

Nonconforming Structure or Use

It is public knowledge that a utility scale wind energy project has been proposed for the Rossway area.

The current municipal regulatory framework requires that a Building Permit be issued before the base of a turbine could be constructed.

If a Building Permit is issued for the construction of a wind turbine base prior to the Notice of Intent to Adopt Planning Documents (Municipal Planning Strategy and Land Use By-law) is published, the Provincial legislation relating to Nonconforming Structures and Uses become relevant.

The relevant provisions from the *Municipal Government Act* are detailed below. A key element of the legislation is that nonconforming structures or uses may continue to exist even though they do not meet the requirements contained in the Planning Documents. In many places this situation is commonly referred to as a “Grandfather Clause”.

The following is from the *Municipal Government Act*

“238 (1) A nonconforming structure, nonconforming use of land or nonconforming use in a structure, may continue if it exists and is lawfully permitted at the date of the first publication of the notice of intention to adopt or amend a land-use by-law.

(2) A nonconforming structure is deemed to exist at the date of the first publication of the notice of intention to adopt or amend a land-use by-law, if the

(a) nonconforming structure was lawfully under construction and was completed within a reasonable time; or

(b) permit for its construction was in force and effect, the construction was commenced within twelve months after the date of the issuance of the permit and the construction was completed in conformity with the permit within a reasonable time.

- (3) A nonconforming use in a structure is deemed to exist at the date of the first publication of the notice of intention to adopt or amend a land-use by-law if
- (a) the structure containing the nonconforming use was lawfully under construction and was completed within a reasonable time; or
 - (b) the permit for its construction or use was in force and effect, the construction was commenced within twelve months after the date of the issuance of the permit and the construction was completed in conformity with the permit within a reasonable time; and
 - (c) the use was permitted when the permit for the structure was granted and the use was commenced upon the completion of construction.”

Section 191 of the MGA also contains the following definitions:

- “(i) nonconforming structure means a structure that does not meet the applicable requirements of a land-use by-law;
- (j) nonconforming use of land means a use of land that is not permitted in the zone;
- (k) nonconforming use in a structure means a use in a structure that is not permitted in the zone in which the structure is located;”

Planning Documents cannot supersede or over ride provincial legislation.

Matters relating to the administration and interpretation of these MGA provisions are not linked to the preparation or adoption of planning documents.

Interpretation of the MGA provisions may require legal opinion, guidance or adjudication.

February 2009