

Session EV7: Planner's toolkit on renewable energy



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OUTLINE

A. Green Energy & Green Economy Act

- Overview of the Green Energy Act (GEA)
- Renewable Energy Permits & Ontario Regulation 359/09

B. A Municipal Planning Perspective

- Challenges of a two system approval process
- Role of local planning under the GEA

C. Tools for Local Municipalities

- Life in a post Planning Act world
- Opportunities for municipal input



GREEN ENERGY & GREEN ECONOMY ACT

- Received Royal Assent on May 14, 2009.
- “Enabling Legislation” – GEGEA came into effect and legislation under other affected Acts was proclaimed in September.
- Most significant regulation is 359/09 under the Environmental Protection Act – Renewable Energy Approvals
 - “unofficial” but now in effect by proclamation.



LOST IN TRANSITION?

- 359/09 exempts projects from an Renewable Energy Approval if:
 - All existing required approval and permits in place (Planning Act = site plan approval)
 - Notice of Completion issued under Environmental Assessment Act (EAA) **AND** executed power purchase agreement.
 - If not subject to EAA, permitted use with a power purchase agreement in place.
 - Water power facility
 - Co-generation facilities with partial renewable component.
 - Farm based anaerobic digestion facilities.



DEFINITIONS

- Notable changes to definitions:
 - Natural features – no reference to provincial significance for wetlands, woodlands, habitat, etc
 - Wind Turbine vs. Wind Facility – some prescribed setbacks apply only to actual turbines.
 - Noise Receptor
 - reference to “centre of building” rather than an area 30m around a building.
 - reference to centre of a vacant lot.
 - Does not include properties owned or leased by the proponent if all/part of the project falls on the property.



CLASSES OF RENEWABLE ENERGY PROJECTS

- Anaerobic Digestion: 3 classes based on location & fuel type.
- Thermal treatment (biomass): 3 classes based on location & fuel type.
- Solar: 3 classes
 - Class 1 (<10kW), Class 2(>10kW building mounted), & Class 3 (>10kW non-building mounted).
- Wind: 5 classes
 - Class 1 (<3 kW)
 - Class 2 (between 3 kW and 50 kW)
 - Class 3 (>50 kW & <102 dBA)
 - Class 4 (>50 kW & >102 dBA)
 - Class 5 (Offshore)



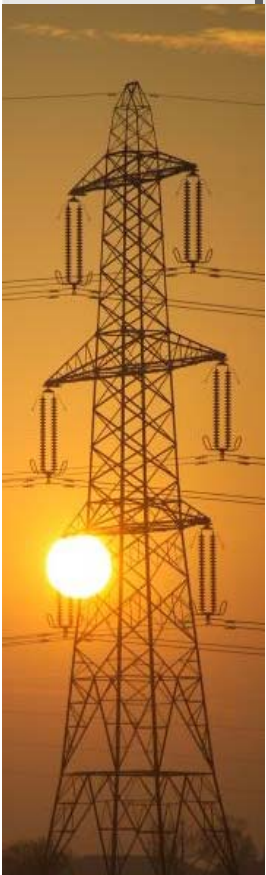
APPLICATION FOR A REA

- Application form & completed supporting documents:
 - **Construction plan report**
 - **Consultation report**
 - **Decommissioning plan report (no securities)**
 - **Design & operations report**
 - Effluent management plan report
 - Emission summary & dispersion modeling
 - Hydrogeological assessment report
 - Noise study report
 - Odour study report
 - **Project description report**
 - Surface water assessment report
 - Off-shore wind facility report
 - **Wind turbine specifications report**



CONSULTATION

- Up to 2 public meetings required. Draft project documents provided 60 days before final public meeting.
- Role of the EBR (Environmental Bill of Rights).
- Notice must be given through local papers, municipal clerks, landowners within 120 metres, and others.
- Pre-consultation required with Aboriginal communities with specific reference to adverse effects.
- Consultation required with local municipalities on “matters of local infrastructure and servicing”.
- Can appeal renewable energy approval within 15 days only of REA issue on grounds of:
 - “serious harm to human health”.
 - Serious or irreversible harm to plants, animals and the environment.
- Reverse onus of proof on the person requiring the hearing.



PROTECTED PROPERTIES

- Properties protected under the Ontario Heritage Act require specific authorization.
 - Ontario Heritage Trust
 - Municipality that gave notice of intention or passed by-law.
 - Minister of Culture
- Required authorization presents an opportunity for municipalities to protect built heritage resources and cultural heritage landscapes.
- Proponent may be required to assess archeological and heritage resources after self “consideration” of potential impacts and submit with application.



