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Ontario

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

PL060754

PL050096

Canadian Hydro Developers, Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Township of Amaranth to redesignate land within the area generally bounded by Highway 89 to the north, 6<sup>th</sup> Line to the east, 25<sup>th</sup> Side Road to the south and Amaranth-East Luther Town Line to the west in the Township of Amaranth from 'Agricultural' and introduce site-specific policies pertaining to wind energy developments, thereby permitting development of a wind project on the subject properties

OMB File No. O060140

Canadian Hydro Developers, Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 46-88 of the Township of Amaranth to rezone lands respecting the area generally bounded by Highway 89 to the north, 6<sup>th</sup> Line to the east, 25<sup>th</sup> Side Road to the south and Amaranth-East Luther Town Line to the west from General Agricultural (A1) to General Agricultural (A1-#) Exemption Zone to permit the development of the wind plant and include site-specific regulations pertaining to wind turbine setbacks and applicable definitions

OMB File No. Z060109

Canadian Hydro Developers, Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 69-2004 of the Township of Amaranth to rezone lands respecting the area generally bounded by Highway 89 to the north, 6<sup>th</sup> Line to the east, 25<sup>th</sup> Side Road to the south and Amaranth-East Luther Town Line to the west from Agricultural (A) to Agricultural (A-#) Exception Zone to permit the development of the wind plant and include site-specific regulations pertaining to wind turbine setbacks and applicable definitions

OMB File No. Z060110

Canadian Hydro Developers, Inc. has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, determination and settlement of details of site plans for wind turbines on lands in various locations (Melancthon II Wind Project) in the Township of Amaranth and a second transformer also in the Township of Amaranth

OMB File No. M060091 and M070025

Allto Investments Holdings Inc. appealed to the Ontario Municipal Board under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the Minister of Municipal Affairs and Housing to approve the Official Plan for the Township of Amaranth, specifically sections 3.10 and 3.10(e)(v) being policies relating to wind energy

Approval Authority File No. 22-OP-5450

OMB Case No. PL050096

OMB File No. O050177

**APPEARANCES:**

**Parties**

**Counsel\*/Agent**

Canadian Hydro Developers Inc.

T. Bermingham\* and M. Mercer\*

Township of Amaranth

J. Wilker\* and D. Germain\*

Township of Melancthon

A. Osyany\* and P. Munn\*

Allto Investments Holdings Inc.

W.W. Stutz\*(not present)

Paul Thompson and Theresa Kidd

P. Thompson

Roy and Teresa Brownell

John and Joan Lever

Rick Dewsbury

Robert Younker

Janikke Heiberg

Ian Reed

**INTERIM DECISION OF THE BOARD DELIVERED BY N.C. JACKSON**

Canadian Hydro Developers Inc. (hereinafter CH) have appealed the initial delay and refusal of the Township of Amaranth (hereinafter Amaranth) to approve of an Official Plan Amendment, Zoning By-law amendments and site plan approvals for 23 wind turbines and an expanded transformer station. An existing transformer station in Lot 15 Concession 9 is to be expanded.

The turbines are to be sited on agricultural lands in the area of Highway 89 to the north, 6<sup>th</sup> Line to the east, 25<sup>th</sup> Side Road to the south, and Amaranth-East Luther Town Line to the west. The Lands are to be leased with agricultural operations continuing.

This project is part of a larger project called the Melancthon wind plant. The first phase for the creation of 67.5 megawatts of renewable energy was constructed in 2005 and 2006 with 45 wind turbines in neighbouring Melancthon Township. The transformer is located in Amaranth Township. The second phase of the Melancthon wind farm project of approximately 132 megawatts is comprised of 69 additional wind turbines in Melancthon Township (recently OMB approved) and 23 wind turbines planned for Amaranth Township. All of the energy from the project is by contract to be supplied to Hydro One.

Amaranth in Dufferin County is largely agricultural in nature, having soils largely classes 1, 2 and 3 under the Canada Land Inventory and therefore Prime Agricultural under the Provincial Policy Statement. Amaranth at an elevation of approximately 500 metres above sea level, with fairly flat terrain and located in proximity to a trunk transmission line is also an area where there are regular strong winds. This leads to the possibility of the consideration of wind farms in accordance with the Provincial Policy Statement (PPS). Section 1.8.2 of the PPS provides that increased energy supply should be promoted by providing opportunities for energy generation facilities to accommodate current and projected needs, and the use of renewable energy systems and alternative energy systems where feasible. Alternative Energy Systems are defined as sources of energy that reduce the amount of harmful emissions to the environment. The PPS goes on to provide in section 1.8.3: "Alternative energy systems and renewable energy systems shall be permitted in settlement areas, rural areas and prime agricultural areas in accordance with provincial and federal requirements. In rural areas and prime agricultural areas, these systems should be designed and constructed to minimize impacts on agricultural operations." Renewable Energy Systems are defined to mean the production of electrical power from an energy source that is renewed by natural processes including but not limited to wind, water and others.

Provincial requirements now include the Environmental Screening process set out under Regulation 116/01 under the *Environmental Assessment Act*. An

Environmental Screening Process has been undertaken and following the denial to elevate to an individual Environmental Assessment, is now complete. Federal requirements in this case revolve around airports, and aerodromes, both registered and unregistered. More on this issue follows later under aerodromes.

