

Call to Order

A special meeting of the Digby Municipal Council was called to order with the Warden in the chair at 8:32 p.m.

Attendance

Councillors present:

- Jim Thurber, Warden
- Jimmy MacAlpine, Deputy Warden
- Linda Gregory, Councillor
- Maritza Adams, Councillor

Staff present:

- Linda Fraser, Chief Administrative Officer
- Cora Lee Bremner, Executive Secretary

Regrets

- Councillor Randall Amero (declared conflict)

Prayer

Warden Thurber welcomed everyone to the meeting, read the Municipality's mission statement and then asked everyone to pause to seek guidance for the meeting.

Municipal Planning
Strategy and Land Use
By-law for the Regulation
of Wind Turbines in the
Municipality of the
District of Digby

At a meeting held on June 29, 2009 Municipal Council received public presentations concerning the proposed adoption of a Municipal Planning Strategy and Land Use By-law for the regulation of wind turbine development in the Municipality. In light of comments received, Council deferred making a decision on adoption of the Strategy and By-law. Council has asked the 4 Site Group if they could provide Council with options that they could use other than the proposed Municipal Planning Strategy and Land Use By-law as it has been drafted.

Mr. Chris Millier was asked by the Warden to review these options that have been provided to Council in a report dated July 20, 2009. (See attached report)

Councillor Gregory asked if in a Development Agreement you can include more prescriptive criteria such as maximum noise level.

Mr. Millier gave examples of how minimum standards can be incorporated into "As-of-Right" Development. If using absolute criteria you might as well use the "As-of-Right" method of regulation. You should not mix prescriptive with performance standards. If Council is comfortable with the prescriptive standards, the development agreement or "by approval" method doesn't add any value to the process.

Warden Thurber noted that he is concerned that the criteria in the draft document is too vague, which will result in the Developer not knowing the regulations. He would like to see the document include minimum setbacks as well as maximum decibel levels and still allow public participation to be part of the process.

Mr. Millier outlines two different methods of regulation other than the Development Agreement method:

- As-of-Right Public input is sought at the beginning of the process when the MPS and LUB are being developed. Once prescriptive standards have been approved by Council, as long as a developer can meet

those standards, the development officer can issue a permit. The public or the Council is not involved in the process.

- Re-zoning – A general zone is created for the entire municipality. All development can take place in the general zone, with the exceptions of the regulations in place for the Conway Area, Airport and Wellfield Area. Wind Turbine development would only be permitted through a re-zoning of an area to a “Wind Turbine Zone”. The requirements for the Wind Turbine Zone could be prescriptive. There is public input required, and Council makes the final decision.

Deputy Warden MacAlpine noted that he likes the public consultation as well, but also noted the need for defined setbacks and standards, and if this is done, people will know up front where they stand. Deputy Warden MacAlpine also noted that Domestic turbines can be just as important as Utility and they will become increasingly more popular as time goes on.

MOVED by Councillor Gregory, seconded by Deputy Warden MacAlpine that Council give second and final reading of the Municipal Planning Strategy and Land Use By-law for the Regulation of Wind Turbines in the Municipality of the District of Digby.

It was noted that this motion pertained to the draft that was presented to Council on June 29, 2009.

MOTION DEFEATED

Opposed - Warden Thurber, Deputy Warden MacAlpine, and Councillor Adams.

Council discussed the need to have an additional meeting with Mr. Millier to review Status Quo or Adoption of Land Use Regulation, Scope of Applicability of Regulation, “As-of-Right” Development or “By Approval” Development, and Prescriptive or Performance-based Development Control Standards. Minimum setback and maximum decibel levels also need to be incorporated into the document. There will be another Council meeting scheduled to review these issues with Mr. Millier so that Council can come up with a direction to refer to the Planning Advisory Committee. Mr. Millier hopes that this process can be done within a month.

Adjournment

MOVED by Councillor Gregory, seconded by Councillor Adams that the meeting adjourn at 9:45 PM.

