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2009 CIP/OPPI Conference:  
*BUILDING A BETTER WORLD*  
Practical Solutions to Challenging Issues  
Niagara Falls, Ontario  
September 30 to October 3, 2009

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**Session EV7:**  
**Planner's toolkit on renewable energy**

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## What tools are left?



Rural area near Kincardine, Ontario



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## Planner's toolkit on renewable energy

- This portion of the presentation will focus on the other tools available to regulate renewable energy projects, now that the amendments and regulations associated with the *Green Energy Act, 2009* are in full force and effect:
  - Life in a post *Planning Act* world
  - Opportunities for municipal input

# Planner's toolkit on renewable energy

- Not subject to the *Planning Act* (exempt undertakings)

- 1998:

- 62. (1) An undertaking of Hydro One Inc. or Ontario Power Generation Inc. or subsidiaries that has been approved under the *Environmental Assessment Act* is not subject to this Act or sections 113 and 114 of the *City of Toronto Act, 2006*

- 2006:

- 62.0.1 (1) An undertaking or class of undertakings within the meaning of the *Environmental Assessment Act* that relates to energy is not subject to this Act or to section 113 or 114 of the *City of Toronto Act, 2006* ...

This section is not operative without a *Planning Act* regulation under clause 70 (h) prescribing the undertaking or class of undertakings. No regulation to date.

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- **New 2009:**

- **62.0.2**

Despite any Act or regulation, the following do not apply to a **renewable energy undertaking** (except in relation to a decision under section 28 (CIPs) or Part VI)

- PPS
  - Official Plan
  - Part V -Zoning By-law, Site Plan Approval, ICBLs, etc.
  - Section 24 – undertaking does not have to conform with the OP;
  - Provincial Plans unless prescribed in Regulation.
- **50 (3) (d.1) and 50 (5) (d.1):** Limits on land division to allow leases and other interests in land for 21 to 50 years without a consent, if for purposes of a renewable energy project or the renewable energy generation facility

- What is a renewable energy undertaking?
  - “renewable energy undertaking” means a **renewable energy generation facility, a renewable energy project, a renewable energy testing facility or a renewable energy testing project**
  - “renewable energy project” has the same meaning as in the Green Energy Act, 2009, which reads:
    - “renewable energy project” means the construction, installation, use, operation, changing or retiring of a **renewable energy generation facility**;

The types and classes of Renewable Energy Generation Facilities established through Part II sections 3-6 of *Ontario Regulation 359/09* – if not listed *Planning Act* applies

- What is still available? Is there any opportunity for municipal input into renewable energy projects other than consultation under the REA process and limited rights of appeal?

- ***The Building Code Act, 1992 and the Building Code***

If the renewable energy project the structure housing the project is a building as defined in the Act it then requires a building permit:

- The Act defines “building” as:

- (a) a structure occupying an area greater than ten square metres consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto,

- (b) a structure occupying an area of ten square metres or less that contains plumbing, including the plumbing appurtenant thereto,

- (c) plumbing not located in a structure,

- (c.1) a sewage system, or

- (d) structures designated in the building code;

# Planner's toolkit on renewable energy

- The building permit, if it is for a project requiring an REA under *Ontario Regulation 350/06* the approval is now considered “applicable law”:
  - New: *(vi.1) section 47.3 of the Environmental Protection Act, with respect to the issuance of a renewable energy approval,*
- This means the REA is now considered “applicable law” and a building permit cannot be issued without proof of an REA.
- Consider adding new requirements to the complete building permit application list:
  - the nature of the renewable energy project;
  - whether it requires an REA, and if so, have the applicant provide the approval and the reports submitted for the approval, especially the decommissioning report, the design and operations report and the noise study and odour study report.

## ■ *Municipal Act, 2001*

Municipalities in Ontario over the past 6 years have been given broader and more expansive general powers (sections 2, 10 and 11 of the Act)

- Economic, social and environmental well-being of the municipality.
- Health, safety and well-being of persons.
- Protection of persons and property, including consumer protection.
- Structures, including fences and signs.

- Potentially use these broad powers to regulate renewable energy projects, particularly those not required to obtain an approval under Regulation 359/09:.

- Case in point – *Croplife Canada v. City of Toronto* – “Precautionary Principle”

By-law prohibiting and regulating pesticide use upheld, even though the Province and Federal Government regulated the area. If you can comply with the by-law and the Provincial and Federal regulations there is no conflict and the by-law must not frustrate the intent of the other legislation.

Specific authority to deal with some of the adverse impacts & nuisance in relation to renewable energy projects, such as noise, odour, vibration, glare, reflection, and shadow flicker may be available through sections 128 and 129, so long as no conflict and does not frustrate the purpose of the GEA:

- **“128(1)** *Without limiting sections 9, 10 and 11, a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances.*  
*(2) The opinion of council under this section, if arrived at in good faith, is not subject to review by any court.”*
  
- **“129.** *Without limiting sections 9, 10 and 11, a local municipality may,*  
*(a) prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors; and*  
*(b) prohibit the matters described in clause (a) unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans.”*

### *Municipal Act, 2001*

- Can regulate structures, including fences and can impose fees related to municipal services (Sections 10, 11, 391)
- May be possible to create a permit system for those projects not subject to an REA, such as the Class 1 and 2 solar facilities and Class 1 wind facility.
  - By-law to require a renewable energy project permit be obtained prior to obtaining a building permit;
  - By-law is applicable law therefore permit required before building permit can issue;
  - Permit system - regulate, but not prohibit and cannot frustrate or conflict with the GEA;
  - limit projects to certain areas/locational requirements and siting on the lot or building
  - Require the filing of studies:
    - Shadow/glare
    - noise
    - construction plans, certified by an engineer,
    - operation plan
    - decommissioning plan and securities
    - monitoring plan
    - fees for processing the permit (subject to Regulation 584/06)