

THE CORPORATION OF THE MUNICIPALITY OF WEST GREY

BY-LAW NUMBER 26 - 2010

BEING A BY-LAW TO ESTABLISH CERTAIN HEALTH & SAFETY PROVISIONS FOR THE LOCATING & ERECTION OF WIND GENERATION FACILITIES

WHEREAS the fundamental role and duty of all three levels of government in Canada—Federal, Provincial & Municipal—to take all steps necessary to protect the health, safety and well being of their residents is hereby acknowledged;

AND WHEREAS Section 7 of the *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*, Being Part I of the *CONSTITUTION ACT*, 1982 provides that:

“LEGAL RIGHTS

LIFE, LIBERTY AND SECURITY OF PERSON.

7. *Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”;*

AND WHEREAS the said Section 7 of the *CANADIAN CHARTER OF RIGHTS AND FREEDOMS* is a constitutional provision that protects an individual's autonomy and personal legal rights from actions of the government in Canada with three types of protection within the section, namely the right to life, liberty, and security of the person.

AND WHEREAS the said Section 7 of the *CANADIAN CHARTER OF RIGHTS AND FREEDOMS* provision provides both substantive and procedural rights afforded to anyone facing an adjudicative process or procedure that affects fundamental rights and freedoms, and certain substantive standards related to the rule of law that regulate the actions of the state (e.g., the rule against unclear or vague laws) such as the locating and erection of wind generation facilities as vaguely provided for in the *Planning Act* of the Province of Ontario with no locating criteria legislated;

AND WHEREAS no legal principle has been demonstrated by the Province of Ontario about which there is sufficient societal consensus that it is fundamental to the way in which the legal system should fairly operate that there be no locating criteria based on the health, safety and well being of the residents of Ontario, with respect to wind generation facilities, that would identify with sufficient precision to yield a manageable standard against which to measure deprivations of life, liberty or security of the person (R. v. Malmo-Levine, 2003);

AND WHEREAS The "Principles of Fundamental Justice" require that means used to achieve a societal purpose or objective must be reasonably necessary and this principle is violated when the government, in pursuing a "legitimate objective", uses "means" that unnecessarily and disproportionately interfere with an individual's rights (*R. v. Heywood*) as is the case with removing the locating of wind turbines from local planning processes thereby interfering with normal individual rights respecting local land use planning;

AND WHEREAS the said Section 7 of the *CANADIAN CHARTER OF RIGHTS AND FREEDOMS* can also be violated by the conduct of a party other than a Canadian government body (e.g. wind generation companies) with the government needing only to be a participant or complicit in the conduct threatening the right, when the violation of the security of the person with respect to the person's health, safety and well being would be a reasonably foreseeable consequence of the government, or other body's, actions;

AND WHEREAS the Section 7 of the *CANADIAN CHARTER OF RIGHTS AND FREEDOMS* right to security of the person, consists of rights to privacy of the body and its health and of the right protecting the "psychological integrity" of an individual, that is, the right protects against significant government-inflicted harm (stress) to the mental state of the individual. (*Blencoe v. B.C. (Human Rights Commission)*, 2000);

AND WHEREAS Section 92 of the *Constitution Act*, 1982 provides further that the “Exclusive Powers of Provincial Legislatures” include:

“7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals. “

(responsibility for the health of its residents)

“8. Municipal Institutions in the Province” (including local planning limitations)

“13. Property and Civil Rights in the Province. “ (with a responsibility to protect same)

*“14. The Administration of Justice in the Province, including the **Constitution**, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts”*

(including upholding Part 1 being the *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*);

AND WHEREAS the Government of Canada has established *HEALTH CANADA*, an Agency whose mandate is to “*protect the Canadian public by researching, assessing and collaborating in the management of the health risks and safety hazards associated with the many consumer products that Canadians use everyday*” and works with “*all levels of Governmental agencies and programmes: Industry, National, regional, and international groups and the Canadian Public*”, in pursuit of reducing or eliminating said risks and hazards;

AND WHEREAS the Province of Ontario has established *THE MINISTRY OF ENERGY AND INFRASTRUCTURE* which is responsible for promoting the development of an affordable, safe, reliable, secure and environmentally sustainable energy supply;

AND WHEREAS the Province of Ontario has established *THE MINISTRY OF THE ENVIRONMENT* which is responsible for protecting, restoring and enhancing the environment to ensure public health and environmental quality;

