

REASONS FOR APPEAL

1. The Appellant is a resident of Amherst Island, Loyalist Township, in the County of Lennox and Addington, Province of Ontario.
2. The Appellant addressed Loyalist Township Council (“Loyalist Council”) on two occasions in 2008, regarding draft wind turbine provisions in a proposed Official Plan Amendment. Thereafter, on or about September 2, 2008, Loyalist Council unanimously approved and adopted Official Plan Amendment No. 18 by By-law No. 2008-91.
3. In particular, Official Plan Amendment No. 18 contained the following sub-clause, in the section entitled “Policies for Commercial-Scale-Wind-Energy-Generating Systems”:

“5.11.3.7

 - a) A noise impact study to determine setbacks from Commercial Scale Wind Energy Generating Systems and attendant transformers so that noise levels will not exceed the Ministry of the Environment noise standards for sensitive land uses. Amherst Island shall be considered a Class 3 (Rural) area for the purposes of determining noise impacts. Class 3 is defined by “Interpretation for Applying MOE MPC Technical Publications to Wind Turbine Generation” and by NPC-232: Sound Level Limits for Stationary Sources in Class 3 (Rural) areas. Sensitive land uses include the points of reception of participating and non-participating sensitive land uses and vacant lots of record that are capable of being developed by a sensitive receptor. The noise study shall include the following: the characteristic frequency and sound level emanating from individual wind turbines and transformers: distance of the turbine or transformer from the point of reception; wind speed and, in particular, the variation of wind speed with height; air absorption based upon frequency; ground effects such as vegetation, buildings, and topography including a 3dBA penalty for sound frequencies below 300 Hz to account for coherent reflections from the ground; a 5dBA penalty for tonal noise and a 5dBA penalty for periodic or impulsive noise sources as defined by the Ontario Noise Guideline NPC-104 broadband noise created by the interaction of blade motion with turbulent air; and the cumulative effect of multiple turbines; “
4. By letter dated December 3, 2008, the Ministry of Municipal Affairs and Housing (“The Ministry”) informed Loyalist Council that it intended to reject sub-clause 5.11.3.7(a) as unanimously approved by Loyalist Council and substitute its own provision.
5. In an attempt to accommodate The Ministry, Loyalist Council proposed an amended version of sub-clause 5.11.3.7(a) that had the effect of reducing the public health safeguards contained in the previous version. That also was rejected by The Ministry.

6. In a written decision dated January 23, 2009, of the Regional Director, Municipal Services Office – Eastern, The Ministry imposed its original version of sub-clause 5.11.3.7(a), as follows:

“(a) A noise impact study to determine setbacks from Commercial Scale Wind Energy Generating Systems and attendant transformers so that noise levels will not exceed the Ministry of the Environment Noise Standards for sensitive land uses. The noise impact study shall be in accordance with the Ministry of the Environment “Noise Guidelines for Wind Farms, Interpretation for Applying MOE NPC Publications to Wind Power Generation Facilities” dated October 2008; except that a participating sensitive receptor (participating receptor) will be subject to the same sound level limits as a non-participating sensitive receptor/point of reception. Amherst Island shall be considered a Class 3 (Rural) area for the purposes of determining noise impacts. Class 3 is defined by “Interpretation for Applying MOE MPC 232: Sound Level Limits for Stationary Sources in Class 3 (Rural) Areas;”

7. In so doing, the Regional Director and The Ministry erred in the following respects:

(a) In failing to recognize that The Ministry of the Environment (“MOE”) Noise Guidelines for Wind Farms Interpretation for Applying MOE MPC Publications to Wind Power Generation Facilities and Noise Guideline NPC-104 (collectively referred to as the “Noise Guidelines”) are simply guides that have no force of law; that are drafted, amended, and interpreted by MOE officials on an ad hoc basis and are not binding on municipalities.

(b) Also in failing to recognize that, in any event, Loyalist Township cannot be bound to future amendments and interpretations of the Noise Guidelines by MOE officials.

(c) In failing to recognize, contrary to Loyalist Council, that the Noise Guidelines systematically underestimate the noise emitted by industrial wind turbines and the quality and characteristics of such noise, with the result that industrial wind turbines have been and are being placed too close to homes.

(d) In failing to recognize or ignoring, contrary to Loyalist Council, that reports from Ontario and abroad identify serious complaints by residents living within 2 km of industrial wind turbines regarding noise and other phenomena, and, in particular, a cyclic “Thump” or “Swoosh”, especially at night, to which many residents cannot habituate.

(e) In their apparent indifference to the fact that the Noise Guidelines have resulted habitually in the placement of industrial wind turbines at or around 400 m from homes, and that such placements and the resulting characteristic wind-

turbine noise may result in injury to the health of local residents and cause them general torment.

(f) In ignoring the fact that there are good and cogent reasons to be concerned that such local residents have and will develop medical symptoms (including: depression, chronic stress, nausea, exhaustion, anger, dizziness, memory loss and cognitive difficulties – children and the elderly being especially affected by the latter), and that the weight of medical and scientific evidence supports this concern.

8. Loyalist Council recognized that the Noise Guidelines, unless modified, may result in public health concerns and was justified therefore in adopting more stringent and broader requirements for a noise-impact study. In so doing, Loyalist Council attempted to fulfill its duty to ensure sound planning, and to comply with the requirements of the Provincial Policy Statement in regard to public health.

9. The Ministry has a duty to avoid any development that may give rise to concerns for the public's health. In imposing the Noise Guidelines as the sole determinant for wind-turbine setbacks by its amendment, it is in breach of that duty and has acted in contravention of the Provincial Policy Statement.

10. Sub-clause 5.11.3.7(a) as originally adopted by Loyalist Council (see para 3 above), does not include the addition of 3 dBA for the inherent uncertainty in calculating sound pressure levels, which is considered to be + or – 3dBA. Good regulatory practise in the context of concerns for public health should dictate that the upper limit of uncertainty be used. Similarly, with regard to the uncertainty associated with the measurement of the sound power of wind turbines, which is in the order of + or – 1 dBA.

11. Only the transformers associated with industrial wind turbines emit “tonal” noise and therefore the 5 dBA penalty as described in sub-clause 5.11.3.7(a), set out in paragraph 3 above, should be limited accordingly.

ORDER SOUGHT

12. The Appellant respectfully requests the following order:

(a) Reinstatement of sub-clause 5.11.3.7(a) of Amendment No. 18 to the Official Plan for Loyalist Township, as originally adopted by Loyalist Council on or about September 2, 2008, with the following additions thereto:

(i) At the end thereof, the expression “in calculating sound pressure levels 3 dBA shall be added to allow for uncertainty inherent in such calculations, and 1 dBA shall be added to allow for the uncertainty in measuring the sound power of wind turbines.”

- (ii) The insertion of the word “transformer” after the phrase, “a 5 dBA penalty for”, so that the full expression reads, “A 5 dBA penalty for transformer tonal noise and a 5 dBA penalty for periodic or impulsive noise sources as defined by Ontario Noise Guidelines MPC-104”.
- (b) Such other amendments as this honourable Board may deem just.