

## LAND COMPENSATION REPORTS

---

[Indexed as: **Pinto v. Simcoe (County)**]

PROCEEDING COMMENCED UNDER subsection 26(b) of  
the Expropriations Act, R.S.O. 1990, c. E. 26, as amended

Claimants: Floyd Pinto and Maria Pinto

Respondent: County of Simcoe

Subject: Land Compensation

Property Address/Description: 1452 County Road 50

Municipality: Township of Adjala-Tosorontio

OMB Case No.: LC140049

OMB File No.: LC140049

OMB Case Name: Pinto v. Simcoe (County)

Local Planning Appeal Tribunal

Docket: LC140049

J.V. Zuidema V-Chair

Judgment: August 17, 2018\*

**Real property — Expropriation — Valuation — Market value — Approaches — Miscellaneous** — Respondent county expropriated portion of applicants' property, for road reconstruction property — Applicants sought \$8,756 for market value of expropriated property — Applicants sought \$69,500 for injurious affection — Applicants finally sought \$124,400.39 for disturbance damages — Applicants applied for damages from county — Property was unique in its location — Being situated closer to road, property had higher market value than other neighbouring properties — Some of this value was lost by expropriation — County's approach did not acknowledge lost value — Full amount claimed by applicants was compensable — Application granted in part — Expropriations Act, R.S.O. 1990, c. E.26, ss. 1, 14.

**Real property — Expropriation — Injurious affection — Where expropriation occurring — Assessment of injury — Before and after method** — Respondent county expropriated portion of applicants' property, for road reconstruction property — Applicants sought \$8,756 for market value of expropriated

---

\* Varied on reconsideration at *Pinto v. Simcoe (County)*, 2019 CarswellOnt 13489, 11 L.C.R. (2d) 17 (Ont. L.P.A.T.)

property — Applicants sought \$69,500 for injurious affection — Applicants finally sought \$124,400.39 for disturbance damages — Applicants applied for damages from county — Septic tank was broken by negligence of county's contractor — These repairs were compensable in amount of \$13,938.64 — Application granted in part — Expropriations Act, R.S.O. 1990, c. E.26, ss. 1, 14.

**Real property — Expropriation — Injurious affection — Where expropriation occurring — Types of injurious affection — Miscellaneous** — Respondent county expropriated portion of applicants' property, for road reconstruction property — Applicants sought \$8,756 for market value of expropriated property — Applicants sought \$69,500 for injurious affection — Applicants finally sought \$124,400.39 for disturbance damages — Applicants applied for damages from county — Construction project caused significant damage to applicants' home, in form of cracks and fissures — Brick repair was necessary as result, and was compensable in amount of \$73,300.42 — Application allowed — Expropriations Act, R.S.O. 1990, c. E.26, ss. 1, 14.

**Real property — Expropriation — Injurious affection — Where expropriation occurring — Types of injurious affection — Flooding** — Respondent county expropriated portion of applicants' property, for road reconstruction property — Applicants sought \$8,756 for market value of expropriated property — Applicants sought \$69,500 for injurious affection — Applicants finally sought \$124,400.39 for disturbance damages — Applicants applied for damages from county — Flooding of property was not connected by evidence, to actions of county — County was not responsible for topography of area — No damages were payable for flooding — Application granted in part — Expropriations Act, R.S.O. 1990, c. E.26, ss. 1, 14.

**Real property — Expropriation — Disturbance damages — Expenses of expropriation — Professional fees — Appraisers** — Respondent county expropriated portion of applicants' property, for road reconstruction property — Applicants sought \$8,756 for market value of expropriated property — Applicants sought \$69,500 for injurious affection — Applicants finally sought \$124,400.39 for disturbance damages — Applicants applied for damages from county — Applicants were substantially successful, at over 85% rate prescribed in applicable law — Applicants were accordingly entitled to all costs related to claim, including appraisal fees — Application granted in part — Expropriations Act, R.S.O. 1990, c. E.26, ss. 1, 14.

