



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LT08012, LT08013
and LT08019
Order LT10-02**

IN THE MATTER of appeals by John Power, Jean Power, Errol Howard, Mark Doyle and Lorraine Doyle of decisions of the Provincial Treasurer of various properties located in Cape Wolfe.

BEFORE THE COMMISSION
on Tuesday, the 7th day of December, 2010.

Maurice Rodgerson, Chair
Ernest Arsenault, Commissioner
Michael Campbell, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

Appeals Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of appeals by John Power, Jean Power, Errol Howard, Mark Doyle and Lorraine Doyle of decisions of the Provincial Treasurer of various properties located in Cape Wolfe.

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IN THE MATTER of appeals by John Power, Jean Power, Errol Howard, Mark Doyle and Lorraine Doyle of decisions of the Provincial Treasurer of various properties located in Cape Wolfe.

Appearances & Witnesses

1. **For the Appellants John Power, Jean Power, Errol Howard, Mark Doyle and Lorraine Doyle**

**John Power
Mark Doyle
Errol Howard**

2. **For the Respondent Minister of Finance and Municipal Affairs**

Paul Olscamp

IN THE MATTER of appeals by John Power, Jean Power, Errol Howard, Mark Doyle and Lorraine Doyle of decisions of the Provincial Treasurer of various properties located in Cape Wolfe.

Reasons for Order

1. Introduction

[1] This is an appeal under the *Real Property Assessment Act*, R.S.P.E.I. 1988, Cap. R-4 (the *Act*), by the Appellants John Power, Jean Power, Errol Howard, Mark Doyle and Lorraine Doyle (the Appellants) of decisions by the Respondent Provincial Treasurer, now the Minister of Finance and Municipal Affairs (the Minister) with respect to the 2008 assessment of the following properties situate at or near Cape Wolfe:

- Notice of Appeal received September 29, 2008 - Property number 637330 owned by John and Jean Power, docket number LT08012
- Notice of Appeal received October 1, 2008 - Property number 590141 owned by Errol Howard, docket number LT08013
- Notice of Appeal received October 23, 2008 - Property number 49346 owned by Mark and Lorraine Doyle, docket number LT08019

[2] The basis for all three appeals is that the Appellants contend that their property tax assessments for the three properties should be reduced to reflect a decreased market value due to the proximity of these properties to wind turbines.

[3] The Commission scheduled the hearing for April 29, 2009. The Appellants requested that the hearing be postponed until September 2010. The Minister consented to this postponement. The hearing was re-scheduled and held on September 22, 2010.

2. Discussion & Findings

Appellants' Position

[4] The Appellants contend that the wind turbines are unsightly and invasive. They cite potential health issues associated with nearby high voltage power lines, noise and flicker. They submit that the wind turbines were constructed without the approval of the residents. Some residents were not notified of the wind turbine project. Those who were notified were led to believe that the project would be confined to West Cape. However, in actual fact the turbines are located from West Point to Howard's Cove, a distance of approximately 17 kilometres.

[5] The Appellants submit that property sales in the Cape Wolfe area have been negatively affected: many properties have been listed for sale but few, if any, have sold. The Appellants referred to specific properties in Exhibits A4 and A5.

[6] The Appellants request that the Commission reduce the assessed value of their properties given the impact of the nearby wind turbines.

The Minister's Position

[7] The Minister submitted that, as an interim measure, an allowance of 10% for "blight" is reasonable until there is more sales data upon which to measure the effect of the windmills on market value. The Minister submitted that the data filed illustrates that, overall, the selling price exceeds the assessed value for properties in the wind turbine corridor area, yielding an average sale ratio of 87.7%; that is to say on average assessed value is about 87.7% of actual selling price. A review of "resales" [a pre-turbine sale followed by one or more post-turbine sales] in the corridor area revealed that out of 8 "re-sold properties", 6 properties sold for a higher value after the installation of the turbines, 1 property sold for a lower value after the turbine installation and one property initially sold for a lower value but its value rebounded following a further sale.

3. Disposition

[8] After giving careful and full consideration to the evidence presented in this case, and upon a review of the applicable law, it is the decision of the Commission to allow this appeal. The reasons for the Commission's decisions follow.

[9] The evidence presently before the Commission on this matter is, quite frankly, rather limited. This is understandable as the windmills in the West Cape area have only been in operation for a few years. The Appellants have raised concerns about appearance, noise and "flicker" [rotating shadows] as a result of the windmills. Windmills are large, unique structures and their location is critical to their effectiveness. Windmills provide benefits for their proponents but they may be somewhat of a detriment to nearby residents.

[10] Appearance may be said to be the most subjective impact of windmills on neighbouring properties. Noise may be able to be evaluated with sound level testing and flickering may be documented with video footage, although tolerance to noise and flickering will vary from individual to individual. Whether a windmill is attractive or unattractive however is solely a matter of personal opinion.

[11] The Minister has offered some limited sales data which tends to suggest that windmills have no effect on market value. The Appellants suggest that the presence of windmills in the area has slowed real estate sales. In particular, they suggest that seasonal residents will look to other areas of the Province for quiet and tranquility.

[12] It is the evidence of the Appellants that there are two kinds of noise associated with windmills, a “whooshing” sound from the rotating arms of the windmill and a grinding noise created by a worn gearbox, or a gearbox in need of re-lubrication.

[13] It is the evidence of the Minister that a “blight” allowance of up to 10% is reasonable until further information is available. Having heard from the Appellants as to the effects of these windmills on their enjoyment of their properties, and mindful that at least some potential purchasers would share their views, the Commission finds that an allowance of 15% would be appropriate to reduce the assessed value of these properties. The Commission hastens to add that this allowance should only be viewed as a temporary measure until either more evidence becomes available or the Minister implements a specific policy.

[14] Accordingly, the Commission allows the appeal and directs the Minister to reduce the assessment of property numbers 637330, 590141 and 49346 by 15% commencing with the 2008 assessment year.

IN THE MATTER of appeals by John Power, Jean Power, Errol Howard, Mark Doyle and Lorraine Doyle of decisions of the Provincial Treasurer of various properties located in Cape Wolfe.

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WHEREAS the Appellants John Power, Jean Power, Errol Howard, Mark Doyle and Lorraine Doyle have appealed the 2008 assessment of property numbers 637330, 590141 and 49346;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on September 22, 2010 after due public notice and suitable scheduling for the parties;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Real Property Assessment Act*,

IT IS ORDERED THAT

1. The appeal is allowed.
2. The Minister is hereby directed to reduce the assessment of property numbers 637330, 590141 and 49346 by 15% commencing with the 2008 assessment year.

DATED at Charlottetown, Prince Edward Island, this 7th day of December, 2010.

BY THE COMMISSION:

(Sgd.) *Maurice Rodgerson*

Maurice Rodgerson, Chair

(Sgd.) *Ernest Arsenault*

Ernest Arsenault, Commissioner

(Sgd.) *Michael Campbell*

Michael Campbell, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. *The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 33 and 34 of the *Real Property Assessment Act* provide as follows:

33. *Notwithstanding anything in any public or private Act, an appeal lies to the Supreme Court of the province from any order, decision, or award of the Commission, if notice of the appeal is given the other parties within forty-five days after the making of the order, or decisions sought to be appealed from.*

34. *The rules and practices of the Supreme Court respecting appeals apply with the necessary changes to any appeal.*

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC142A(2009/11)