.

Ms. Kenney replied that she was unaware of the necessity to have the author present to support his submissions. She submitted that she had limited resources and it was too much to have the witness attend for two days and to pay expenses.

Because the appellants in this appeal are self-represented, and MPAC and the Township are represented by capable counsel, the Board is mindful of the need to keep a level playing field.

The Board allowed the document into evidence on the basis that counsel for MPAC and the Township did not argue that the document was not relevant, and section 15 of the *Statutory Powers Procedure Act* (*SPPA*) allows the Board to accept any document or other thing relevant to the subject matter in the proceeding.

Subsection 15.(1) of the *SPPA* states:

> ***15.*** *(1)* ***What is admissible at a hearing. –*** *Subject to subsection (2) and (3) a tribunal may admit as evidence at a hearing, whether or not proven under oath or affirmation or admissible as evidence in a court,*
>
> *(a) any oral testimony; and*
> (b) *any document or other thing,*
>
> *relevant to the subject matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.*

The Board, however, is unable to give any weight to this evidence because the author's background and experience was unknown. He was not going to appear at the hearing to explain to the Board and the other parties the basis upon which he reached his conclusion and the experience or expertise that he has which would allow the Board to accept this opinion.

To give weight to this kind of opinion evidence would be a denial of natural justice.

On the second last day of the hearing (October 6, 2011), the Kenneys introduced a letter dated April 18, 2011 addressed to the Kenneys from Dr. Ralph Janicki, a resident of Cape Vincent New York found in Exhibit 17 at Tab10, Page 150.

In the letter, Dr. Janicki provides his opinion that the windmills on Wolfe Island would reduce the Kenneys' property value and gives the advice that the Kenneys should consider selling their property. He state that tax assessors,

> *will be most reluctant to decrease assessments since substantial decreases in raised revenue is not an option for schools or towns. I suspect my assessor with support from the town, will obfuscate, spin or frankly lie about my situation. That's what bureaucrats do. The home-owner will be left to suffer the loss.*

MPAC and the Township objected to the Board receiving this letter into evidence. They argued that the evidence was of no help in valuing the Kenneys' property and that if the letter was accepted into evidence there would be a breach of natural justice. Dr. Janicki was not available for cross-examination after making accusations which include allegations with respect to the integrity of assessing authorities. While Ms. Kenney offered to strike out the part of the letter offensive to assessing authorities, the Board refused to accept the letter into evidence.

As already stated, the Board has a wide discretion with respect to the accepting of documentary evidence. The Board was not satisfied that the letter was relevant to the issue the Board has to decide. Even if it were relevant, it would be a denial of natural justice to consider the letter as evidence without allowing MPAC the opportunity to demand a further explanation and clarification of the allegations made against assessing authorities.

The Board is of the view that in an assessment appeal of this nature, there is a need for a person who is providing an opinion of value or of an effect of value to appear at the hearing to allow the Board and the other parties to determine if the person has the expertise necessary to offer the opinion, and also to allow the other parties the opportunity to cross-examine the assumptions and conclusions they have reached (*Consolidated Graphics Canada Ltd. v. Municipal Property Assessment Corp., Region No. 13* [2005] O.A.R.B.D. No. 36; ARB File No. 36235).

MPAC also objected to an undated newspaper article from the Kingston Whig Standard that that the Kenneys included at Page 95, Tab 7, Exhibit 16. MPAC's counsel objected to the Board considering this document as evidence on the basis of relevance.

Ms. Kenney submitted that the article is relevant as it relates to the opening statement made by Ms. Douglas that the Kenneys' case is not a test case.

The Board ruled that the document is not relevant for the reason that it is of no assistance to the Board in determining the current value of the property or in determining if the assessment of the subject property is equitable with the assessments of similar lands in the vicinity. The newspaper article is an account by a reporter of his interviews with Ms. Kenney, Trans Alta's Director of community relations, and an MPAC representative. The Board has the sole jurisdiction to determine the current value of property for the purposes of assessment in the Province, and the account of the disagreement by a newspaper reporter is not relevant evidence to the Board.

In the Board's view it may, and does, take judicial notice of the fact that the approval, construction, and operation of wind turbines in the Province of Ontario is very controversial, and the effects or lack of effects of the wind turbines on health and enjoyment of property owners and on property values is a subject of much debate.