AND WHEREAS the Province of Ontario has established *THE MINISTRY OF NATURAL RESOURCES* to sustainably manage the province's natural resources to contribute to the environmental, social and economic well-being of the people of Ontario;

AND WHEREAS on February 20, 2004, Ontario Premier, Dalton McGuinty stated that: “*The health of Ontarians is our province's most precious resource. We share a responsibility to protect it from harm, and care for it in times of need*”;

AND WHEREAS the Province of Ontario, through Section 11, of the *Municipal Act*, 2001, as amended, has mandated broad authority that lower-tier municipalities may provide “*any service or thing that the municipality considers necessary or desirable for the public*, as follows:

By-laws

(2) A lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting the following matters: ...

- 1. Governance structure of the municipality and its local boards.*
- 2. Accountability and transparency of the municipality and its operations and of its local boards and their operations.*
- 3. Financial management of the municipality and its local boards.*
- 4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act.*
- 5. Economic, social and environmental well-being of the municipality.*
- 6. Health, safety and well-being of persons.***
- 7. Services and things that the municipality is authorized to provide under subsection (1).*
- 8. Protection of persons and property, including consumer protection.*

thereby recognizing the lower-tier municipality's need and responsibility to provide for the health, safety and well-being of its residents;

AND WHEREAS The Corporation of the Municipality of West Grey's confidence in the safety of the locating criteria of WIND GENERATION FACILITIES, as legislated by the Province of Ontario, is based on the premise that, having done their due diligence with respect to ensuring the health, safety and well-being of their citizens under The Constitution and the Charter of Rights and Freedoms, both the federal and provincial governments are prepared to certify the said facilities for location within the Municipality;

AND WHEREAS there is no intention by The Corporation of the Municipality of West Grey to prevent or restrict the "use" of wind generation facilities as a source of renewable energy but rather to promote their "use" in a responsible manner to benefit, or at least, do no harm to any individual by such "use";

AND WHEREAS it is deemed advisable to ensure the continued good health, safety and well-being of all persons living and/or owning lands within the Corporation of the Municipality of West Grey in a responsible manner;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF WEST GREY ENACTS AS FOLLOWS:

1. That, the Chief Building Official, at his/her discretion, may issue a building permit, in accordance with the provisions of the *Ontario Building Code*, for the construction of any *wind generation facility*, when the said application is accompanied by all of the following:
 - a) a certificate issued by *HEALTH CANADA* confirming that the proposed type of *wind generation facility* will benefit, or will not harm, the health, safety and well-being of any resident of The Corporation of the Municipality of West Grey;
 - b) a certificate issued by the *ONTARIO MINISTRY OF ENERGY & INFRASTRUCTURE* confirming that the proposed type of *wind generation facility* will benefit, or will not harm, the health, safety and well-being of any resident of The Corporation of the Municipality of West Grey;
 - c) a certificate issued by the *ONTARIO MINISTRY OF THE ENVIRONMENT* confirming that the proposed type of *wind generation facility* will benefit, or will not harm, the health, safety and well-being of any resident of The Corporation of the Municipality of West Grey;
 - d) a certificate issued by the *ONTARIO MINISTRY OF NATURAL RESOURCES* confirming that the proposed type of *wind generation facility* will benefit, or will not harm, the health, safety and well-being of any resident of The Corporation of the Municipality of West Grey;
 - e) a certificate issued by the *ONTARIO MINISTRY OF ABORIGINAL AFFAIRS* confirming that the proponents of the proposed type of *wind generation facility* and the Crown have carried out satisfactory, meaningful consultation with all the affected aboriginal groups that is respectful and accommodates their rights as recognized and affirmed by Section 35 of the Constitution Act, 1982;"
 - f) certificates issued by either or both the Saugeen First Nations and Chippewas of Nawash, as applicable, confirming that the proponents of the proposed type of *wind generation facility* have carried out satisfactory, meaningful consultation with them with respect to the proposed facility.
2. That before the certificates identified in Section 1 above are issued, the stated Ministries must provide original documentation to the satisfaction of the Council of the Municipality of West Grey that the necessary full and complete non-partisan third party, independent health studies on humans are presented to determine safe setbacks and noise limits.

3. That this by-law shall take effect with final passing.

Read a first and second time, this _____ day of _____, 2010.

Read a third time and finally passed, this 10th day of June, 2010.

Kevin Eccles, Mayor

Christine Robinson, CAO/Clerk