

THE CORPORATION OF THE
TOWNSHIP OF WAINFLEET
BY-LAW NO. 000-2012

Being a By-law for prescribing the minimum Setback distance for the Construction of all Industrial Wind Turbines, also known as Wind Turbine Generators, to be erected within the borders of the Township of Wainfleet, AND to require that any such Construction, in compliance with this By-law or not, shall also provide indemnification for any loss of Property value or adverse health effect therefrom to the extent of 100%.

WHEREAS government Ministers, Ministries, Agencies and Municipalities have an ethical duty and legal obligation to protect the health, safety, quality of life and well being of citizens and their properties;

AND WHEREAS the Supreme Court of Canada, in *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40. File No.: 26937, held that Municipalities, in addition to specific powers conferred by statute, also have included in that authority "general welfare" powers, upon which Municipalities can draw to enact by-laws genuinely aimed at furthering goals such as public health and safety, protection of Property and the like;

AND WHEREAS s.9 of the *Municipal Act, 2001, SO 2001, c 25*, grants Municipalities Powers of a natural person;

AND WHEREAS the *Canadian Charter of Rights and Freedoms*, being Part 1 of the *Constitution Act, 1982*, confers specific rights and freedoms on all Canadians, including that of Due Process, which rights and freedoms are to be protected by all levels of government, including the Municipal;

AND WHEREAS s.130 of the *Municipal Act, 2001, SO 2001, c 25*, in force until July 1, 2012, still states "A municipality may regulate matters not specifically provided for by this Act or any other Act for purposes related to the health, safety and well-being of the inhabitants of the municipality";

AND WHEREAS ss.128 – 129 of the *Municipal Act, 2001* confer powers to regulate *Public Nuisances, Noise, Odour, Dust, etc.*; and

AND WHEREAS s.128 (2) also states "The opinion of council under this section, if arrived at in good faith, is not subject to review by any court";

AND WHEREAS s. 11 of the *Municipal Act, 2001* confers broad authority on the Municipality, including the passing of By-laws, *inter alia*, for the "Economic, social and environmental well-being of the municipality" and for the "Health, safety and well-being of persons"

AND WHEREAS s.1(1) of the *Environmental Protection Act, R.S.O. 1990, c. E-19* states that:

"adverse effect" means one or more of,
(a) impairment of the quality of the natural environment for any use that can be made of it,

- (b) injury or damage to property or to plant or animal life,
- (c) harm or material discomfort to any person,
- (d) an adverse effect on the health of any person,
- (e) impairment of the safety of any person,
- (f) rendering any property or plant or animal life unfit for human use,
- (g) loss of enjoyment of normal use of property, and
- (h) interference with the normal conduct of business; (“conséquence préjudiciable”),

and further states,

“contaminant” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect; (“contaminant”);

AND WHEREAS s.3 of the *Environmental Protection Act, R.S.O. 1990, c. E-19* also states “The purpose of this Act is to provide for the protection and conservation of the natural environment”; and

AND WHEREAS there is mounting documented evidence of the adverse impact of IWT technology on humans, wildlife and livestock;

AND WHEREAS the *World Health Organisation* recommends ambient noise levels be less than 30dB(a) inside a Property dwelling;

AND WHEREAS several jurisdictions world wide have enacted or recommended laws or By-laws to regulate Setback distances of 2 to 10km for Industrial Wind Turbines;

AND WHEREAS more than 70 Ontario Municipalities, including Wainfleet, as well as the Ontario Federation of Agriculture and the Christian Farmers Federation of Ontario, have asked for a Moratorium on wind power development and for more and better studies on the impact of wind power;

AND WHEREAS some Ontario realtors have asserted that Properties within sight and sound of IWT's are available at prices 20 to 40% lower than those Properties without IWT interference;

AND WHEREAS restrictions in the laws of Ontario governing Municipalities and the Environment variously contradict one another and restrictions in the laws governing Alternative Energy generation do the same;

AND WHEREAS nothing in this By-law frustrates the purpose of the laws governing alternative energy generation, it being the Municipality's concern to promote the responsible use of alternative energy in a manner that does no harm to persons, wildlife and livestock;

AND WHEREAS s.92 of the *Constitution Act, 1982* provides further that the “*Exclusive Powers of Provincial Legislatures*” includes upholding *Canadian Charter of Rights and Freedoms*, being Part 1 of said Act;

AND WHEREAS the fundamental rights of Canadian persons cannot be extinguished or modified except by s.33 (“*Notwithstanding*”, clause) of the *Canadian Charter of Rights and Freedoms, The Constitution Act, 1982*;

AND WHEREAS it is reasonable and prudent for the protection of the Municipality's citizens,

NOW THEREFORE the Council of the Corporation of the Township of Wainfleet
HEREBY ENACTS AS FOLLOWS:

Definitions:

1. In this By-law, the listed words have the following meanings:
 - (a) "Setback" means a horizontal radial distance;
 - (b) "Industrial Wind Turbine" (IWT), means a wind turbine power generator using blade technology with a hub height exceeding 30 metres;
 - (c) "Property" means property line, vacant land, dwelling or structure and their inhabitants of all species used for private or business or public purposes;
 - (d) "Municipality" means the Corporation of the Township of Wainfleet;
 - (e) "Construction" includes placement, erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing and cleaning, earth moving, grading, excavating, the laying of pipe and conduit whether above or below ground level, street and highway building, concreting, equipment installation and alteration and the structural installation of construction components and materials in any form or for any purpose and includes any work in connection therewith.
 - (f) "Noise" means unwanted sound, vibration, or both, emitted by or related to an Industrial Wind Turbine or Turbines;
 - (g) "Developer" means any person or business or company involved in the development, Construction and operation of an Industrial Wind Turbine, including the legal owner of said Turbine; AND, person, business, company, Turbine and owner can be construed in the singular and in the plural;

Application:

1. This By-law applies to all Property within the territory of the Municipality.
2. This By-law applies to all Property owned by the Municipality.

Prohibition:

1. For the Construction, erection or operation of any IWT inside the Municipality, there shall be a minimum Setback of a distance of 2km from any Property measured from the tip of the rotor blade in horizontal position;
2. In any case, Noise emitted by the IWT shall not exceed 32dB at the nearest Property;
3. The Developer shall provide an indemnification of 100% for any loss of Property value or adverse health effect directly or indirectly caused by an IWT.

Severability:

If a portion of this By-law is held invalid by a court of competent jurisdiction then the invalid portion must be severed and the remainder of this By-law is deemed to have been adopted without the severed section.

Force and Effect:

This By-law shall come into force and take effect on the day of its Final passing.