Issues for the Board to decide

Determination of current value

The Kenneys are asking the Board to find that the approval, construction, and operation of the wind farm has affected the current value of their property and lowered the current value of their property. They ask the Board to lower the assessment to $ 283,000.

The Kenneys identify several factors which they consider to be “nuisances” or “annoyances” which they argue reduce the value of their property.

Noise

Ms. Kenney submits that the operation of the wind farm is a nuisance to her property and that her enjoyment of her home has been affected.

She states that there is uncertainty of the day to day noise level, and a need to monitor the noise level. She also expresses concern that the noise level may be detrimental to her health.

Noise impacts of proposed wind turbine generators are considered by the MOE when assessing an application for a Certificate of Approval for a wind turbine (Exhibit 5).

It is clear from the evidence of Ms. Kenney and the documents found in Exhibits 15, 16, and 17 that Ms. Kenney takes issue with the fact that since the wind farm was approved and constructed, there have been no noise studies undertaken to determine if the wind farm meets the noise level standards in the approval certificate. She takes issue with the fact that (as confirmed by Mr. Brian Garth, the Supervisor of the Kingston and District Office of MOE) the wind farm is not required to meet the noise requirements of the *Green Energy Act*, 2009 which were proclaimed in force on September 9, 2009

(Exhibit 14).

The Township included an excerpt from the “Environmental Noise Impact Assessment” in Exhibit 10, which is the environmental noise impact assessment prepared for the Wolfe Island Wind Project to fulfill the Canadian Renewable Energy Corporation’s requirements under the *Environmental Assessment Act*, and to provide the basis for the Certificate of Approval – Air under the *Environmental Protection Act*. The object of the assessment was to demonstrate, by means of technical assessment, that the noise impact from the operation of the wind would comply with the MOE’s noise guidelines for wind turbines.

The evidence before the Board is that the proposed wind farm complied with the noise regulation in effect at the time of the approval.

There is no evidence before the Board as to whether or not the noise levels at the Kenneys’ farm now or during the relevant time period for the 2009, 2010, and 2011 taxation years are above or below acceptable levels. The excerpt from the noise studies in Exhibit 10 is the only evidence of noise levels before the Board.

No noise studies were done by any party for the purpose of this hearing. The evidence of both the Kenneys and Dr. Harrison is that the cost of conducting a noise study is prohibitive.

Ms. Kenney is clearly frustrated. She complains that she has no way of testing the noise levels for MOE standards. She complains that the Islanders are receiving mixed messages as to whether compliance can be tested or not.

Ms. Kenney’s evidence is that despite a great effort put forward to have the Township adopt a noise by-law before the wind farm went into operation, a noise by-law was not adopted by the Township.

Ms. Kenney made one formal complaint about the noise to Trans Alta in August 2009. The Board heard evidence from Michael Jablonicky, the operations supervisor at the wind farm, who confirmed the complaint procedure and stated that most of the complaints received are noise-related and are resolved without the MOE becoming involved. Since the wind farm began operation, there have been 18 noise complaints. The latest complaint was made the week before the hearing.

In response to Ms. Kenney's complaint, Mr. Jablonicky attended at the Kenneys' residence. He testified that it was a breezy day but he could carry on a normal conversation with Ms. Kenney. As a result of the inspection by Mr. Jablonicky, no actions were taken by Trans Alta, and Ms. Kenney has not filed another noise complaint. Ms. Kenney testified that she can see no point in lodging another complaint as in her view; Trans Alta is only concerned with the origin of the noise and not the noise level itself.

Ms. Kenney is the only witness who testified with respect to the noise level at the Kenneys' property interfering with the enjoyment of the property. Under cross-examination by Mr. Fleming, Ms. Kenney agreed that she could carry on a normal conversation, watch television, sit outside, and listen to music and that she continues to garden although sometimes she chooses not to if bothered by the noise.

There is no evidence that the noise from the turbines has restricted the Kenneys' activities. Ms. Kenney did testify that she sometimes wakens at night and can hear noise from the turbines.

In response to questioning by Mr. Fleming, it became clear that the noise complained about is not a problem to the extent that the Kenneys have felt compelled to do something about it such as putting in air conditioning so that they can keep their windows closed. Mr. Kenney testified that they have planted 48 trees within the last four years to block the view of the wind turbines and cut down on the shadow flicker

from the turbines.

