

MUNICIPALITY OF THE
COUNTY OF PICTOU

Municipal Planning Strategy



Wind Energy Development

August 2007

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MUNICIPAL PLANNING STRATEGY

1. Introduction

Background

As a renewable resource wind energy is becoming an important viable alternative to reliance on fossil fuels. In the past five years a number of wind turbines have been constructed in various areas of Nova Scotia. These facilities range from a single turbine to “windmill farms” consisting of many turbines. Recently controversy has arisen with respect to the location of turbines and their impact on nearby residential development.

In early 2006 the Municipality of the County of Pictou (Pictou County) was approached by a local company involved in the development of wind energy. In addition to providing Municipal Council with an overview of their activities, the company felt that the development of a municipal strategy and regulations for wind turbines would be beneficial in protecting the interests of both the community and wind energy businesses. At present, there are three turbines in Pictou County, two located on Fitzpatrick Mountain and one located in Marshville.

There are two scales of wind turbine development. The larger ones are frequently called utility scale wind turbines as they are designed to tie into the power grid of Nova Scotia Power Inc. (NSPI).

Usually only one turbine is initially constructed as a test turbine. If tests are positive more are constructed leading to a development known as a wind farm. Some of these turbines are reaching 115 metres (377 feet) in height. The turbines are developed by companies which have agreements in place with NSPI for the sale of the electricity. Many of these proponents are community based.

In addition to the utility scale wind turbines, relatively small turbines known as domestic turbines are also being installed throughout the province. As the term implies, these turbines generate power primarily for domestic use. Most of these turbines are installed “behind the meter” and NSPI restricts the size of these turbines to 100 kilowatt (KW). Only twelve of these turbines have been constructed throughout the province to date. In addition, a smaller number of domestic wind turbines have been constructed in remote areas not serviced by NSPI. This Municipal Planning Strategy and Land Use By-law will address both utility scale turbines and domestic turbines.

Wind turbines producing 2 megawatts (MW) or more are required by the Province to undertake an environmental assessment. Federal requirements may also apply. Many municipalities believe that not all municipal concerns will necessarily be addressed by the senior levels of government. Increasingly municipalities are adopting by-laws to regulate not only turbines producing 2 MW or more but the smaller ones as well.

Pictou County is very supportive of wind energy and believes it is important that this source of energy be developed without jeopardizing the rights of their residents to fully enjoy their property and way of life. Council intends to provide for the future development of wind turbines and to regulate them in such a way that other land uses, especially residential development, will not be adversely affected. Council is aware that there will be no perfect solution acceptable to all of the residents and all the developers of wind energy but will strive to arrive at a reasonable balance in their approach to control future wind turbine development.

Legislative Mandate

The *Municipal Government Act*, Chapter 18 of the Statutes of Nova Scotia, 1998, gives municipalities the authority to regulate land use and development within its boundaries. This authority is exercised through the

adoption of a Municipal Planning Strategy and Land Use By-law.

The purpose of a Municipal Planning Strategy is to provide statements of policy to guide the development and management of the municipality. Council may address a broad range of land uses in the Strategy or Council may choose to provide for the planning and management of only one use of land. Council has decided that this Municipal Planning Strategy and Land Use By-law will address only the development of wind turbines within the Municipality of the County of Pictou. No other use of land will be affected.

The Municipality Planning Strategy provides the policy statements with respect to the regulation of wind turbines but the regulations themselves are contained in a separate document, the Land Use By-law. The documents are prepared and adopted concurrently. After adoption, the Land Use By-law may be amended but any amendments must be consistent with the policy statements of the Municipal Planning Strategy. Development is regulated by the Land Use By-law through the issuance of a development permit by the Municipal Development Officer. A proposed wind turbine development may not be issued a development permit unless it meets all requirements of the Land Use By-law.

The *Municipal Government Act* mandates that a public participation program be carried out to obtain input from all interested parties before documents may be adopted. As well, Council must hold a formal public hearing to hear and receive final comments before they make their decision.

In the preparation of the Municipal Planning Strategy, the Statements of Provincial Interest were reviewed to determine their applicability to this planning initiative. Statements of Provincial Interest form part of the *Municipal Government Act*. The Act requires that planning documents be consistent with the Statements.

As this Strategy and By-law will regulate only the location of future wind turbine facilities, the documents will not adversely affect the goals and objectives reflected in the Statements.

Wind Energy Development in Nova Scotia

To highlight its commitment to renewable energy, the Province is setting targets to require increased production. The general target is that by 2013 at least 20% of Nova Scotia's electricity be produced by renewable energy – wind, tidal, solar, hydro, and biomass. Regulations entitled *Renewable Energy Standards Regulations* have recently become effective and are posted at the Department of Energy's website. No doubt wind energy will be a major contributor to this effort.

