

Environmental Review Tribunal

Cham Shan Temple v. Director, Ministry of the Environment

Case Nos: 13-140/13-141/14-142

PARTICIPANT STATEMENT

Presentation Notes – December 11, 2014

**Based on original submission dated February 5, 2014 and addendum dated
November 7, 2014**

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The City of Kawartha Lakes is involved in the planning and reviews of proposed industrial wind turbine projects to ensure municipal policy objectives are met, consultation and information to the public is provided, and that the public, natural environment and municipal infrastructure is not negatively impacted by the construction and operation of these projects. The City has endorsed many renewable energy projects throughout the City of Kawartha Lakes to-date. As a participant in this proceeding, the City contends that local interests and objectives will not be met, and that the approval holder's project scope is unclear and should not have been approved by the Director of the MOECC.

The City submitted to the tribunal a participant statement and accompanying document book, dated February 5, 2014. Through additional deliberations and considerations of this project, an addendum participant statement was submitted to the tribunal, dated November 7, 2014. My objective today is to provide an overview of the key City issues and concerns outlined in those statements.

The City is aware that this tribunal has the obligation to be satisfied that the project will not cause either serious harm to human health, or cause serious and irreversible harm to plant life, animal life or the natural environment. The City takes the position that there is inadequate information to even make this determination, and there is lack of clarity in the project details and implementation to properly assess the impacts as the details are constantly changing and being amended.

1 - The Oak Ridges Moraine Conservation Plan (ORMCP)

The proposed project is located partially within the Oak Ridges Moraine Conservation Plan (ORMCP). Turbines # 4 and # 5 are located in the Country Side Area of the Oak Ridges Moraine and are also in a High Aquifer Vulnerability Area. Turbine #5 is located within the minimum area of influence for a Natural Heritage Feature - Significant Woodland and an intermittent watercourse. (Map #2 and Map #3)

The ORMCP is an ecologically based plan established by the Ontario government to provide land use and resource management direction for the 190,000 hectares of land and water within the Moraine. Through the legislation and the ORMCP, the Ontario Government has set a clear policy framework for protecting the Oak Ridges Moraine. This provincial policy is reflected in the City's official plan and implementing zoning by-law to inform decisions on all development applications. The Plan also provides that:

"Any City Official Plan is required to be in conformity with the ORMCP. Nothing in this Plan is intended to prevent municipalities from adopting official plan policies more restrictive than the ORMCP, except where prohibited by the ORMCP."

The REA process incorporates some restrictions for alternative energy applications within the ORMCP. These restrictions are intended to protect significant natural heritage features including provincially significant wetlands, areas of natural and scientific interest, significant woodlands and valleylands, and sensitive water bodies. Under the REA process, and subject to approval from the Ministry of Natural Resources, the developer must submit a Natural Heritage Assessment and geotechnical surveys which evaluate the ground water and hydrology of the area.

Under the ORMCP, hydrology and hydrogeological reports are routinely required to rationalize proposed development. The City requested additional reports from wpd (not prescribed in the REA process) including detailed maps showing high aquifer vulnerability zones, natural heritage features and a hydrogeological report. The proponent noted in the REA Consultation Report that they had submitted a Hydrology Report, however the City requested a Hydrogeological Report. This information has not been provided to the City to-date.

The applicants have not addressed:

- site specific information about groundwater and aquifer features and hydrogeology; and
- local natural heritage features and potential impacts.

Further, Industrial Wind Turbines are not considered a permitted use in either the ORMCP (Section 41) or the Oak Ridges Moraine Zoning By-law 2005-133, as there is no description provided for this use under the definition of transportation, infrastructure and utilities, which are limited to: (see Tab #4 in Document book)

- a) public highways;
- b) transit lines, railways and related facilities;
- c) gas and oil pipelines;
- d) sewage and water service systems and lines and stormwater management facilities;
- e) power transmission lines;
- f) telecommunications lines and facilities, including broadcasting towers;
- g) bridges, interchanges, stations, and other structures, above and below ground, that are required for the construction, operation or use of the facilities listed in clauses (a) to (f); and
- h) rights of way required for the facilities listed in clauses (a) to (g).