Health impact of the noise

The May 2010 review by the Chief Medical Officer of Health (CMOH) (Page 9, Tab C, Exhibit 9) concludes that:

> *…while some people living near wind turbines report symptoms such as dizziness, headaches and sleep disturbance, the scientific evidence does not demonstrate a direct causal link between wind turbine noise and adverse health effects. The sound level from wind turbines at common residential setbacks is not sufficient to cause hearing impairment or other direct health effects, although some people may find it annoying.* ("The Potential Health Impact of Wind Turbines" Chief Medical Office of Health Report May 2010.)

Ms. Kenney testified that since the wind turbines became operational, she has suffered from tinnitus. She testified that Mr. Kenney also suffers from tinnitus although Mr. Kenney did not confirm this in his evidence. Ms. Kenney stated that her Doctor advised her that he could not say with certainty that the tinnitus was caused by the wind turbines. No medical report or Doctor's certificate was provided to confirm a diagnosis.

The Board is not satisfied that the tinnitus Ms. Kenney complains about has a direct link to the wind turbine and, like the Chief Coroner, is unable to conclude that the wind turbines have caused hearing impairment or other direct health effects. The Chief Coroner's report found that the wind turbine sound was annoying to only a small percentage of exposed people:

> *Annoyance was strongly correlated with individual perceptions of wind turbines. Negative attitudes such as an aversion to the visual impact of wind turbines on the landscape were associated with increased annoyance, while positive attitudes, such as direct economic benefit from wind*

> *turbines were associated with decreasing annoyance.*
> (Page 5, Tab C, Exhibit 1)

Even if the Board was satisfied that the tinnitus was caused by the wind turbine, the Board would require evidence as to how this affects the current value of the property.

The Board has no doubt that a prospective purchaser of a property in the vicinity of a wind turbine would want to be satisfied that the noise from the turbines was not going to interfere with everyday life and that there were no known adverse health effects from living close to a turbine.

Industrial lighting

Ms. Kenney complains that the lighting on the turbines interferes with their enjoyment of the property and is a nuisance.

The evidence before the Board is that the nearest turbine to the Kenneys' property is over one kilometre away. The pictorial evidence shows that the Kenneys' home is oriented to face Lake Ontario and that the exposure of the property to the road side is limited.

As Mr. Fleming pointed out in his closing submissions, there is no evidence to support a finding that the flashing lights interfere with the enjoyment of the Kenney property.

Industrial viewshed

The Kenneys submit that the construction of the turbines on the Island has created an industrial viewshed which affects property values. The Board received evidence of real estate listings indicating that the properties were not within view of wind turbines and heard evidence from both Ms. Grace and Mr. Blacker that potential purchasers of Island properties are very interested in the wind turbines.

There is no evidence, however, to support a finding that the viewshed of the turbines would affect the value of the Kenneys' property for the taxation years under appeal.

The Board is not satisfied, based upon the photographs entered into evidence of the Kenneys' property, that their enjoyment of the view from their property is affected by the wind turbines. Their view of the waterfront has not been altered.

Industrial traffic

The Kenneys complain about the increase in the industrial traffic on the Island, creating long ferry line-ups and affecting the value of their property. There is no evidence before the Board to show how the traffic has increased in the vicinity of the Kenney property.

With respect to the ferry line-ups, the evidence before the Board is that Island living is not for everyone. In the Board's view, the ferry line-ups may be a consideration of a prospective purchaser of an island property. There is, however, no evidence before the Board to support a finding that longer ferry line-ups have reduced the value of properties.

Degradation of the natural environment

Ms. Kenney conceded that she had no evidence that the wind turbines caused a degradation of the natural environment of her property.

Effect of the concerns on current value

In determining the current value, the Board acts in a judicial capacity. It is required to hear the evidence and determine the issues based on the evidence presented. *Marathon Realty Co., v. Ontario (Regional Assessment Commissioner, Region No. 7)* [1979] O.J. No. 1090.

There is no evidence before the Board to allow, it to conclude on the balance of probabilities, that any or all of the concerns raised by the Kenneys have affected the current value of their property.

The Kenneys argue that the requirement of the Canadian Real Estate Association (CREA) “Seller Property Information Statement” (Page 40, Tab 3, Exhibit 14) for a vendor to disclose any hydro generating projects that are planned for the immediate area, is evidence that a wind farm reduces the value of properties in the vicinity. The Board does not agree. In the Board’s view, it is evidence that CREA is of the view that a proposed wind farm is something a prospective buyer of a property might take into consideration.

