

MUNICIPAL COUNCIL

A Special Session of the Municipal Council of the Municipality of the County of Colchester was conducted virtually and in-person on Wednesday, February 14, 2023, at 6:00 pm.

In peace and friendship, and in the spirit of truth and reconciliation, it was acknowledged that the Municipality of Colchester is in Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq.

Roll Call

The roll was called with the following Councillors in attendance:

Mayor Christine Blair, Chair	
Councillor Laurie Sandeson	District 2
Deputy Mayor Geoff Stewart	District 3
Councillor Mike Cooper	District 4
Councillor Tim Johnson	District 5
Councillor Karen MacKenzie	District 6
Councillor Lisa Patton	District 8
Councillor Marie Benoit	District 9
Councillor Victoria Lomond	District 10
Councillor Wade Parker	District 11

Regrets

Councillor Eric Boutilier	District 1
Councillor Michael Gregory	District 7

Staff Present

Rob Simonds, Chief Administrative Officer
Dennis James, Municipal Solicitor
Tracey Veno, Recording Secretary
Paul Smith, Director of Community Development
Pam Macintosh, Manager of Planning Services
Tim Smith, Manager of IT

Moment of Silence

Council observed a moment of silence in honour of former Mayor and Councillor, Bob Taylor, who passed away on February 10, 2023.

The purpose of this Special Session of Council is to consider Second Reading of amendments to the Wind Turbine Development By-law.

Approval of Agenda

Moved by Councillor Patton and seconded by Councillor Johnson

“That the agenda be approved with the addition of Item 4b, Jordan Municipal Support Project.” Carried unanimously.

Public Presentations on Wind Turbine Development By-law Review AND Second Reading – Amendment to the Wind Turbine Development By-law

Mayor Blair began the meeting advising that at their January 26, 2023, meeting, Council approved by way of resolution, the process for public presentation at this meeting. Council will hear presentations before proceeding to the business portion of the meeting, which is Second Reading of the Wind Turbine Development By-law.

Nine members of the public have registered to present to Council, eight in person and one virtually, a list of which has been distributed to Council. Each presenter is asked to identify themselves before proceeding with their presentation and will have three minutes to speak with a 30 second warning

indicating time is almost up. After their presentation, Council may ask questions of the presenter.

Oscar Urbina – RES, Global Renewable Energy Company - Mr. Urbina advised that they were present when staff presented their findings to the Planning Advisory Committee as well as for First Reading of the By-law amendments. Three points were highlighted as part of his presentation:

- A setbacks of 1.5 km is restrictive however, it can still be worked with. A 2 km setback would be so restrictive that it might make development projects be unviable;
- In response to a question asked at their first presentation in February 2022, regarding any tangible benefits other than taxes the project would provide, Mr. Urbina indicated that benefits include opportunity for local residents to invest in the project; benefits agreement with scholarships and local community funding opportunities; and establishment of a local benefits committee to ensure as many local jobs and contracts as possible.
- Regardless of the outcome, they hope that there is opportunity to work together on a project that would benefit everyone.

Responding to a query on the 2 km setback, Mr. Urbina indicated that the 2 km would be too restrictive for certain turbines.

Leslie Dykeman, Protect Wentworth Valley, Resident of Folly Lake - Ms. Dykeman began her presentation indicating her passion for protecting the whole area, between Folly Lake and Wentworth. She stressed the importance of Colchester completing their county-wide planning and land use by-law (LUB) and requested that priority be placed on completing the county-wide LUB to provide greater protection for Colchester residents. Other points noted were Cumberland County's existing MPS and LUB providing more options for protection; uniqueness of Wentworth Valley and Council's recognition of this; Council's willingness to provide adequate protection but lacking tools, such as the county-wide LUB, to do so; and other options previously suggested by Protect Wentworth Valley (PWV) . The request of PWV is to revisit the restricted overlay once the county-wide LUB is in place and to consider if the tax benefits are more important than the biodiversity, species at risk and the unique beauty of the area. Ms. Dykeman also inquired about the timeline for completion of the county-wide LUB.