**Real property — Expropriation — Disturbance damages — Trees and fences** — Respondent county expropriated portion of applicants' property, for road reconstruction property — Applicants sought \$8,756 for market value of expropriated property — Applicants sought \$69,500 for injurious affection — Applicants finally sought \$124,400.39 for disturbance damages — Applicants applied for damages from county — Applicants' claim that additional snow

would accumulate on property was not proven — Creation of extra land did not mean increased snow — Snow blade was not compensable expense — Application granted in part — Expropriations Act, R.S.O. 1990, c. E.26, ss. 1, 14.

**Cases considered by J.V. Zuidema V-Chair:**

*Dell Holdings Ltd. v. Toronto Area Transit Operating Authority* (1997), 142 D.L.R. (4th) 206, (sub nom. *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*) 31 O.R. (3d) 576 (headnote only), (sub nom. *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*) 97 O.A.C. 81, (sub nom. *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*) 206 N.R. 321, 7 R.P.R. (3d) 1, 36 M.P.L.R. (2d) 163, (sub nom. *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*) 60 L.C.R. 81, (sub nom. *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*) [1997] 1 S.C.R. 32, 45 Admin. L.R. (2d) 1, (sub nom. *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*) [1997] S.C.J. No. 6, 1997 CarswellOnt 78, 1997 CarswellOnt 79, 31 O.R. (3d) 576 (note) (S.C.C.) — followed

*Gillespie v. Ontario (Minister of Transportation)* (2006), 2006 CarswellOnt 410, 207 O.A.C. 91, 89 L.C.R. 1, 264 D.L.R. (4th) 375, 47 R.P.R. (4th) 146 (Ont. Div. Ct.) — followed

**Statutes considered:**

*Expropriations Act*, R.S.O. 1990, c. E.26

Generally — referred to

s. 1(1) “injurious affection” (a) — considered

s. 14(1) — considered

s. 14(2) — considered

s. 14(3) — considered

APPLICATION by residents, for compensation from respondent county after expropriation of property.

Robert Ackerman, for Floyd John Pinto and Maria Teresa Pinto  
Marshall Green, for County of Simcoe

**J.V. Zuidema V-Chair:**

**INTRODUCTION**

- <sup>1</sup> A hearing was held under the *Expropriations Act* (“Act”) with respect to an expropriation by the County of Simcoe (“County”) of a portion of property located at 1452 County Road 50 in the Township of Adjala-Tosorontio (“subject property”) owned by Floyd and Maria Pinto (“Claimants”). The subject property is located within the County.

2 For ease of reference and for consistency, references in this decision will be to the “Board” given that the matter began before the Ontario Municipal Board. At the time of its conclusion, the Ontario Municipal Board had been replaced by the Local Planning Appeal Tribunal.

3 Further the final written argument from Counsel for the Claimants and the County have been received and included with the materials in the file.

### *The Project*

4 The County expropriated 0.045 acres of the subject property or roughly 10 feet along the length of frontage of the subject property for the purpose of widening and reconstructing County Road 50. It was formerly Highway 50.

5 The road reconstruction project (“the project”) involved the addition of an interior lane for slower vehicles immediately in front of the subject property and included lowering the slope of County Road 50 north of the subject property for southbound traffic, while elevating the road grade in front of the subject property by approximately one (1) metre (“m”).

6 The project required the expropriation of lands from the Claimants’ neighbours as well, and while there had been some back and forth with respect to those claims, those other claims were settled prior to the commencement of this hearing. This was the only outstanding claim.

7 It should be noted however that the Claimants’ house on the subject property was situated closer to the road than their neighbours’ properties. As such, I view the taking of 10 feet of frontage where the Claimants’ home is roughly 100 feet to the road as remarkably different than taking a similar amount of land from the neighbours where their homes were situated anywhere from 250 to 400 feet to the road. In my estimation, the impact of such a taking is different and lesser than that of Mr. and Mrs. Pinto’s neighbours.