Mr. Fleming referred the Board to the case of *Antrim Truck Centre v. Ontario (Minister of Transportation)* 2011 ONCA 419 where the Court of Appeal discusses the tort of nuisance and defines nuisance at page 25 (CanLII) as: “any activity or state of affairs causing a substantial and unreasonable interference with a claimant’s land or his use and enjoyment of that land”.

Mr. Fleming submits that in order for an activity or state of affairs on the Kenneys’ property to be considered by the Board a nuisance, it must cause a substantial and unreasonable interference with the use of the land. The Board asked Mr. Fleming if he was suggesting that the Kenneys would need to prove the common law tort of nuisance in order to have their property value adjusted to recognize a nuisance or annoyance that affects value, and he agreed that that was not the case.

A nuisance or annoyance may affect a property’s current value without causing substantial and unreasonable interference with the use of land that may entitle a land owner to compensation for the nuisance.

The jurisdiction of the Board is limited to determining the current value of the property

under appeal. If the wind farm has affected the current value of the Kenneys' property, there is no evidence before the Board that would allow it to isolate the effect on current value of any or all of the concerns raised by the appellant.

When the assessments were returned for 2009 taxation year, the MPAC model did not have a data element that identified if a property abutted or was in proximity to a wind turbine.

The sales that MPAC relies upon to support the assessment at $357,000 all took place before the approval, construction, and operation of the wind farm but after the wind farm became common knowledge in 2003.

Purchase prices for Island properties between 2003 when the wind farm was first proposed and 2008 when the wind farm was approved would take into account the proposed wind farm.

The Board cannot speculate as to the effect on property values that a proposed wind farm may have as opposed to the effect that an approved and operating wind farm may have.

The Kennys argue that the assessment needs to be lowered below $357,000 to account for the nuisances and annoyances that have arisen since the wind farm went into operation. The Kenneys take the position that $357,000 is the correct current value if the wind farm was not in operation.

MPAC and the Township submit that there is no evidence to support a finding that the approval, operation or construction of the wind farm lowered the current value of the Kenneys' farm or any Island property.

For the reasons given above, the Board was not satisfied that any of the witnesses

called by the parties had the expertise required to opine on the effect on the current value of the Kenneys' property, if any, that the approval, operation or construction of the wind farm has had.

The only evidence that the Board has to consider in determining the current value of the Kenneys' property is the sales evidence introduced by the parties.

Even if the Board determined that the current value is lower than $357,000, the Board would be unable to conclusively state that the lower current value is a wholly or partially a result of the approval, construction and operation of the wind farm.

The Board would only be able to state that the sales evidence leads to the conclusion that the current value for the property is lower.

Valuation day

Assessments are returned annually for each roll number. Subsection 19.2(1) of the Act provides that for the 2009, 2010 and 2011 taxation years land is valued as of January 1, 2008. Assessments are made any time during the year between January 1 and the second Tuesday following December 1. While the wind farm received its certificate of approval in June 2008, it did not go into commercial operation until June 2009.

None of the parties argued or presented evidence to show that that the current value of the property should be different for the 2009 taxation year than the 2010 and 2011 taxation year; because the wind farm may not have been approved or been in commercial operation when the roll was returned for the 2009 taxation year.

Hydro electric easement and water source

During the hearing, the Kenneys introduced evidence of a hydro easement that runs

across the property and the fact that they receive their water from the river and not a well as shown on MPAC's records. While the Kenneys raised these issues, they did not introduce any evidence to show that the right-of-way or water source reduced the current value of the property below the $357,000 they agree would be the current value if there were no wind farm. The Board accepts the evidence of Ms. Corsi that the $357,000 assessment does not require a reduction to account for the right-of-way or water source.

Sales evidence

The best evidence of current value is a sale of the subject property on or close to the valuation day. If there is not a relevant sale of the subject property the Board looks to the sales of comparable properties close to the valuation day.

The Kenneys' property is a waterfront residential property and the parties agree that the most comparable properties for the purposes of sales comparisons are other waterfront residential properties on the island. The parties further agree that the amount of water frontage of a property is a key variable in determining the current value of the property.

The Kenneys' property is a prime piece of water front property having an effective frontage of 237 feet on Lake Ontario.