Locally Amaranth has anticipated wind energy projects through its 2004 Official Plan. Section 3.10.a states the Township supports wind energy facilities as a source of renewable energy. The section goes on to state that large scale commercial wind energy operations including one or more large wind turbines generating electricity for sale to the electrical grid, known as wind farms, are permitted through a zoning by-law amendment in the Agricultural Designation. Parts of section 310 were appealed to this Board by Allto Investments Inc. and then subsequently consolidated with the present CH Appeals. Allto have now withdrawn their Appeal, dismissed by this Board. All the wind energy sections of the Amaranth Official Plan are now in effect.

There have been other significant changes in this hearing process. What was originally projected by the Parties and Participants (25) in the Prehearing process to be a five week hearing was reduced to portions of a 3 week hearing process. OMB Mediation brought the Parties closer together but short of full settlement. CH and Amaranth continued discussions that have resulted in a full settlement with Amaranth. The Brownells have settled and withdrawn as Parties.

The Township has given site plan approval to the sites of the remaining 22 turbines (#23 has been withdrawn by CH). The 22 site plan referrals by CH have been withdrawn by CH. What remains with the Board is the site specific Official Plan Amendment, 20 Zoning By-law amendments (2 cover sites for 2 turbines and 18 are for single turbines), and the site plan amendment for a second transformer at the previously approved site for the existing transformer. The Township Council deliberating during the OMB hearing determined that site plan approval for the changes to the transformer site should remain with the OMB.

Others have come forward to argue against wind energy turbines. John and Joan Lever and Ian Reed have testified against the concept. The Board prefers the expert planning evidence of John Bousfield that the planning concept for wind energy is accepted in the Province of Ontario through the use of the word "shall" in the Provincial

Policy Statement and in the Township of Amaranth through the provisions of the Amaranth Official Plan. Even in Prime Agricultural Areas otherwise protected, the Province has recognized the value of renewable energy sources that will not pollute the environment. What remains asks Mr. Reed for his well intentioned concerns eloquently expressed. The Provincial Policy Statement makes it clear that in addition to the many environmental issues visited in the Environmental Screening process is the design and construction so as to minimize impacts. In this case the impacts that can be properly considered in the site specific Official Plan amendment, site specific zoning by-laws and the site plan referral to this Board are setbacks in particular to aerodromes, registered and unregistered and noise (in this case from the existing transformer proposed for twinning).

### **Aerodromes**

According to evidence in this Hearing there are 19 aerodromes located in the Township of Amaranth. Most are on grassed runways without any formal Amaranth, Provincial, or Federal approvals. Two are registered in the Canadian Flight Supplement. The relatively large number of aerodromes is perhaps since Amaranth is generally flat following more upland areas of the Oakridges Moraine or perhaps as speculated by pilot David Moritz that this area was thought earlier to be an alternative to full airport use for the GTA. Since aeronautics is within federal legislative authority there is a legal reluctance to legislate locally in that field Re Orangeville Airport Ltd. and the Town of Caledon et al (1976), 11 O.R. (2<sup>nd</sup>) 546 Ont. Court of Appeal. In Amaranth none of the 19 aerodromes have been recognized individually in the Official Plan nor in the Zoning By-law. Amaranth takes the position that to do so in a restrictive manner to the aerodromes would be beyond their legal authority. Amaranth concedes it could legislate not to restrict but to protect aerodromes. This is done in part generally in the Official Plan section 3.10 respecting wind farms. Paragraph vii regulates location of wind turbines to be "no closer than 10 kilometres from an airstrip unless the written approval of Transport Canada is obtained." The short answer to this succinct policy is that Transport Canada and its related agency Nav Canada have both given written approval (Exhibit 61) for all remaining 22 turbine locations in Amaranth.

Transport Canada does not fully legislate over airstrips of the type in Amaranth. Transport Canada does deal more explicitly with airports known for their federal certification. Transport Canada permits registration of airstrips in the Canadian Flight Supplement. This registration is voluntary and can assist with landing. Unregistered airstrips are subject to recommendations of Transport Canada from Non Instrument Code1. Of the 3 classifications of aeronautical facilities, in Amaranth there are no airports, there are 2 registered aerodromes and the other 17 are unregistered aerodromes. In the Provincial sphere the Provincial Policy Statement speaks to airports only – by definition “all Ontario airports, including lands designated for future airports, with Noise Exposure Forecast (NEF)/Noise Exposure Projection (NEP) mapping. Section 1.1.3 g) of the PPS states long term economic prosperity will be supported by planning so that major facilities such as airports... are designed to prevent adverse impacts noise...”.

“To protect airports from incompatible development new residential development ... will not be permitted in areas near airports above 30 NEP/NEP as set out on maps approved by Transport Canada.” It is evident from this reference that the Provincial Policy Statement only deals with airports of a type not evident in Amaranth and that its intent is the protection of such airports.

Even though Transport Canada and Nav Canada have given their written approvals to the turbine locations and their lighting, they have also recommended to Amaranth that local pilots be consulted in the planning process. This Amaranth has done and this Board in turn has heard from 11 persons who are either pilots, and or who operate aerodromes in Amaranth. All the pilots are not in agreement. There is a strong sentiment that air safety is compromised by the location of some of the turbines near existing aerodromes. That sentiment is however disagreed with by other pilots with long flying records and experience. Charles Burbank, a respected pilot and operator of the registered Burbank Field Aerodrome, spoke to the need to make all turns to the left when operating within aerodrome traffic circuit. Yet the Regulations provide exceptions when right turns are specified by the Minister in the Canadian Flight Supplement or where otherwise authorized by the appropriate air traffic control unit [reference Canadian Aviation Regulations Part VI Division v 602.96(3) ]. Filed by other witnesses as Exhibit 65 are references from the Aerodrome/Facility Directory which show for the