8 In their pleadings, the Claimants were seeking the following:

- i. \$8,756.00 for the market value of the Expropriated Lands.
- ii. \$69,500.00 for injurious affection to the Claimants’ Remaining Lands.
- iii. \$124,400.39 for disturbance damages, or in the alternative, personal damages, resulting from the expropriation.
- iv. an amount yet undetermined for disturbance damages, or in the alternative, personal damages, or in the further alternative as dam-

ages for injurious affection, resulting from the draining changes caused by the increased elevation of County Road 50.

- 9 By the time the hearing began, some of these amounts remained but some were withdrawn or paid. I was advised that the amounts for market value remained the same and was still being claimed. The amount for injurious affection had decreased slightly to \$65,624.00. The amount for disturbance damages had been divided into various categories as follows:
- i. \$14,341.00 for trees which had now been agreed upon to be paid by the County to the Claimants;
  - ii. \$77,956.43 for repairs to the home on the subject property;
  - iii. \$15,157.82 for repairs to the driveway were no longer being claimed;
  - iv. \$3,870.00 for costs for a survey were no longer being claimed;
  - v. \$13,938.64 for costs associated with a new septic tank and bed with necessary reports for same.
- 10 By the conclusion of the case, I was advised that some of these figures were changed once again although slightly: item (ii) as noted above had been reduced to \$73,300.42 for repairs required to the home as result of vibration and additional amounts of \$1,423.80 and \$1,574.64 representing replacement of the garage door and snow blade, respectively.
- 11 The total amount for disturbance damages being sought was \$104,578.50. Adding the amounts for injurious affection (\$65,624.00) and the market value (\$8,756.00) brought the grand total to \$178,958.50 with interest and costs associated with legal, appraisal and other experts necessary for the hearing.
- 12 The Claimants also asked the Board to require the County to complete remedial works along the new frontage of the subject property to rectify the drainage problems which they alleged occurred and were a direct result of the road project. No order will be made to provide for this relief given my findings on the issue of flooding discussed further in this decision.
- 13 On behalf of the Claimants, I heard from:
- a. Mr. Floyd Pinto, one of the owners of the subject property. I took his evidence to be given on behalf of himself and his wife, as I was advised she was not well enough to attend the hearing;
  - b. Mr. Larry Bedford, qualified and accepted as an expert appraiser;

- c. Mr. John Southern, who was not qualified as an expert but was a senior engineering technologist who took photographs and videos of the subject property and reviewed the data from the seismograph equipment;
  - d. Mr. Robert Rimrott who was qualified and accepted as an expert in the areas of vibration monitoring, construction vibration, interpretation of the data arising from the vibration equipment and noise;
  - e. Mr. Paul Kocsis, who was qualified and accepted as an expert in the area of structural engineering. He provided opinion evidence with respect to ground-borne vibration.
- 14 On behalf of the County, I heard from the following witnesses:
- a. Mr. Christian Meile, who was qualified and accepted as an expert in civil engineering with a focus on transportation issues;
  - b. Mr. Chris Doherty, who was qualified as an expert certified engineering technician and spoke to the road construction;
  - c. Mr. Geoffrey White, who was qualified as an expert in the areas of vibration and vibration impacts on geotech works in connection with the road construction;
  - d. Mr. Steve Wasylenki, who was qualified as an expert certified engineering technologist with a focus on home construction and condition;
  - e. Mr. Chris Gariepy, who was qualified and accepted as an expert in the areas of masonry and construction; and
  - f. Mr. Stephen Thompson, who was qualified as an expert appraiser in land valuation.
- 15 It should be noted that because of the schedules of some of the witnesses and the fact that this hearing commenced in March 2018 but did not conclude in the time allotted, and as such, continued in May 2018, the order of witnesses was a little bit irregular. However, such sequencing was done on consent of the parties and to oblige other commitments.
- 16 Also, the County chose not to retain the services of a court reporter for either sitting of this hearing, and that too, was not objected to by the Claimants. I provided no direction on this issue.
- 17 My starting point in assessing the evidence stems from the approach enunciated in the 1997 seminal Supreme Court of Canada decision, *Dell*

*Holdings Ltd. v. Toronto Area Transit Operating Authority*, [1997] 1 S.C.R. 32 (S.C.C.).