MOTION CARRIED



Planning
Development
Project Management

MEMO

To: Digby Municipal Council
From: Chris Millier

Date: July 20, 2009

**Re: Options Relating to the Regulation of Wind Turbine
Development and the Draft Municipal Planning Strategy and
Land Use By-law**

Context

At a meeting held on June 29, 2009 Municipal Council received public presentations concerning the proposed adoption of a Municipal Planning Strategy and Land Use By-law for the regulation of wind turbine development in the Municipality.

In light of comments received, Council deferred making a decision on adoption of the Strategy and By-law.

The purpose of this report is to identify with Council options which it may wish to consider as alternatives to draft wind turbine development regulation. No specific recommendations are provided.

Background

As Municipal Council is aware the Planning Advisory Committee initiated a process in the Spring of 2008 to prepare a Municipal Planning Strategy and Land Use By-law for the regulation of wind turbines within the Municipality. Over the period of a year the Committee reviewed a wide variety of general and technical background information, including a report prepared for the Union of Nova Scotia Municipalities, as well as reviewing the regulatory approaches from other jurisdictions.

Committee meetings were open to the public and Information was received from the public through presentations to the Committee as well as more formally through a series of three community meetings which were held in February 2009.

The draft Strategy and By-law were prepared in conformity with the requirements of the enabling legislation and provisions contained in the Province of Nova Scotia's Municipal Government Act.

In preparing the current draft Strategy and By-law the Committee discussed a number of issues which formed underlying rationale for the selection of the regulatory approach which is contained in the documents. It may be helpful for Council to be aware of these assumptions:

- There is currently no technical/industry, community or medical consensus as to an appropriate minimum distance for wind turbines to be separated

from a community. Similarly, there is also no consensus as to a preferred regulatory tool (i.e. setbacks, development agreement) for the regulation of turbine development.

- Small scale (“domestic”) and large scale (“utility”) turbines can create different concerns and have different impacts therefore they should be regulated in a different manner from each other.
- Members of the public and communities potentially impacted by the development of wind turbines should have the ability to participate in reviewing any proposed development.
- Any regulations to be adopted by the Municipality should apply equally to all lands within the Municipality.

In light of this underlying rationale, the Committee has drafted a Municipal Planning Strategy and Land Use By-law that would enable an application to propose the development of small and large wind turbines anywhere in the Municipality.

Small scale turbines would be regulated through the use of setbacks from property lines using a formula which links the noise created by the turbine to a distance which should yield a target noise level at the property line. The erection of small scale turbines would be considered “as-of-right” and would not be subject to a public review process. The processing and approval of an application to erect a turbine would be administered by the Municipality’s Development Officer.

Large scale turbines would be regulated through a Development Agreement. A proposal for large scale turbine development would be subject to review against a number of established criteria which address, among other matters, infrastructure, environment, visual and noise impacts. The review of a proposal would include a formal opportunity for the public to make presentations to Council the approval of the project would be the responsibility of Municipal Council and implementation of the development would be subject to control through a binding legal agreement between the developer and the Municipality.

Discussion at the Committee indicated that both of these options provided the Municipality an ability to regulate the development of new wind turbines on a “performance basis” and to have local conditions and circumstances play a role in determining how the development would be undertaken. In the circumstances of small scale turbines minimum setback distances from a property line would be related to target noise levels. In the circumstances of large scale turbines a site and proposal specific evaluation would be undertaken using predetermined criteria and a legal agreement would be structured to regulate the specific development.

Policy Options and Alternatives

Following the comments received through the formal public hearing process Council has expressed a desire to discuss alternatives to the policy and regulatory regime contained in the current draft MPS and LUB. The purpose of this report is not to propose specific alternative policy directions or wording.

In order to identify a policy framework which Council may wish to adopt it is necessary for Council to identify the underlying “principles” or “rationale” which it

believes should be embodied in the Strategy and By-law. A series of focused questions have been developed for Council's consideration which address basic policy alternative and approaches. In identifying a consensus on these alternative policy approaches Council will enable the preparation of revised draft Strategy and By-law text.

Issue 1, Status Quo or Adoption of Land Use Regulation

Context

At present the Municipality does not have municipal-wide land use regulation in place. Wind turbines can be developed in all areas of the Municipality without Municipal approval except for the Conway Area, the Digby Airport Area and certain zones within the Digby Wellfield Area - all of which have detailed area planning documents in place.