This provincial initiative will spur more and more wind energy development in Nova Scotia. Community groups are major players as they hold seminars throughout the province and raise capital for wind turbine development.

Municipal Profile

The Municipality of the County of Pictou ("Municipality") is a rural municipality located in the northern part of Nova Scotia with a population of 21982 (2006 Census). The Municipality is situated along the Northumberland Strait and encompasses an area of 635,200 acres.

The region is well known for its industrial, farming, forestry, and fishing sectors. The Municipality has one of the largest industrial bases in the Province and is home to one of three Michelin Tire Plants in the Province, and to Neenah Paper, a major international pulp & paper company. In addition, numerous smaller businesses contribute greatly to the prosperity of the County.

The Municipality is the largest of six (6) municipal units located in the County of Pictou and provides a wide range of municipal services. A fourteen (14) member elected Council governs the Municipality, and meets on a monthly basis with a formal Council meeting and a number of standing committees.

The County of Pictou at present does not have a Municipal Planning Strategy or any bylaws related to planning, with the exception of a Subdivision Bylaw. A Development Officer for the approval of subdivisions is appointed by Council from the Pictou County District Planning Commission. The County of Pictou is not a member of the Pictou County District Planning Commission.

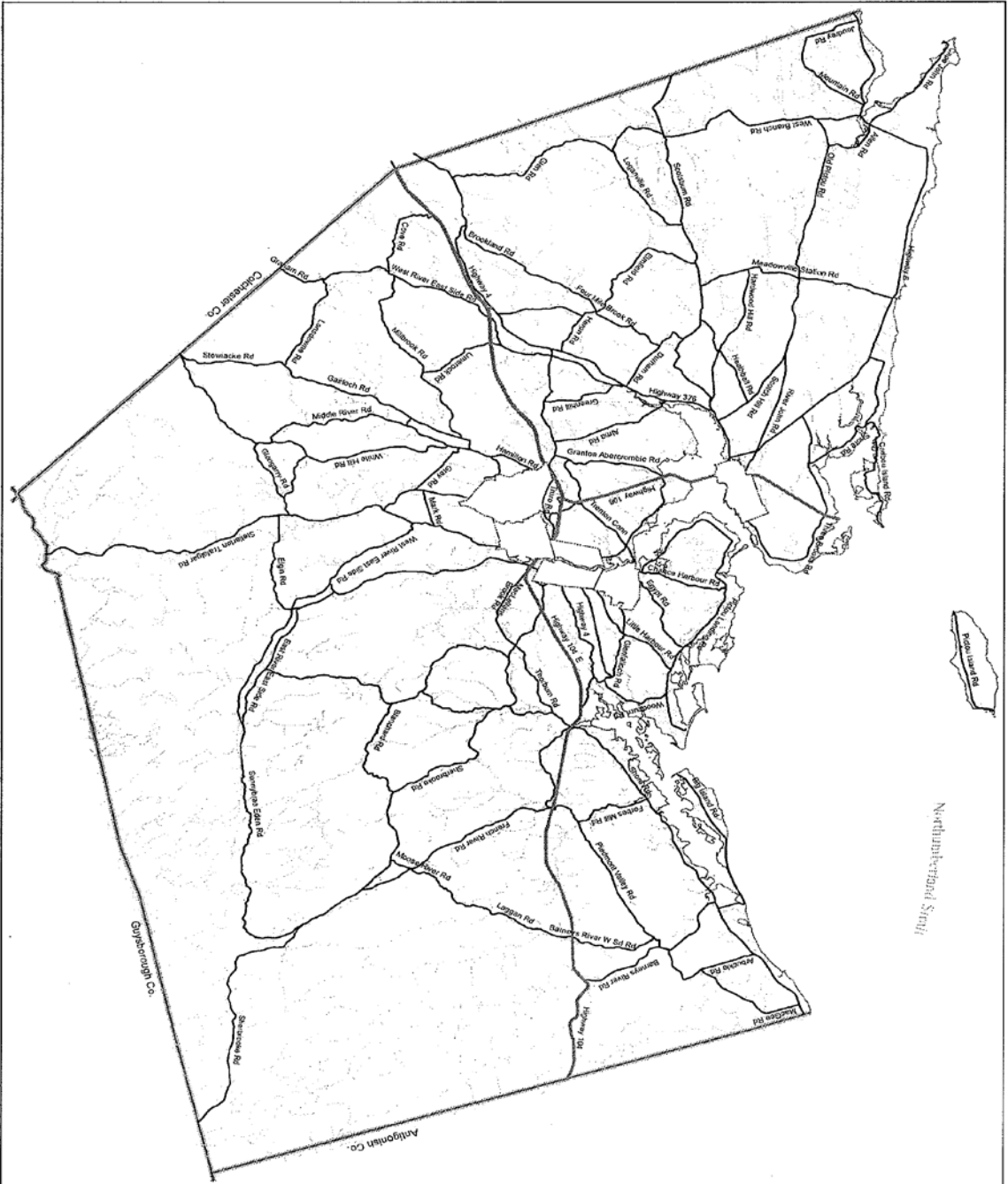
During the late 1990's early 2000, the County of Pictou did examine Land-use Planning in the Abercrombie area of the Municipality to deal with industrial developments near residential uses. After public consultation of a proposed plan, the Municipal Council abandoned the development of a Municipal Planning Strategy and Bylaw.

