

ENVIRONMENTAL & ENERGY LAW

COURT STRIKES DOWN MUNICIPAL ANTI-WIND BY-LAWS

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On May 23, 2014, in *Suncor Energy Products v. Town of Plympton-Wyoming*, 2014 ONSC 2934 (“*Suncor*”), Ontario’s Superior Court of Justice confirmed that the provisions of any municipal by-law that purport to prohibit the construction and operation of wind turbines at provincially approved locations will be of no force and effect, and cannot interfere with the issuance of building permits for such turbines. In doing so, the court expanded upon the decision in *Wainfleet Wind Energy Inc. v Wainfleet (Township)*, 2013 ONSC 2194, where an identical municipal by-law that attempted to impose 2km setbacks and 32dB sound level limits on provincially approved wind farms, in contrast to 550m and 40dBA provincial standards, was found to be “invalid and without force and effect as a result of vagueness and uncertainty”.

In *Suncor*, the court also:

1. declared *ultra vires*, portions of a by-law that purported to impose mandatory indemnification provisions on wind farm developers;
2. quashed as illegal, portions of a municipal by-law that increased fees for building permits for wind turbines from \$100 per turbine to \$10,000 plus \$100 per meter of turbine height plus a \$200,000 security deposit;
3. quashed as illegal, portions of a municipal by-law that imposed a development charge of \$8,890 per turbine; and
4. confirmed that zoning by-laws passed under the *Planning Act* are indeed not applicable to renewable energy undertakings, pursuant to s.62.0.6 of the *Planning Act*.

The *Suncor* decision should provide renewable energy developers with added certainty that provincially approved renewable energy projects may be constructed despite municipal by-laws to the contrary.

MOE’S 6-MONTH SERVICE GUARANTEE FOR RENEWABLE ENERGY APPROVALS (“REAS”) UNENFORCEABLE

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On May 22, 2014, in *Big Thunder Windpark Inc. v. Her Majesty the Queen in Right of Ontario*, 2014 ONSC 3050, Ontario’s Divisional Court confirmed that the 6 month service guarantee (recently amended to a 6 month service standard), contained in the Ministry of the Environment’s (“MOE”) *Technical Guide to Renewable Energy Approvals* does not give rise to a legitimate expectation, nor any enforceable right, as it is not prescribed by a statute or regulation.

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