Wind farm development is currently subject to provincial review through the Environmental Assessment Act and the design and construction of turbine bases is subject to the Municipal Building Code.

The Municipality has been granted the primary responsibility for land use planning through the Municipal Government Act. The Municipality is not required to put land use regulation in place. The Municipality has the right to adopt planning documents which address the whole or a specific portion of the Municipality and/or which address as single issue or comprehensive planning and development concerns.

Question 1

Does Council support changing the status quo through the adoption of planning documents which provide a legal framework for regulating the development of wind turbines? If so, should different regulatory approaches be adopted for small scale and large scale turbine development?

Issue 2, Scope of Applicability of Regulation

Context

The Municipality can adopt different planning and land use regulation for different parts of the Municipality. Such is the case for the existing planning documents which have been adopted for the Digby Wellfield Area, the Conway Area and most recently for the Digby Airport Area.

The wind regimes within the Municipality have been mapped and been acknowledged as having significant potential for energy generation. Portions of the Municipality adjacent to the Bay of Fundy, and in particular along the Digby Neck, have been identified as having the most significant energy generation potential. Concern has been expressed from some communities and community groups that certain areas should be protected from "industrial" type development and in particular from wind farm development.

Question 2

Should any planning and land use regulations relating to wind turbine development be applied in a consistent manner across the Municipality or should differing types of regulation be prepared for different “areas”?

Issue 3, “As-of-Right” Development or “By Approval” Development

Context

A fundamental distinction to land use control contained in all planning documents is whether or not a proposed development/use/activity is subject to a public review process. The Municipality has the ability to identify development which will be permitted in a specific or general area without public notice, review by the Planning Advisory Committee, public hearing or approval by Municipal Council – such development is referred to as “as-of-right”.

The alternative to as-of-right development is “by approval” development. By approval development requires that prior to being granted a permit a proposed development is subject to either a rezoning or development agreement. In either of these cases the Municipality’s planning documents would establish criteria against which the “suitability” or “appropriateness” of a proposed development would be assessed using pre-determined criteria. A proposed development would be reviewed by the Municipality’s Planning Advisory Committee, a recommendation would be made by the PAC to Council, a formal public hearing would be held to gather public input and comment and the approval of the proposed development would be made by majority vote of the Council.

Question 3

Should a proposal to develop wind turbines be subject to a process which involves public input and decision-making by Municipal Council?

Issue 4, Prescriptive or Performance-based Development Control Standards

Context

The regulation of any land use can be addressed through one of two fundamental approaches – prescriptive regulation; performance-based regulation.

Prescriptive regulation establishes a series of minimum standards or requirements for a specific type or class of use. A common prescriptive regulation might include a minimum lot frontage or area requirement in a specific zone or a minimum setback distance for a structure from a property line. The Municipality’s existing planning documents utilize prescriptive regulations.

Establishing prescriptive regulator standards can be challenging in the absence of tested precedent or technical data and standards are often

criticized as being arbitrary. In the context of potential wind turbine regulations the establishment of a specific minimum separation distance from a turbine to a residence would be a form of prescriptive regulation.

Performance-based regulation recognizes that the potential impact of a development is inherently linked to the site, to the adjacent environment and the particular physical characteristic of the proposed development. Performance-based regulation is structured on a site and development specific basis and establishes conditions to which a proposed development or use must perform. These types of regulations are often linked to both quantitative and qualitative assessment criteria which are considered through a planning evaluation process.

Again in the context of wind turbine regulation the current draft Land Use By-law proposes to regulate the location of small “domestic” scale turbines by establishing setback requirements which are linked to target acoustical levels at a property line.

Question 4

Does Council prefer to utilize prescribed development regulations over performance-based regulation? And if so, what standards does it support for wind turbine development?

Next Steps

In identifying preferred options in relation to the fundamental principles identified in the four questions above Council will enable the preparation of a revised draft Municipal Planning Strategy and Land Use By-law which addresses Council’s concerns.

The process of adopting planning documents is established through the Municipal Government Act. This will require the Municipality to hold a new public hearing if any “substantial” revisions are made to the current draft Strategy and/or By-law.