- 18 That decision stood for the proposition that the Act must be given a broad and liberal interpretation, given that it is remedial legislation with a purpose to adequately compensate those whose lands are taken to serve the public interest. The majority wrote “[t]o take all or part of a person’s property constitutes a severe loss and a very significant interference with a citizen’s private property rights. It follows that the power of an expropriating authority should be strictly construed in favour of those whose rights have been affected.” [*ibid.*, page 44]
- 19 And further at page 46:
- It follows that the *Expropriations Act* should be read in a broad and purposive manner in order to comply with the aim of the Act to fully compensate a land owner whose property has been taken.
- 20 I note that the Supreme Court used the term “fully” in describing how a land owner is to be compensated. It does not suggest that every claim should be paid but rather that each claim made properly under a heading stipulated in the legislation and supported by credible evidence, should be fully paid.
- 21 I found Mr. Pinto to be a forthright and credible witness. He explained that he and his family have lived in the house since October 2002 which is when they purchased the property. He believed the house was built sometime in 1969.
- 22 It is a one-storey brick bungalow with a walkout with a two-car garage (the second car garage was added after the house was built but prior to the Claimants’ purchase). The house is approximately 1,777 square feet in area.
- 23 Outside there are mature trees, a “Y” shaped driveway and chain-link fence. Mr. Pinto also arranged a modest bus shelter for his children to stand under during inclement weather as the school bus picks them up in front of their home. The property is a large rectangular shape parcel of just over 10 acres. There are some out buildings as well for storage.
- 24 From the many photographs provided, it was clear to me that the Pinto family took pride in the ownership of their home and did the best they could within their means.

***Flooding***

- 25 The County took the expropriated lands on July 25, 2012 but the project did not commence until approximately one year later. Besides widening the road for an additional lane, some works were done to replace culverts which were located just beyond the Claimants' driveway. Mr. Pinto testified that the work done on the culverts in front of his home has caused flooding which negatively impacted the drainage patterns on his property.
- 26 From evidence of the County and topographical mapping provided to me, it was clear that areas near the front and side of the Claimants' property are at a lower elevation than those lands surrounding. Mr. Pinto explained that in prior years there had been some ponding on his property but not to the extent following the reconstruction work on the road and culverts.
- 27 The County maintained that it should not be held responsible for the low topography and that in recent years, greater periods of intense rainfall has occurred, likely due to the effect of climate change. Nevertheless, the County argued that the taxpayer should not bear the cost for these perceived damages.
- 28 I agree with the County on this point. Unfortunately, the Claimants did not provide sufficient and compelling evidence to connect the alleged flooding of their property to the works done by the County. Without a reasonable causal connection, I cannot conclude that damages were arising from the County's action on this particular point.
- 29 The mapping which was provided to me showed that the elevations on the subject property were lower than those to its adjacent neighbour. Exhibit 4(a), a site drainage plan prepared in June 2008, set out the elevations of the subject property and that of neighbouring properties. From that document, it showed a low point between the Pinto property and that of the next door neighbour. Structures such as the septic field and outdoor shed are in the vicinity of that low point.
- 30 Logical surface drainage patterns, shown by the arrows on Exhibit 4(a) would result in some ponding on the subject property and particularly so on those occasions when there were extreme rain events.
- 31 The lower elevations on the subject property are facts not connected to the expropriation and the County should not be held responsible.