2. Regulating Wind Turbine Development









This Municipal Planning Strategy and the accompanying Land Use By-law will be very straightforward documents. This is due to two main factors:

- Council has decided that the only development to be regulated is wind turbine development, both utility scale turbines and domestic turbines; no other land use will be affected.
- Council has decided on an approach which is easy to understand by the general public and relatively easy to administer by the Municipality.

The planning area is the entire Municipality of the County of Pictou.



The Municipality of the County of Picou
 Municipal Planning Strategy
 Planning Area

-  Town Boundaries
-  Lakes
-  Land
-  100 Series Hwy
-  Roads
-  County Boundary
-  Coastline
-  Rivers



1:250,000

2

Provincial legislation requires that a planning area be divided into zones. Since wind turbine development is the only land use being regulated; only one zone will be established in the Land Use By-law. The zone will allow all development, including wind turbines, but will contain requirements pertaining only to wind turbines. Therefore a development permit will not be required for any development except for wind turbines.

Council will regulate utility scale wind turbines in a different way than domestic turbines.

Utility Scale Wind Turbines

To regulate the location of utility scale turbines, Council has decided on a three pronged approach.

First, the Land Use By-law shall contain setbacks from existing residential uses. These setbacks shall be of sufficient distance to mitigate most adverse effects the turbines may have on residential uses. Council believes this approach will provide for wind turbine development in future and also provide a degree of protection for homeowners to continue to enjoy the use of their residential property.

In keeping with Council's original intent to regulate only wind turbine development, the setback requirement will not apply to future residential growth locating closely or relatively closely to existing turbines. Council's position is that homeowners who do so will be fully aware of the distance their residence will be to a turbine and will have accepted the adverse effect, if any; the turbine will have on them. The same is true of future purchasers of these residences.

Therefore if these homeowners decide they are, after all, adversely affected at some point in future by the wind turbine development and look to

Council for relief, Council will bear no responsibility to take any action in this regard.

Second, the Land use By-law will contain a setback requirement from property lines. Obviously this setback distance will be considerably less than the setback from a residential use. The property line setback serves two purposes: to have the turbine contained on the lot if it should topple and to also provide some protection to the homeowners who choose to locate their residence close to a turbine.

There may be instances where a number of contiguous properties are leased for wind turbine development. Although the properties are leased, the property lines remain in place. If a property owner has leased his or her land for wind turbine development, the concern of a wind turbine falling onto the leased land should not apply. Therefore the setback requirement from a property line will be waived where the adjacent property is leased on a long term basis for wind turbine development.

Setback requirements will not apply to residences being located on any lot on which wind turbine development is proposed as the owners will have full control as to whether or not their land will be used for this purpose.

Third, the Land use By-law will contain a setback from public roads. Council is concerned that there may well be people who have purchased or otherwise acquired a lot on which they intend to construct their home. If there are no existing homes in the area, wind turbines could be constructed quite close to a prospective building lot, even though the setback from a property line would apply. Council will therefore require that wind turbine development be located a distance from a public road that is greater than the distance from a property line but less than the setback from a residence.

There will not be a limit on the number of turbines in any one area. In other words even if the number of turbines proposed puts a project into the “wind farm “ category, the project would still be permitted provided all of the turbines meet the setback requirement.

Policy 1

It shall be a policy of Council to regulate utility scale and domestic wind turbines as defined in the Land Use By-law. A development permit will be required to construct a wind turbine anywhere within the planning area. A development permit will not be required for any other land use.

Policy 2

It shall be the policy of Council to establish in the Land Use By-law the General Development (GD) Zone which shall apply to the entire planning area and which shall permit all uses as-of-right.

Policy 3

The General Development (GD) Zone shall regulate the location of utility scale wind turbines by establishing a setback from residential uses, a setback from a public road, and a setback from all property lines. The setback from residential uses shall not apply to residences located on the same lot as the turbine.