This list does not contemplate, nor permit, uses related to renewable energy generation structures.

The ORMCP provides that Transportation, infrastructure and utilities uses may be permitted to cross a natural heritage feature or a hydrologically sensitive feature if the need for the project has been demonstrated and there is no reasonable alternative.

The City contends that there are other locations, outside of the Oak Ridges Moraine, where the potential impact to environmental and natural features can be mitigated.

In addition, these specific uses are only permitted to cross a key natural heritage feature or a hydrologically sensitive feature if the applicant demonstrates that:

- a) the need for the project has been demonstrated and there is no reasonable alternative;
- b) the planning, design and construction practices adopted will keep any adverse effects on the ecological integrity of the Plan Area to a minimum;
- c) the design practices adopted will maintain, and where possible improve or restore, key ecological and recreational linkages;
- d) the landscape design will be adapted to the circumstances of the site and use native plant species as much as possible, especially along rights of way; and
- e) the long-term landscape management approaches adopted will maintain, and where possible improve or restore, the health, diversity, size and connectivity of the key natural heritage feature or hydrologically sensitive feature.

The portion of the project that is located within the Oak Ridges Moraine boundary is identified as an area of High Aquifer Vulnerability. (Map #4) The Plan states that development in wellhead protection areas and areas highly vulnerable to groundwater contamination is limited. Development near these hydrologically sensitive features is only permitted if it will not adversely affect these features.

The City requested a Hydrogeological Report from the proponent, but never received the information. The Hydrogeological Report is necessary to determine potential impact to ground water and potential ground water contamination.

The ORMCP states that “the Ontario government’s vision for the Oak Ridges Moraine is that of a continuous band of green rolling hills that provides form and structure to south-central Ontario, which protecting the ecological and hydrogeological features and functions that support the health and well-being of the regions residents and ecosystems.

In the absence of this supplementary information, it is not clear if the proposed development will cause either serious harm to human health, or cause serious and irreversible harm to plant life, animal life or the natural environment. Through discussions with Ministry of Environment staff on this matter, the City was advised that municipalities are encouraged to provide additional comments that are not prescribed in the Part B form if there are any additional concerns or comments. (See Tab # 18 in Document book). The approval of this project by the Director in the absence of this prescribed information in the ORMCP is flawed.

Even if the Green Energy Act permits as an exempted land use energy generation projects within the ORM, that exemption does not permit these uses as-of-right, and those prescribed considerations, requirements and policies in the ORMCP must be considered and applied prior to any development approvals. The City contends that the approval holder has not satisfied the prescribed requirements of the ORMCP.

2 – Impact to Municipal Infrastructure:

The proponent requested, as early as June 2012, permission from the City for road upgrades and access to Ballyduff Road, Wild Turkey Road and Gray Road. Permission has not yet been granted. There are four (4) roads potentially impacted by the proposed development: (Map #5)

Ballyduff Road – open and maintained rural municipal road. Wpd proposes to travel on this road to Wild Turkey Road for both construction and future maintenance access.

Wild Turkey Road – portion of this municipal road within the project area is unopened and not maintained by the City. Wpd proposes to utilize this section of unopened road allowance to accommodate construction access, future maintenance access through three (3) proposed property entrances, and a transmission wire crossing to serve Turbines #4 and #5. This involves clearing and grubbing of roadside vegetation; importation and placement of Granular A and B; grading; digging of roadside drainage ditches; installation of culverts; installation of access points for existing properties; and compaction of road materials. (Reference: MCEA project file report)

Gray Road – unopened and not maintained municipal road. Wpd proposes to install an above ground transmission wire corridor within this road allowance to service the proposed development and connect to a transformer station located at Highway 35. (Reference: OEB Procedural Order October 23, 2014)

Highway 7A – open and maintained Provincial Highway. Wpd is proposing access to the project from this highway. The City is not aware of any Provincial approvals granted by MTO for this access to-date, and was advised by MTO that there are a number of outstanding items including detailed engineered drawings that demonstrate that the proposed turning movement can be achieved.