Photographs of the wind turbines' proximity to the Kenneys' property were entered into evidence by both the Kenneys and MPAC. The Board finds that the Kenneys' main view of Lake Ontario and Simcoe Island is unobstructed by the location of the turbines. The turbines are located on the road side of the property and not in the direction that the Kenneys would usually be looking out from inside their home (Page 4, Exhibit 14 and Page 14, Tab 2, Exhibit 10).

The Board is also not satisfied that the photographs taken from the sunroom or dining

room window show a great sight exposure to the wind turbines. Although Ms. Kenney testified that her views were obstructed, no photographs were introduced of their uninterrupted view of the lake.

While the Kenneys did submit a photograph (Page 6, Exhibit 14) taken from a boat out on the Bateau Channel showing the Island windmills in the background, the Board is not satisfied that the Kenneys' enjoyment of their property is from a boat on Lake Ontario.

Mr. Rayner in his report (Page 31, Tab 2, Exhibit 9) also notes that the Kenneys' water view is not obstructed by wind turbines.

MPAC's Current Value Study (study) (Tab A of Exhibit 3) compares the sales of six waterfront residential properties on the Island. Three of the sales took place in 2007; two of the sales took place in 2006, and one in 2005. MPAC time adjusted all sales as of the January 1, 2008 valuation day. MPAC's evidence is that based upon the analysis of six sales on the Island, the range of value for the Kenneys' property is between $295,000 and $368,000.

Ms. Emily Corsi, the assessor, testified that after considering the difference between the properties, she concluded that the current value of $357,000 determined by MPAC's multiple regression model is correct.

The Kenneys accept $357,000 as the current value of the property prior to the approval, construction and operation of the wind farm. The Board heard evidence that the Kenneys had the property appraised in 2006 by Michael Cotman and that the appraisal determined the value of the property at that time to be $370,000. The Kenneys did not produce the appraisal and did not rely on it at the hearing.

In determining if $357,000 is the current value of the property prior to the approval, construction, and operation of the wind farms it is useful to look at the assessment to

sale ratios (ASRs) of the sales comparables. ASRs are helpful in determining how well the MPAC multiple regression model is working in determining current values.

The median ASR for the six time-adjusted sales relied upon by MPAC is 1.14, which may suggest that MPAC's model valued properties above their current value. Six sales however, is a small sample from which to conclude that all properties are over-assessed.

Ms. Corsi also included in her report (Exhibit 3) three larger studies of ASRs.

Appendix C, Study 1 (Exhibit 3) indicates a median ASR of 0.9 using time-adjusted sales for the properties in the study which included all types of properties and not just waterfront. This study did not include the properties at 21 Meadow Lane or 31 Pleasure Lane that were included in MPAC's study.

Appendix D (Exhibit 3) includes two ASR studies of waterfront properties on the Island. The median ASR of both of these studies (19) sales is 0.95. Again, however, these two studies do not include all of the sales that MPAC has relied upon as sales comparables. In addition to 21 Meadow Land and 31 Pleasure Land, the study does not include 329 Carpenter's Point Road which had a 2005 sale.

Reviewing the time adjusted ASR's for waterfront properties, including 21 Meadow Lane and 31 Pleasure Lane, the Board finds the median ASR is 0.96, which does not lead to the conclusion that MPAC's model was determining assessments greater than current value.

In her reply evidence, Ms. Corsi testified with respect to the ASRs of the waterfront properties included in MLS listings at Page 34, Tab 3 of Exhibit 14 in the Kenneys' evidence. Two of these properties sold in 2008 while the balance sold in 2009 or 2010. The 2008 sale at 1558 Highway 96 is included in MPAC's study at Tab D (Exhibit 2)

while the 2008 sale of 17 Bayview Lane is not included in MPAC's study. The additional ASR of 17 Bayview Lane does not change the median ASR.

The Board is satisfied the current value of the subject property as of January 1, 2008 prior to the approval, construction, and operation of the wind farm is $357,000.

Sales evidence after 2008

The Kenneys are asking the Board to find that the current value of their property as of January 1, 2008 fell to $283,000 as a result of the wind farm being approved and going into operation.

MPAC's evidence is that the model used to determine the current value of the Kenneys' property as of January 1, 2008 did not have a data element for proximity to wind farm. All of these sales relied upon by MPAC took place at a time before the approval, construction, and operation of the wind farm and for that reason, the sale prices and the time-adjusted sale prices may not take fully into account any effect on current value that the approval, construction or operation of the wind farm has had on the current value as of January 1, 2008.