Gar Moffatt, Protect Wentworth Valley, Resident of Folly Lake, Colchester – Mr. Moffatt indicated support in general for the proposed By-law as presented by the Planning Advisory Committee including the proposed decommissioning changes and increased setbacks helping to mitigate some of the negatives of living next to a wind site. However, failure to use land boundaries as benchmarks is a huge injustice and it is a missed opportunity to mirror the protection as provided by Cumberland County's MPS and LUB. Mr. Moffatt indicated that staff had an overt bias for development; appeared to have an unwillingness to listen to residents and look at a process that might help in the absence of a county-wide plan; and made recommendation contrary to that of the PAC recommendations. Affected residents had little to no direct benefits of living near an industrial wind facility.

Following Mr. Moffatt's presentation, Councillor Cooper advised that staff were following the directive of Council to undertake a complete review of the

Wind Turbine By-law. If unhappy with what is being presented, it should be directed to Council, not towards staff.

Gregor Wilson, Protect Wentworth Valley, Colchester – Mr. Wilson commended the Mayor, Council and PAC on the recommendations to mitigate risk and indicated support for the PAC recommended motion. Concern was expressed regarding the process for bringing forth recommendations and why a second recommendation is being presented when it is not the recommendation of the PAC and requested that Mayor and Council not consider the staff recommendation this evening.

Also included in his presentation was information regarding residents in the higher elevation communities in the Cobequid Hills having additional risk impacts of industrial wind development due to topography. Homes in these communities can be 150 m below the base elevation of modern industrial giants though the setback do not capture the difference in heights. Mr. Wilson urged a moratorium, or whatever is required, be immediately considered following this evening's decision to make all wind turbine development equitable for all residents and taxpayers in Colchester and suggested for every 1 m of addition turbine height above adjacent residential or seasonal dwelling, there shall be an additional 7.5 m setback.

Responding to a request for clarification on the topography, Mr. Wilson provided a more detailed explanation and indicated that the expected visual and noise impacts would be greater.

Catherine Johnston (virtual attendance), Protect Wentworth Valley, Resident of Colchester County – Ms. Johnston advised that the Wentworth Valley has unique topography and is special due to its biodiversity, being home to many endangered species and it being an outdoor tourist destination. She noted Cumberland County has prioritized protection of the area and urged Council to do the same. It is her belief that many Council members agree however, are challenged in doing so in the absence of a county-wide by-law. Given the unique qualities of the area, she is urging Council to put in place a temporary restriction possibly through a single LUB pending completion of the county-wide planning, providing protection consistent with the overlay as provided by Cumberland. Ms. Johnston indicated that she believes topography is an issue and needs to be considered for Wentworth Valley and throughout Colchester, with setbacks as outlined by Peter Bigelow and Gregor Wilson. The recommendations of the PAC are good and with added elements to address topography through a single LUB or temporary restrictions, she feels it would be gold standard of the province. The request is to pause the process and do the right thing for the residents.

Nancy Frame, Protect Wentworth Valley, Folly Mountain, Resident of Colchester County – Ms. Frame began her presentation by urging Council to approve the by-law amendments as presented at First Reading and recommended by PAC this evening. Also included were concerns regarding Council and staff roles and response to future wind development RFPs. There seemed to be significant emphasis on protection of proponents and land available for development versus the costs and risks to residents, including safety, lost biodiversity and economic development. Ms. Frame indicated that her request for future reviews of industrial development is to make residents most impacted the priority. Additionally, to request that Council lobby the

province for future RFPs to ensure they are responsible for completing provincial landscape assessments to identify areas most suited for wind turbines; to ensure minimal negative impact to communities, environment, eco-systems and wildlife; and for the province to take responsibility for province wide specifications related to setbacks and noise with standardized protection for all Nova Scotia.