NATURAL HERITAGE

- Proponent to undertake natural heritage assessment within 120 metres of a project location (only building and structures) to identify natural heritage features & submit to MNR for confirmation.
- Water bodies may trigger similar assessment process up to 300 metres of a project location.
- If greater than 120 metres from a natural feature, no EIS is required unless setback reduction requested.
- 120 metre setback for most natural heritage features.
- 30 metre setback to lakes and streams.
- Setbacks can be reduced with an EIS.
- Specific provisions for the Oak Ridges Moraine and Greenbelt.



SETBACKS

- Transformers – 500m to 1 km from noise receptor.
- Most farm based anaerobic digestion and thermal treatment facilities have a minimum setback requirement of 250m which can be reduced to 125m.
- No setback requirements for wind turbines less than 50 kW.
- Minimum setback of 550m from a noise receptor. Reduce with noise study where ambient TRAFFIC noise already exceeds 40dBA and consistent with MOE noise guidelines.
- Increased setbacks per number of turbines and noise output with reduced setbacks possible.
- Setbacks to non-participating properties equal to hub height but can be reduced to blade length plus 10m with justification.
- Setbacks to roads and right-of-ways of blade length plus 10m.



CONCLUSIONS

- Little involvement for land use planners for renewable energy approvals.
- Opportunity for many adverse effects (particularly with smaller and less regulated projects) particularly in urban areas.
- Final regulations are less onerous.
- Expect a frustrated public for smaller projects with less information and consultation requirements.
- Municipalities should use the EBR to communicate legitimate land use issues.
- Opportunities may exist for stakeholders to participate through existing legislation unaffected by the GEA.



September 24th, 2009 – GEA Regulations Became Law

- Official Plan Policies and Zoning By-law provisions are replaced with the Renewable Energy Approval Process under the Green Energy Act
- Transition of 'In Process' Applications are revealed within the GEA Regulations
- Consultation requirements with Local Municipalities are required within the Regulations but are not specified



Exempt Projects

- Approvals are not required for 'micro' or 'small' scale Renewable Energy Projects
 - Limited requirements apply to these structures under the 2006 Ontario Building Code (turbines with a nameplate capacity less than 3kW are not required to obtain a Building Permit)
 - No regulation of facilities with potential for conflict, particularly within Settlement Areas



Transition Projects

- Renewable Energy Approval is not required
 - Projects must conform to the provisions of the Green Energy Act (setbacks, noise provisions, etc.)
 - Projects which do not conform are required to be amended. Major amendments may require a Renewable Energy Approval
- Approval under the Planning Act R.S.O. 1990, as amended is not required
 - No requirement for local consultation
 - No provision for the implementation of standards from a Municipal perspective, including Public Works / Municipal Infrastructure (i.e. roads)



New Projects under the GEA

- Municipal Goal – Meaningful Participation

Although Planning Act powers are removed local Municipalities are still afforded the consultation requirements under the Green Energy Act. Effective and meaningful participation in this process requires Municipalities to take a 'proactive approach'.



Potential Considerations and Tools

- Revise Municipal Engineering and Development Standards to specifically address Renewable Energy Projects.
 - Consider specific road standards to deal with projects based their scale and location
 - Create specific standards for transmission lines and project access requirements
 - Create specific standards and requirements for the provision of an Emergency Plan during not only the life of the project but also the Construction period
 - Create specific standards for Switching Stations and other project components located within Municipal rights-of-way and on Municipal property
 - Consider specific provisions dealing with non-wind facilities
 - Have the document endorsed by Council



Potential Considerations and Tools

- Create a Municipal Protocol specific to Renewable Energy Projects
 - Include requirements for the provision of Documents and Reports for Public Viewing in the Municipal Office
 - Reference Municipal Engineering and Development Standards endorsed by Council
 - Include expectations for planning considerations for Renewable Energy Facilities
 - Include expectations for Municipal participation in Public Meetings as part of the Renewable Energy Approval process
 - Make documents available on the Municipality's website
 - Have the document endorsed by Council



Benefits of a Proactive Approach

- Requirements are clear and concise for Renewable Energy Proponents
- Easily accessible documents allow Proponents to budget and prepare their project accordingly
- Local Policy documents provide guidance to ratepayers to understand the Municipality's role in the Renewable Energy Approval process
- Decisions and requirements for Projects are based on policy creating an equal playing field for all projects