The Kenneys argue that the properties of the west side of the Island are not selling and that the lack of sales is evidence of a fall in property values.

Mr. Kenney who has lived on the island all of his life is firm in his testimony that the dividing line between the east and west half of the island is Highway 95 and that most of the turbines are located west of Highway 95.

Mr. Blacker testified that he did an MLS search for expired listing agreements and determined that more listings expired on the west side of the island than the east. During cross-examination by Mr. Fleming, it became clear that Mr. Blacker and Mr.

Kenney drew the line between the west half and the east half of the island in different places.

Regardless of where the line is drawn, there is no evidence with respect to the level of sales on what Mr. Kenney defines as the west side of the island prior to 2008 to allow the Board to conclude that the number of sales on the west side has declined.

Ms. Grace was very forthright in her evidence that Island properties are unique and do not turn around quickly. The evidence is that expired listing agreements on the Island are not uncommon.

Mr. Rayner in his report states that the waterfront properties on the east and south sides of the island are more desirable due to the prevailing winds, making the west side very windy (Page 8, Tab 2,Exhibit 9). In cross-examination by Ms. Kenney, Mr. Rayner agreed that the properties on the east and south ends of the islands have always been more desirable.

Mr. Rayner includes a summary entitled “Island Property Sales Information” in his report (Page 21, Tab 2 of Exhibit 10). The summary shows that there were between nine and 13 single-family home sales on the Island per year for the years 2005 to 2008. There was a small decline in 2008 (nine sales) which Mr. Rayner attributes to the global recession and the fact that high end waterfront properties were not selling (Page 2, Tab 2, Exhibit 9).

If the approval, construction, and operation of the wind farm on the island has affected the current value of properties such as the Kenneys’, the effect should be accounted for by the market in the volume of sales and the sale prices achieved for the properties after the wind farm was approved in June 2008.

Ms. Grace looked at the 2009 and 2010 sales of six properties in her comparative

market analysis found at Page 100, Tab 7, of Exhibit 16, 2009 and 2010 MLS sales information is found at Pages 34-38 of Tab 3 of Exhibit 14.

Ms. Grace, Mr. Rayner and Mr. Blacker identify the property at 329 Carpenter's Lane as the most comparable to the subject property. The 2005 sale of this property is included in MPAC's study. In Ms. Grace's opinion (Page 10, Tab 7, Exhibit 16) the property at 329 Carpenter's Lane is superior in terms of location, setback, and overall size; however, the Kenneys' property has a larger waterfront. This property sold in 2009 for $325,000, and in Ms. Grace's opinion, $40,000 is required to equate this property with the subject. Based on the sale of this property, Ms. Grace would place a 2009 value on the subject property of $365,000. The evidence is that "you can see wind turbines from the properties on Carpenter's Road" (Page 13, Tab 1, Exhibit 10).

The Board accepted Ms. Grace as an expert in the comparability of Island properties but refused to qualify her to give opinion evidence on the amount if any that the Kenneys' assessment requires adjustment to account for the wind turbines for the reasons already given.

The Board finds nothing in the sales evidence of Ms. Grace to support a finding that the Kenneys' property fell in value between 2008 and 2009.

With respect to the MLS 2009 and 2010 sales evidence found at Pages 34-38 of Tab 3 of Exhibit 14, Ms. Corsi in her reply evidence confirmed the assessed values of the properties and confirmed the properties in the listings which are Island waterfront properties.

If property values declined in 2009 and 2010 one might expect to see ASRs for the sales above 1.00, indicating that the properties have been assessed over their current values even though the 2009 and 2010 sales are removed from the valuation day. This is not the case. The median ASR for the 2009 and 2010 sales in the MLS listings is

0.98.

The waterfront sales in evidence do not suggest a sluggish market for waterfront properties. Number 60 Shoals Lane sold in one month, 319 Carpenter's Point Road sold in two weeks. Number 124 Lewis Bay sold in 3 weeks. Number 269 Carpenter's Point Road sold in one month while 329 Carpenter's Point Road sold in seven months following a January listing.

The Board finds there is no evidence to allow the Board to conclude that since the construction of the wind farm properties on what Mr. Kenney defines as the west side of the Island have sold for less than properties on the east side.