Brian Dorey Sipekne'katik First Nation – Mr. Dorey began his presentation with an introduction in Mi'kma'ki and welcomed everyone to the ancestral and unceded territory of the Mi'kmaq. His presentation addressed Council's duty to consult, as was also presented previously and as decided by the Supreme Court in 2017, yet despite this, there has been no consultation with the community on the proposed LUB which have an affect on aboriginal and treaty rights. He spoke of an offer to partner in moving the project forward, indicating that it protects interest of all Nova Scotians by reducing greenhouse gas emissions and providing a better source of power. Concerns were raised regarding the overlay that is being put in the by-law and the impacts it will have on aboriginal and treaty rights; protecting endangered species, however environmental assessments and ecological studies have not been completed but decisions are being made; and wanting to be fully informed before making decisions. Mr. Dorey implored Council not to make a decision on the by-law this evening as consultation has not happened and he does not want any process to go forward that is not collaborative.

Jonathan Turner, Elemental Energy, Vancouver – Mr. Turner indicated that he is representing Elemental Energy and along with Sipekne'katik and another local partner, is developing the Higgins Mountain Wind Project. His presentation touched on goals of the Province of Nova Scotia and Colchester County. Highlights included climate change being real and needing real solutions to address; provincial commitments to reduce greenhouse gas emissions and achieving net zero; and, Colchester's Carbon Free Colchester Plan focus of renewable energy and reducing greenhouse gas emissions. Mr. Turner also addressed Colchester currently having some of the most stringent setbacks in the Province and the reduction of available developable lands with increased setbacks. He indicated that he believes the existing noise thresholds, shadow flicker guidelines and height setbacks are a better approach to managing potential quality of life impacts as noted by previous speakers and will still allow for development of projects that will benefit the Municipality and its residents.

A question was raised on how a 2 km setback would impact the number of turbines for the project. Mr. Turner indicated that the changes to the by-law would affect the Municipality in general and not specifically this project. The project has been designed with input from the community and that visual quality impacts were of great concern to residents of Folly Lake and Wentworth Valley.

Peter Bigelow, Protect Wentworth Valley, Folly Lake, Colchester County – Mr. Bigelow spoke of his experience in advising councils and the province on planning and economic growth related to land use and development. He offered support for Councils direction regarding placement of wind turbines, decommissioning bonds and decibel ranges, however, was not in support of staffs recommendations regarding setbacks. The preference would be for greater setbacks with further setbacks from sensitive communities.

Concerns were noted regarding the current by-law approach being a single county wide setback with special consideration only being contemplated through an MPS. He noted that he feels that options put forward by the community and as referred to by previous speakers could work and was disappointed that those options were not further explored. If consideration is only being given to the two options as presented this evening, he encourages Council to adopt the 2 km for towers over 100 m and this should be from the residential property line and special setback consideration needs to be part of the upcoming county-wide MPS and LUB review, however wind turbines will likely be in place in the Wentworth Valley by the time the review is completed. Mr. Bigelow also encouraged Council to act quickly as another round of wind turbines RFPs is set to come out in the near future and 75 sites in Wentworth have been identified to house wind turbines.

Pam Macintosh, Manager of Planning Services, advised that one written submission has been received regarding the Wind Turbine Development By-law Review, from Natural Forces dated February 13, 2023, a copy of which was distributed on table for this evening's meeting.

Dennis James, Municipal Solicitor, provided information on the process for First and Second Readings when dealing with by-laws. Council approved First Reading of a draft By-law and that is the document for consideration this evening. Details of what would be considered non-substantive and substantive changes were provided noting that any substantive changes would require the By-law to go back to First Reading. A variation in setbacks would not be considered substantive but a change introducing new concepts such as topography would be substantive and would require reverting back to First Reading. Council was reminded that a by-law can be amended at any time. We are nearing the deadline for the moratorium that put a hold on developments approximately one year ago. With the moratorium set to expire, if amendments are not approved this evening, development could no longer be prohibited under the existing By-law. However, if amendments are adopted this evening, direction can be provided, should Council wish to do so, for further review. Referring to confusion addressed by presenters on two recommendations being considered, Mr. James reconfirmed that there is only one recommendation before Council for consideration, as was approved at First Reading as per the recommendation of PAC. However, there is an obligation and it has always been the practice for staff to present their professional judgement, which may not always be the same as what a committee is recommending, and this is properly before Council this evening. Lastly, Mr. James respectfully touched on the duty to consult issue raised indicating that he does not believe that the courts in the law have been clear. The duty to consult our indigenous people is a senior governments obligation. Municipal government can be involved in the process as directed by the provincial government.