*Repairs to House*

- 32 Where I do find the evidence compelling and connection is with respect to the damages to the home itself, namely the numerous cracks and fissures which appeared shortly after the road project commenced. Mr. Pinto's evidence on this point was reliable and compelling. He was candid to admit that there were some cracks in the brick work of his home; this is to be expected of a home which is almost 50 years old.
- 33 However, the County was unable to satisfactorily explain how the number of cracks increased exponentially shortly following the road construction. I attribute the many additional cracks to be directly connected to the County's road project.
- 34 Unlike many homeowners, Mr. Pinto had the foresight to retain experts to do vibration monitoring during the period of construction. That evidence was provided to me and I accept it as being an accurate and reasonable representation of the nature of the vibrations arising from the large road reconstruction equipment which was being used in August 2013.
- 35 Mr. Pinto took photographs showing the large road construction vehicles and equipment which were being used. I heard evidence on the nature of the vibration those types of vehicles and equipment create. Where there was some dispute was on the fragility of the Pinto home. As mentioned earlier, it was built sometime in 1969 but what was unknown until the damage was already done, was that this was a house built with concrete blocks with a brick veneer.
- 36 This is unlike the traditional homes which are built today mostly of wood. I accept the evidence of Mr. Kocsis on behalf of the Claimants who explained that while concrete blocks are stronger, they also are much more susceptible to vibration damage. There is more "give" to use the vernacular with wooden homes but not so for concrete, and this would explain the many cracks and step-cracks which would have formed due to vibration damage.
- 37 Mr. Wasylenki testified on behalf of the County. He was the civil engineering technologist who prepared the pre-construction report. This was the report which described the condition of a property before commencement of road project. It served as a baseline assessment for the subject property. It was done just over a year prior to the road project having commenced.

38 Mr. Wasylenki was asked why his report did not identify the many cracks which were apparent from the photographs submitted by the Claimants and his response was candid that either those cracks were not present when he had done his initial inspection in June 2012, or that he might have missed them or that they appeared sometime between the June 2012 inspection and the August 2013 road reconstruction.

39 I have difficulty accepting the proposition that over a hundred cracks appeared in a 50-year-old home within one year's time (from June 2012 to August 2013) which would more than double the number of cracks from the initial inspection. One would have thought that if the suggestion is that the house is already old, it would have had many cracks at age 44 but then not over twice as many at age 45, which time period coincidentally overlaps with the road project.

40 I find it more reasonable that either Mr. Wasylenki missed seeing a number of cracks or that the cracks appeared following the road project. In either case, the County should be held responsible. If it is the former, then the benefit of the doubt should be given to the Claimants as the County should have done its due diligence with proper and reliable documentation prior to the road project. Unfortunately, if Mr. Wasylenki missed a large number of cracks during his inspection, it does not leave me with confidence in the accuracy and reliability of his evidence. As such, I prefer the evidence submitted by the Mr. Kocsis.

41 If it is the latter, then there is a causal connection between the many additional cracks and the road project, and that, in my estimation, is compensable.

42 So now I come to the quantum. The Claimants would like to remove the veneer from the entire home and re-brick given that the existing brick is no longer manufactured and replacing localized areas where the cracks have appeared would result in an aesthetically unpleasing appearance.

43 The option of tinting new bricks to try to match might work but there was just as much doubt that it might not match either. This option was raised by the County to try to minimize costs and I understand the rationale for this approach.

44 Mr. Pinto explained that his wife was not keen on having a patchwork of replacement bricks and that the front of the house was the most important view for the curb-appeal of the property. I accept his concerns.

45 He also indicated that if there was a less costly alternative (i.e. reface the front of the house and perhaps recycle the older bricks for areas along

the side which were not as visible), he would be amenable to that solution as well. I did not have an alternative cost proposal provided. I do note that some areas of the home had siding and not brick so replacement of bricks would not be necessary for the entire home.

- 46 Therefore, given that I have concluded from the evidence of the experts on vibration that a large number of cracks were a result of the road project, I accept the Claimants' account that the repairs to the bricks will be \$73,300.42. Amounts in this range were supported by the estimates which Mr. Pinto obtained and which had been filed as exhibits (Exhibit 1, Tab 18 to 18(e)).

### *Septic System*

- 47 Another claim made was for the septic system. On this account I also find for the Claimants and require the County to compensate. I rely on the evidence of Mr. Pinto wherein he described how the County Contractor directed a septic company to remove some sludge from the tank and the company, likely accidentally, hit the partition wall in the tank and broke it. This required the replacement of the septic, which Mr. Pinto has done at his expense.