Ms. Grace's evidence includes one sale on Reed's Bay (220 Easy Lane) in the area Mr. Kenney defines as the west side of the Island. The MLS listing at Page 142, Tab 10, Exhibit 17, suggests that the cottage with no septic tank is a "tear down". Number 220 Easy Lane sold in December 2009 for $112,000 having previously sold in July 2006 for $102,000 (Page 28, Tab 2, Exhibit 9). This evidence does not support the Kenneys' argument that properties on the west side of the Island declined in value.

At Page 149, Tab 10, Exhibit 14, the Kenneys include a chart comparing the listing prices for building lots in Shore Acres on the south side of the Island, where wind turbines are not visible to a listing for a property at 316 Easy Lane. The chart shows most of the Shore Acres lots listed for $199,900. The Kenneys' evidence is that 316 Easy Lane (on Reed's Bay) was listed for $84,900 and the price was reduced to $78,900 (Exhibit 19). The Kenneys argue that the difference in lot prices and the drop in the listing price is evidence that properties on the west side of the Island declined in value.

The Board is unable to conclude from this evidence that property values on the west end of Island have been affected more than property values on the east and south ends

of the Island. The Shore Acre lots are on the south side of the Island which the parties agree is more desirable. The Shore Acres lots are all at least two acres in size while the Reed's Bay lots are less than one acre.

The sales evidence confirms that waterfront properties on the Island have continued to sell since the approval, operation, and construction of the wind farms. There is no evidence to allow the Board to determine that the current value of the Kenneys' property for the taxation years under appeal is less than $357,000 as of January 1, 2008.

MPAC's evidence with respect to the wind farm proximity and current value

MPAC relies on the evidence of Jason Moore to support its position that there is no evidence that the approval, construction, or operation of the wind farm has affected the current value of the Kenneys' property. Mr. Moore gave factual evidence as to the sales trends that occurred following the approval, operation, and construction of wind turbines in Melancthon and Erie Shores Townships.

He explained that MPAC was working on modifying the model to include a data element for wind farms.

Jason Moore testified that in November 2008, MPAC began to look at whether the location and operation of a wind farm has an effect on property value. He testified that prior to that time he had not had experience in studying the effect of wind farms on property values.

The first step taken by MPAC was to identify properties which were coded by MPAC as having wind farm structures. Next, MPAC looked at a definition for abutting a wind farm and in proximity to a wind farm. Mr. Moore testified that for the next general reassessment, two new data elements will be included in the multiple regression model: abutting a wind farm, and in proximity to a wind farm. The study done by Mr. Moore

looked at sales from January 2005 through to August 2008. The study did not look at properties valued as farm land used for farm purpose, only residential properties.

MPAC created an inventory of properties that abutted or were in proximity to wind turbines where the sale occurred in the year of construction or after construction of the wind turbine.

Province-wide, 17 sales were identified (Tab 8, Exhibit 1). Six sales abutted wind turbines. Eleven sales were in proximity to wind turbines. The median ASR was 0.88 for properties that MPAC defined as abutting turbines and 0.92 for the properties MPAC defined as in proximity to wind turbines.

Mr. Moore testified that four of the 17 properties have been resold. None of the sales were of waterfront properties.

The Board is unable to conclude from the sales data provided by MPAC that sale values of properties in proximity or abutting wind turbines are always negatively affected.

The results of Mr. Moore's analysis of sales of properties in proximity to or abutting wind farm located in Melancthon and Erie Shores are included in Exhibit 1 at Tabs 6 and 7.

The average ASR for Melancthon was 0.796 and the median was 0.74; while Erie Shores had an average ASR of 1.11 and a median of 1.09. It may be argued that the Erie Shores evidence suggests that, at least in Erie Shores, the proximity of a property to a wind farm may have some effect on current value. The sample sizes are very small and there may, however, be other reasons why the model is tending to assess properties above their current value.

The Board finds that there is nothing in the MPAC evidence of sales in proximity to or abutting wind farms to lead to the conclusion that property values on the Island or of the Kenneys' property have been adversely affected by the wind farm.

Township evidence

The Township focused its evidence on the issue of whether there has been a diminution in value of properties on the Island following the approval for, construction, and operation of the wind farm. While Township witness Mr. Rayner was the only accredited appraiser (AACI) to give evidence in the hearing, Mr. Rayner was not retained to do an appraisal of the property.

Mr. Rayner was retained to conduct a study on the impact, if any, that the wind farm located on the Island has had on property values. The report he prepared for the hearing is an update to a report that he completed in April 2007 for Canadian Hydro Developers as part of their approval process (Tab 3, Exhibit 9).