Mayor Blair indicated that Council would now proceed with dealing with Second Reading respecting amendments to the 2013 Wind Turbine Development By-law. Documents outlining the proposed amendments and related staff reports have been circulated to Council members and have been made available to the public.

The CAO advised that the guidelines of the Municipal Government Act regarding advertising of the First and Second Readings have been followed.

Paul Smith, Director of Community Development, indicated the purpose of his presentation was to provide background information on the Wind Turbine Development (WTD) By-law, to identify key elements of the review process, and review the proposed amendments made by staff and PAC.

The presentation began with a briefing on the development and implementation of the WTD By-law in 2009, and amendments in 2013. The prospect of an industrial WTD in West Colchester, specifically the Higgins Mountain WTD, created concern which prompted a moratorium on new wind turbine development until completion of a review of current standards, however, it was noted that any changes in the WTD By-law would apply to all development in Colchester County. Strong emphasis was noted on the difference in approaches of how the WTD can be managed due to Cumberland's county wide planning strategy versus Colchester's stand alone by-law.

Mr. Smith indicated that as part of the review process, staff and PAC were directed to consider four key issues - setbacks, height limitations, decommissioning bonds and noise generation standards. Included in the presentation was details on the community engagement strategy, and consultation process; the jurisdictional scan relating to the four key issues; legislative and legal considerations; GIS modelling considerations and observations; impacts of setbacks under existing By-law requirements, staff's recommended changes, and PAC's recommendations; and, observations/findings as a result of the public and stakeholder consultations and overall comprehensive review. Also included was a detailed overview of staff and PAC recommendations which differ in the setback and turbine height requirements, but are consistent in decommissioning and noise generation standards.

A copy of Mr. Smith's detailed presentation is available in the Clerk's office.

Councillor Sandeson, Chair of the PAC, presented the report from their meeting held on January 16, 2023.

Brief debate took place on noise generation and who regulates; effective date and whether further amendments can be made to the By-law if approved this evening; and, how and when it could be brought back to the table for consideration of further amendments such as to deal with topography concerns. The Municipal Solicitor indicated that the By-law would be effective upon publication in local paper of approval of amendments. If no amendments are approved, applications would be processed under existing By-law regulations. Should Council wish to direct staff to undertake further review, Council can do so at any time, keeping in mind the same notice requirements would apply relating to First and Second Readings. Further discussion was held on the restricted overlays and this can be considered under the county-wide planning review. Additionally, clarification was sought on Mr. Dorey's presentation and obligations under duty to consult. Mr. James advised that he does not think the law imposes the duty to consult on municipalities, rather the law exists at provincial and federal levels of government.

Moved by Councillor Sandeson and seconded by Deputy Mayor Stewart

“That Council approves, by way of Second Reading, the amendments to the Wind Turbine Development By-law, as recommended by the Planning Advisory Committee.” Motion carried (*Councillor Parker opposed*).

Mayor Blair noted that once amendments to the By-law are approved by Council, a notice is published and the By-law will then be in force.

Jordan Municipal Support Project (JMSP)

Mayor Blair advised that the Municipality has participated in the JMSP over the last six years with involvement of the Economic Development Officer, CAO, Waste Reduction Manager, two Council members and herself, as a keynote speaker in 2018. The JMSP closing event is taking place in March and an invitation has been extended for the Mayor to attend.

Brief discussion was held on the significance of this project and the commitment of the Municipality to participate in the project including the closing event. Responding to an inquiry about a possible second project, Mayor Blair indicated that a request has been made by FCM to Global Affairs but no decision has been made as yet. An inquiry was also made regarding whether the event would be livestreamed. Mayor Blair indicated that she would inquire with FCM.

Moved by Deputy Mayor Stewart and seconded by Councillor Sandeson

“That Council supports the Mayor attending the Jordan Municipal Support Project closing event.” Carried unanimously.

Adjournment

Moved by Councillor Patton and seconded by Councillor Benoit

“That the meeting adjourn at 7:57 pm.” Carried unanimously.

Tracey Venio
Recording Secretary