The City has not consented to any proposed upgrades to unopened Wild Turkey Road, and the City takes the position that opening up and widening Wild Turkey Road is not in keeping with the ORMCP, nor its current use as a naturalized area for recreational trail use.

Section 41.(4) of the ORMCP (Tab #4) states that “except as permitted in subsection (5), with respect to land within a key natural heritage feature or a hydrologically sensitive feature (in this case unopened Wild Turkey Road is wholly within a High Aquifer Vulnerability Area and adjacent to a Significant Woodlot) ...

all upgrading or extension of existing transportation, ... including the opening of a road within an unopened road allowance, are prohibited.”

Under the Ontario Municipal Act 2001, s. 31(1), s. 31(2) it should be noted that unopened Municipal road allowances can only be opened and assumed by Municipal Council by virtue of a by-law. The Electric Act, 1998 does not grant permission to a distributor to open a Municipal Public Highway. The City has no obligation to open this section of Wild Turkey Road to accommodate the proposed development, and City Council is on record refusing wpd Canada’s proposed improvements to this Road. Recently, the City became aware that the proponent is exploring alternative access road locations, through private property, to connect to turbines #2, #4 and #5. The proponent would still require vehicular access across Wild Turkey Road to access Turbine #5. This proposed crossing would not be approved by the City

In the absence of municipal consent for use and reconstruction of Wild Turkey Road, it is unclear of the resultant revisions or changes to wpd Canada’s project plan for access and turbine siting.

It is therefore not clear if the proposed development will cause either serious harm to human health, or cause serious and irreversible harm to plant life, animal life or the natural environment. The approval of this project by the Director is flawed, in the absence of approval for wpd Canada from the City to use and obtain access over Wild Turkey Road.

3 - Health and Public Safety Concerns

Fire & Rescue

City Fire and Rescue Services do not have suitable resources, equipment or training to adequately respond to some potential emergencies associated with these structures. City By-law 2014-273 was passed on October 14th 2014 which establishes fire department regulations and system requirements for industrial wind turbines. These requirements are outlined in Appendix “A” to the City’s Addendum submission, dated November 7, 2014. All proponents must adhere to the requirements of By-law 2014-273. In correspondence to the City from Polly Faith LLP, on behalf of wpd Canada, and dated November 28, 2014, the writer acknowledges the By-law adopted by City Council, and notes that “the by-law imposes a new set of onerous and unprecedented fire safety requirements ...”

Wpd has not adequately addressed proposed fire safety and access with the City to-date. As a result, the City takes the position that the proposed development could cause serious harm to human health, in the event of an emergency.

Conclusion/Recommendation:

The City forwarded the Part B Municipal Consultation Form, together with Council's recommendation to the Province, recommending that the Sumac Ridge Wind Project be refused.

On April 5, 2013, an Instrument Proposal Notice for Sumac Ridge was posted on the Environmental Bill of Rights Registry (EBR) for a comment period ending May 20, 2013. A comprehensive list of comments addressing health and safety concerns, inadequate setbacks, lack of information, impact on roads and infrastructure, conflicts with Oak Ridges Moraine legislation, and various other concerns, was submitted in response to that Notice.

REA approval (Number 8037-9AYKBK) was granted for this project in December of 2013, and outlines terms and conditions for the project. That approval only requires that the proponent submit a traffic management plan and a road use agreement to the City. No consideration to the City's expressed concerns respecting the protection of municipal interests and public safety, environmental impact and infrastructure impact was given or addressed in approval conditions. (See Tab #28 in Document book)

Approval of the Sumac Ridge Wind project by the Director is flawed as no City-requested conditions of project approval were imposed on the development, the impact on the Oak Ridges Moraine was not adequately demonstrated (in keeping with the Province's own ORM legislation) and that approval was based on the use and reconstruction of an unopened municipal road allowance that the approval holder has no permissions for.

The City contends that there is a significant lack of information to appropriately approve this project; and as a result the proponent has not demonstrated that the proposed development will not cause either serious harm to human health, or cause serious and irreversible harm to plant life, animal life or the natural environment.

The City respectfully requests that the REA approval be revoked.