The Corporation of the Municipality of Arran-Elderslie

To: All Municipalities in Ontario

Subject: Industrial/Commercial Wind Generation Facilities (Wind Turbines)

After much consultation, consideration and debate, the Council of the Municipality of Arran-Elderslie passed By-law No. 14-10 (which amends our Municipal Code) to address health and safety concerns related to the location and erection of wind generation facilities (industrial wind turbines) within the Municipality.

Council is not opposed to “green energy” projects per se, however we wish to promote their use in a responsible manner to benefit, or at least, to do no harm to any individual by such use.

We are circulating this by-law to all municipalities in Ontario for your information and support. A full copy of By-law Bo. 14-10 is attached and any also be found on our website at www.arran-elderslie.com under Notices.

Your support of our efforts is much appreciated and any other comments or suggestions you might have would be most welcome by Council.

Should you have any questions, please contact me.

5/21/2010
THE CORPORATION OF THE
MUNICIPALITY OF ARRAN-ELDERSLIE

BY-LAW NO. 14 - 10

A By-law to Amend the Municipal Code
(Health Provisions Respecting Locating and
Erecting Wind Generation Facilities)

WHEREAS it is deemed advisable to amend the Municipal Code to incorporate certain health
and safety provisions with respect to the locating and erecting of wind generation facilities
within the Municipality;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE
MUNICIPALITY OF ARRAN-ELDERSLIE HEREBY ENACTS AS FOLLOWS:

1. That "Schedule B Protection to Persons & Property, Building Inspection: Health &
   Safety Provisions Respecting Locating & Erecting Wind Generation Facilities" is hereby
   added by the addition of Schedule A to this by-law.

2. That Schedule A attached to this by-law shall form part of this by-law.

3. This by-law shall take effect with final passing.

READ A FIRST AND SECOND TIME THIS 26TH DAY OF APRIL, 2010.

"Ron L. Oswald"

MAYOR

"A.P. Crawford"

CLERK

READ A THIRD TIME AND PASSED THIS 10TH DAY OF MAY, 2010.

"Ron L. Oswald"

MAYOR

"A.P. Crawford"

CLERK
SCHEDULE A TO
BY-LAW NO. 14-10

SCHEDULE B PROTECTION TO PERSONS & PROPERTY
BUILDING INSPECTION: HEALTH & SAFETY PROVISIONS RESPECTING
LOCATING & ERECTING WIND GENERATION FACILITIES

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 reeding 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 I 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. 
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 Arran-Elderslie’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 Arran-Elderslie 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 Arran-Elderslie in a responsible manner;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF ARRAN-ELDERSLIE HEREBY 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 Arran-Elderslie;

   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 Arran-Elderslie;

   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 Arran-Elderslie;

   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 Arran-Elderslie;

   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 Arran-Elderslie 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.