Policy 4

The General Development (GD) Zone shall regulate domestic wind turbines by establishing a setback from all property lines.

Policy 5

Notwithstanding Policy 5, where wind turbine development is proposed on a lot where the immediately adjacent property is subject to a long term lease for that use, the setback requirement from a property line shall not apply.

New Residential Development within Wind Turbine Setback

As previously indicated, Council will not regulate any development other than wind turbine development. Therefore the setback requirements will not apply to new residential development being located close to any utility scale wind turbine development. If such development does occur, Council is of the opinion it should not prevent an expansion of the wind turbine development which has been established in conformity with this Strategy. However the expansion should not be located any closer to the residential development which has been built within the setback.

Policy 6

Where a residence is constructed within the setback distance of utility scale wind turbine development erected after the effective date of this Strategy, the wind turbine development may expand provided the expansion is not located closer to the residence than the initial wind turbine development.

Existing Wind Turbines

Policy 6 shall not apply to utility scale wind turbines existing as of the effective date of this Strategy. Existing wind turbine development that does not meet the setback requirements will be allowed to continue as non-conforming structures but an expansion will not be permitted.

Removal of Wind Turbines

When the time comes that a utility scale wind turbine is not in operation and will be removed from a site, Council would like to be informed of the decision to remove the wind turbine as early as possible.

Policy 7

Council would like to be made aware of decisions to remove utility scale wind turbines and encourages the owners to notify Council of such decisions as early as possible.

3. Variance

The *Municipal Government Act* authorizes the Development Officer to grant a variance from specified requirements of the Land Use By-law. These requirements include

- height of a structure;
- height and area of a sign;
- size of yards; and
- minimum lot area

The Act also states that variance may not be granted where the

- variance violates the intent of this Land-Use By-law;
- difficulty experienced is general to properties in the area; or
- difficulty experienced results from an intentional disregard for the requirements of the Land-Use By-law.

Adjacent landowners are notified of the Development Officer's granting of a variance and may appeal the decision to Council. The refusal of a variance may also be appealed to Council.

Only one of the above requirements is relevant to the Land Use By-law for the Municipality, that being the size of yards. A setback is considered a yard. Council would like to call attention to this variance provision as it provides for a degree of flexibility for development proposals.

Policy 8

It shall be a policy of Council to include a provision in the Land Use By-law stating that a variance may be granted pursuant to the *Municipal Government Act*. The variance will apply to the setback requirements established in the By-law.

Wind Energy Developments 2021

The Municipal Council started the process of regulating wind energy developments in 2007, with the development of its Municipal Planning Strategy and related bylaw. Over the course of time several amendments were made to the Land-use Bylaw, mainly dealing with the setback requirements of Utility Scale Turbines.

Recently there has been concern expressed by residents that domestic wind turbines should be regulated in a different manner than presently contained under the bylaw.

The Municipal Council wishes to bring consistency in the manner that it regulates wind turbine development. This will include ensuring setback requirements from residential developments and property lines.

The Municipal Council also wants to bring clarity to terms used within the bylaw and municipal planning strategy. The term domestic wind will now be referred to small wind.

The Municipal Council will also introduce a third classification of wind development known as Microwind, which are small turbines used primarily used onsite use of wind energy.

The Municipal Council also wants residents to be informed of wind developments prior to issuance of a development permit. To this end the Municipal Council wants the proponent of a development permit to conduct a public consultation process.

The following policies are here by added or deleted from the Municipal Planning Strategy:

Policy 1 is amended to read

Policy 1

It shall be a policy of Council to regulate utility scale and domestic small wind turbines as well as Micro-wind as defined in the Land Use By-law. A development permit will be required to construct a wind turbine anywhere within the planning area. A development permit will not be required for any other land use.

~~Policy 4 is deleted~~

~~The General Development (GD) Zone shall regulate domestic wind turbines by establishing a setback from all property lines.~~

Policy 4 (a)

The General Development (GD) Zone shall regulate the location of small wind turbines by establishing a setback from residential uses, and a setback from all property lines and height requirements. The setback from residential uses shall not apply to residences located on the same lot as the turbine

Policy 4 (b)

The General Development (GD) Zone shall regulate the location of Micro wind turbines by establishing a setback from residential uses, and a setback from all property lines. The setback from residential uses shall not apply to residences located on the same lot as the turbine.

Policy 9

It shall be the policy of the Municipal Council to require that a developer of Utility Scale Turbines and small wind conduct a public consultation process in the community of the proposed development to inform residents of the development and to allow for dialogue on the development.

Policy 10

It shall be the policy of the Municipal Council to establish within the Land-use Bylaw a noise standard and the requirement for a field study of noise emissions to ensure minimal disturbance to surrounding properties and uses.