In April 2007, Mr. Rayner concluded that property values overall on the Island had increased by 16.34% per year between 2004 and 2006. His study looked at residential values on both the Island and Simcoe Island and concluded that residential values on the two Islands increased by 11.54% per year. The study did not isolate residential properties or waterfront properties on the Island and did not break down the sales analysis to east or west side of the Island.

The October 2010 update to the April 2007 (Tab 2, Exhibit 9) reviews all of the sales of single-family homes that have taken place on the Island in the years 2007 – 2010, using 2005 and 2006 sales as a benchmark for calculating increases/decreases in value.

Mr. Rayner concludes that Island properties have appreciated at a higher rate than properties on the mainland over the period 2005 to 2010 and that his study shows no

diminution of property values on the Island.

Mr. Rayner also conducted what he termed a “paired sales analysis” for several residential properties on Wolfe Island, from which he concluded that properties’ values have increased since the wind farm went into operation. Three properties are included in the October 2010 report and three different properties are included in the March 2011 addendum to the report (Tab 1, Exhibit 10).

As already stated, the property at 220 Easy Lane sold in July 2006 for $102,000 and again in December 2009 for $112,000. Photographs at Page 148, Tab 10, Exhibit 17 confirm that the wind turbines can be seen from the roadway at 220 Easy Lane. This 2009 sale is evidence that the value of a property within view of the turbines increased after the wind farm went into operation.

The property at 329 Carpenter’s Point Road sold in April 2005 for $270,000 and again in August 2009 for $325,900. This property is located within sight of wind turbines as well. The photographs found at Page 13, Tab 1, Exhibit 10 confirm that the wind turbines can be seen from Carpenter’s Road.

The Kenneys pointed out several errors in Mr. Rayner’s evidence. His 2010 report refers to wind turbines on Simcoe Island. The parties agree that there are no wind turbines on Simcoe Island. Mr. Kenney also pointed out some discrepancies in Mr. Rayner’s evidence with respect to the paired sales analyses.

Mr. Rayner did not inspect any of the properties he used in his study and relied on listing information. No discrepancies were pointed out for the sales evidence for 220 Easy Lane and 329 Carpenter’s Road, which the Board finds to be the most relevant sales as the properties both have windmills in their view.

The most compelling paired sale is the sales of 220 Easy Lane where the price

increased between July 2006 and December 2009 despite being on the west side of the Island.

The photographs of the Carpenter's Road view (Page 13, Tab 1, Exhibit 10) and the photographs of the subject property's view, (Page 14, Tab 1, Exhibit 10) show that the turbines are visible at a distance at the rear of the properties and do not affect the waterfront view.

The Board finds nothing in the studies conducted by Mr. Rayner to allow it to reach a conclusion that the current value of the Kenneys' property fell below $357,000 after the wind farm went into operation.

Case law

Both MPAC and the Kenneys provided the Board with copies of the ARB decision *Thompson v. Municipal Property Assessment Corp. Region No. 22* [2008] O.A.R.B.D. No. 223 (ARB File No. WR 70364), a case heard by the Board in 2008 where the issue was the effect on current value of noise emitted from a transformer station.

This case is distinguishable from the case before the Board for several reasons including:

- The noise in issue was from a transformer station and not wind turbines located at least one kilometre away from the property;
- In the *Thompson* case, the MPAC assessor acknowledged that the noise was so loud that it could be heard over the telephone and further acknowledged that the noise would affect the current value of the property;
- In these appeals, there is no evidence that the noise level affects normal conversation;
- In these appeals, both MPAC and the Township argue that the wind turbine noise

does not affect the value of the Kenneys' property.

1. Is an assessment at current value equitable with the assessment of similar lands in the vicinity?

For the purpose of subsection 44.(3)(b), the Board finds similar properties in the vicinity to be waterfront properties on the Island.

The Kenneys do not argue that the assessment of the subject property requires a reduction below the current value of the property to make it equitable with the assessments of similar land in the vicinity. The Board finds that there is no evidence before it to support a finding that the assessment of the Kenneys' property must be reduced below its current value to make it equitable with the assessments of similar lands in the vicinity.

"J. Laflamme"
J. Laflamme
Member

"S.F. Mather"
S.F. Mather
Vice-Chair

/sm/dt
DECISION RELEASED ON: March 29, 2012