- 48 Mr. Pinto should receive \$13,938.64 for this element of his claim under disturbance damages. The presence of the septic company was at the behest of the County as part of the road project. Mr. Pinto explained that as a result of the damage to the septic, some back-up was caused into the house. Costs for those repairs have been included with the amount noted above for "Repairs to House."

- 49 The County argued that the septic was very old anyway and was soon to fail in any event. The "slight tapping" as the County characterized it, caused the damage but had the septic not been so old, the septic might have been able to withstand the slight tapping.

- 50 With respect this is conjecture. When the County's contractor tested the septic, the contractor should have inspected the septic to assess its condition, including its age. If it was very old and fragile, perhaps the contractor should have refrained from doing any tapping but if the contractor proceeded, it did so on behalf of the County and bears the responsibility for any damage which arises as a result.

### *Snow Blade*

- 51 The Claimants also claim for purchasing a snow blade which they argue is now necessary given the additional snow which will accumulate

in front of their driveway given the extra lane arising from the road project. The Claimants suggest that the County will be required to plow County Road 50 and now that there are three lanes instead of two in front of the subject property, there will be more snow to remove in front of the Pinto driveway.

52 I do not find that this request falls under any compensable heading under the *Expropriations Act*. The purported increase in the amount of snow to be shovelled as a result of the additional lane was never quantified through the evidence.

53 While it might appear logical that an additional lane means more snow to clear, that assumption is premised on a consistent quantity of snow which requires removal year after year. That is not always the case. There are some years where there is little snowfall and some where there is more. Some years require more effort to remove the accumulated snow and some years do not.

54 There is no reasonable connection that the road project will result in more snow removal which justifies the compensation for a snow blade for Mr. Pinto's vehicle.

#### ***Market Value for Land***

55 In assessing the market value for the portion of the frontage taken from the subject property, I am required to assess the methodology used by the competing appraisers. The County estimated that the market value for the land expropriated came to \$1,363.00. The Claimants were seeking \$8,756.00. A difference of \$7,393.00 results.

56 The starting point to assess market value is rooted in subsection 14 of the Act which states:

14 (1) The market value of land expropriated is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer. R.S.O. 1990, c. E.26, s. 14 (1).

#### **Idem**

(2) Where the land expropriated is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, and the owner genuinely intends to relocate in similar premises, the market value shall be deemed to be the reasonable cost of equivalent reinstatement. R.S.O. 1990, c. E.26, s. 14 (2).

**Idem**

(3) Where only part of the land of an owner is taken and such part is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the taking may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the taking. R.S.O. 1990, c. E.26, s. 14 (3)

- 57 In this case, each appraiser used a direct comparison method, which is standard in the industry. Where there was a distinction was that the County's appraiser, Mr. Thompson looked at the property as a whole and as such, sought comparable which were similar in size to the ten-acre parcel of the subject property.
- 58 The Claimants' appraiser, Mr. Larry Bedford, on the other hand, divided the subject property into two segments and reviewed comparable which were roughly one-acre parcels and determining the remainder to be residual.
- 59 Another distinction was the treatment of the frontage which was taken: Mr. Bedford viewed the frontage taken as having a greater value than the same amount of land taken from the rear of the property. His approach was to look at the partial taking from a "parent" parcel of 1 acre in size whereas Mr. Thompson's approach was to look at the entire property, namely the full 10 acres as the "parent" parcel.
- 60 These are important differences given how the property was treated and viewed. While the lawyers for the respective parties argued about whether comparisons to other one-acre or ten-acre parcels should be preferred, the common approach taken by both appraisers was to look at other rural estate residential properties.
- 61 In my estimation, the comparison should be viewed from the perspective of the use of the property, namely as a rural estate residence. While I understand the rationale for trying to find other properties with similar characteristics, I did not view the size of the parent parcel as having critical prominence.
- 62 At the end of the day, the comparators of other rural residential properties within the vicinity and with similar (not identical) characteristics to the subject property were of concern to me. Both appraisers found such properties.
- 63 The County maintained that when conducting the direct comparison, the market value of the subject property, both before and after the expro-

priation, did not change. The County then simply prorated the value to the amount of land taken and came to its figure of \$1,363.00.

64 This, in my estimation, does not take into account the unique aspect of the Pinto property, namely that the Pinto home is situated much closer to the road. While the property is indeed over 10 acres in size, the character of the property is similar to other rural residential and estate residential properties, many which are in the size range of one or two acres.

65 Mr. Bedford's comparables included a number of one-acre parcels which were characterized as rural residential or rural estate lots. I accept and prefer his methodology on this account and as such, agree that market value should be provided at the amount he identified.

66 Where I disagree with Mr. Bedford's approach is that he would have me look at the specific location of the partial taking. He made the point that taking 10 feet from the front of someone's property is remarkably different than taking 10 feet from the back of a 10-acre parcel. To put it another way, the taking of the land at the front of the property has a greater impact on the streetscape and visual "curb-appeal" of the subject property and that results in a negative impact to the property which should be compensated.

67 While I agree with the intent, I cannot agree that doing so strictly falls into the category of market value. With respect, Mr. Bedford's analysis takes him into the calculations associated with injurious affection and not market value. The Act defines "injurious affection" as:

- a. Where a statutory authority acquires part of the land of an owner,
  - i. The reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works thereon or by the use of the works thereon or any combination of them, and
  - ii. Such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute.  
[section 1(1) of the Act]

68 The concept of market value is not a defined term under the Act. There are a number of widely accepted methods to gauge how the market value of a property would be affected by the expropriation. The "before and after" approach is one standard approach. This was an approach utilized by the appraisers in this case. The County's assessment concluded

that there was no difference in market value and as such, the amount of land taken was simply calculated at the per acre rate.

69 Mr. Bedford's approach included the impact of the taking into the market value, but then he seemed to blend in the negative impacts which should have been more appropriately classified as injurious affection. In reviewing his market impact report, Mr. Bedford includes an amount which reflects, in his professional view, the resulting decrease in value of the overall parcel because of the taking.

70 The commentary provided by the Ontario Superior Court of Justice Divisional Court in the 2006 case of *Gillespie v. Ontario (Minister of Transportation)* (2006), 89 L.C.R. 1 (Ont. Div. Ct.) ("*Gillespie*") is helpful. In that case, the court states:

Section 14(4) states that in determining the market value of the land, "no account shall be taken of ...", the following three factors:

- (a) the special use to which the expropriating authority will put the land;
- (b) any increase or decrease in the value of the land resulting from the development or the imminence of the development in respect of which the expropriation is made or from any expropriation or imminent prospect of expropriation; or
- (c) any increase in the value of the land resulting from the land being put to a use that could be restrained by any court or is contrary to law or is detrimental to the health of the occupants of the land or to the public health." [paragraph 16]

71 When the Divisional Court was reviewing the OMB decision in *Gillespie*, the concept of "betterment" was addressed. The OMB had correctly held that betterment did not come into play, as it found there was no injurious affection to the remaining land.

72 In this case, I do find that there is injurious affection to the remaining land in that the taking of the frontage of parcel which has a home situated closer to the road than neighbouring properties, results, in my estimation, in a negative impact to the remaining parcel. A prospective vendor looks to the streetscape and curb-appeal of a property and compares that to neighbouring properties when determining what should be paid, and this parcel has lost some of that appeal with this taking.

73 In coming to the amount which should be compensated for this loss, I prefer and accept Mr. Bedford's estimate and rely on the comparable which he presented. The County's approach does not recognize any neg-

ative impact to the market value of the home and I simply disagree with this conclusion.

74 Therefore, there should be compensation in the amount of \$8,756.00 paid to the Claimants.

75 Given my decision on the various headings of compensation, the Claimants have achieved an amount greater than 85% and as such, should be fully compensated for all costs associated with their claim. Those costs include all legal and consulting costs as permitted by the legislation. The amount shall be payable forthwith along with interest at 6% as permitted by the Act.

76 Therefore, the Tribunal orders that the appeal is allowed in part and compensation and costs shall be paid as outlined in this decision.

*Application granted in part.*