

## Don Humphrey Intervenor Submissions

It is my submission that the decision of the Municipality (RMEK) to deny the development permit Application of PEIEC was in conformity with its Official Plan and was procedurally fair. RMEK best understood the enormous negative consequences to the RMEK and its residents if it permitted such an enormous and divisive application. I urge IRAC to deny the appeal of PEIEC. My arguments will be:

1. **Decision in conformity with the Official Plan of RMEK**
2. **Council's process was fair**
3. **Financial and political pressure**
4. **Political Interference**
5. **Environmental concerns**

### 1. **DECISION IN CONFORMITY WITH THE OFFICIAL PLAN OF RMEK**

The most pertinent sections of the Official Plan which deserved consideration by RMEK Council are as follows (the words in **bold** are my emphasis):

#### 3.1. Vision

To develop a long term sustainable economy which is in **harmony with the natural carrying capacity of the local physical environment**. To **protect and enhance the existing natural environment and rural lifestyle** while promoting a variety of housing choices and commercial and recreational opportunities within the community.

#### 3.2. Future Development Goals

To **protect and enhance the existing physical features** to promote a viable local economy, especially related to agriculture, forestry, the fishery and recreation. **To protect and enhance the health of the local watersheds** by establishing a high standard of buffers along watercourses and wetlands, and by promoting a high standard of property development.

#### 3.4. Goals

##### 3.4.1. *General*

- To **preserve the traditional rural character of Eastern Kings**; and
- **To promote the local economy based on the natural environment.**

##### 3.16.1. *Windmill Policies*

It shall be Council's policy that the Community shall regulate windmill development in the Development Bylaw. Viewscapes of the shoreline will be protected from development of large scale wind turbines.

Council will adhere to provincial regulations addressing wind energy production. In addition, it is Council's aim to address opportunities for wind development **appropriate in size and scale to the Municipality**.

##### Windmill Policy

It shall be Council's policy that renewable energy generation facilities, as defined in the Provinces Renewable Energy Act, R.S.P.E.I., 1988, Cap. 16, shall be permitted within limited zones within the Community; such facilities shall be subject to specific restrictions. It shall be Council's policy that windmills, wind turbines or wind energy conversion system may be permitted within the Community for the purposes of electrical power generation, provided they **do not pose any significant aesthetic, environmental or public safety threats to the Community residents or the travelling public**.

Council heard many submissions over the two years of processing, with representatives from PEIEC in attendance at all public meetings, expressing concerns and a desire that all Council decisions protect the natural environment, and the character and lifestyle of the rural area. Council was well-informed and determined that this application was not of an appropriate size and scale for RMEK and did not meet the other relevant policies of its Official Plan. The reasons of councillors to this effect were expressed clearly and, given the high level of participation afforded to PEIEC, were well understood by it.

## **COUNCIL'S PROCESS WAS FAIR**

The submission made by PEIEC counsel in closing that PEIEC was unaware of the Council concerns, that these were not conveyed to them and that there was, in effect, some 'unfairness' in the process because they were not advised of the issues with the application so they could mitigate is disingenuous, if not misleading. Representatives of PEIEC were present at many Council meetings through 2019 and 2020 as their witness' evidence shows, and minutes of those meetings (which are public documents and therefore always accessible to PEIEC) are part of the RMEK record before the Commission.

I ask you to look at those documents which are part of the record. Not only do they accurately reflect what was in the public domain, they also indicate that while RMEK may not have retained highly paid experts, unlike the very well resourced PEIEC, they had the benefit of well informed, well recognized and knowledgeable local resources – persons who, unlike the PEIEC expert who testified at the hearing, know the area well.

Specifically, these included presentations to Council from the Souris and Area Wildlife (Souris and Area Branch of PEI Wildlife Federation which has been operating in the community for 65 years (IRAC - 317) and its members are well respected as being stewards of the land), a presentation from the Island Nature Trust on July 31, 2019 (IRAC - 062) and a presentation by Fred Cheverie on behalf of the Eastern Kings Community Association on Nov 12, 2019 (IRAC - 102) Also note at the July 31, 2019 public meeting, at which PEIEC representatives were present, there were many deputations expressing concerns about the PEIEC plan. .

I direct you to the record (IRAC - 128), of the November 19, 2019 open house at Council and the December 4, 2019 meeting (IRAC – 170-241). 15 speakers addressed Council including the Environmental Coalition of PEI. PEIEC was present. Even a cursory review of the submissions will provide persuasive evidence of the fact that Council had available to it many expert resources and were informed by the public who live in the community and are most impacted by this development when they made their decision.

As counsel for RMEK stated in her closing submissions, the 'record' needs to be read as a whole- it forms a continuum of reasons. PEIEC were well informed of the issues; they simply chose to ignore them because they did not like the result.

## **2. FINANCIAL AND POLITICAL PRESSURE**

This is a classic "David and Goliath" situation and though PEIEC seems to be suggesting they are the "David" through their submissions about unfairness in the process and that they were somehow so in the dark about issues that they were gobsmacked by the outcome. We know that is an untenable, if not preposterous suggestion.

You have heard from counsel for RMEK that this is a small rural municipality. Through some period of time, they did not have a development officer. Counsel for RMEK stated that she may not be able to respond to the intervenor submissions because the budget for legal fees has been depleted. No such issues constrain PEIEC.

This points to one of the tensions you are called upon to assess; does the financial interest and pressure of PEIEC outweigh the broader public interest that a democratically elected Council is required to address **by legislation**, being the provisions of its Official Plan.

The financial interest and pressure by PEIEC on the RMEK were enormous, which makes their decision to stand up to PEIEC and thereby to the PEI Government, who they are financially dependent on, is

remarkably courageous. The easy decision that PEIEC fully expected and arrogantly based their actions and expenditures on is that RMEK would give in to this enormous pressure.

For example, at the RMEK Council meeting January 29, 2019 (IRAC - 008) there was a presentation by Kim Horreft, PEIEC about wind farm expansion that:

- a) Required crucial timelines and urgent approval by RMEK,
- b) Was competing with locations at Irishtown and Skinner's Pond, and
- c) Would be less challenged if a variance of the bylaw was made to reduce setbacks (minimum distance between wind turbines and dwellings).

This meeting also started to reveal the deplorable divisiveness in the community caused by this Application, between the few landowners who would financially benefit and the many who would not but would still face the consequences of this enormous development.

For another example, at the RMEK Council meeting May 14, 2019 (IRAC – 011) PEIEC gave a follow-up presentation (IRAC - 014) to that given January 29. Four scenarios were presented and the PEIEC proposed the following:

- a) Increasing compensation depending on how far RMEK was willing to go,
- b) Alter bylaws to accommodate up to 14 wind turbines,
- c) Again urgency was required for a project completion date in Q3-2020.
- d) Project design and procurement can't wait,
- e) Memorandum of Understanding suggested by PEIEC, and
- f) A 10% variance in setbacks to allow increase the separation between wind turbines requested.

A motion was passed to set a Special Council Meeting for May 21, 2019 in order to discuss the details of the presentation and the process for a special development application.

At a closed RMEK Council meeting on May 20, 2019 (IRAC – 030) a letter and presentation from Don Humphrey was made which challenged the conflict-of-interest declaration by members of RMEK Council and the mayor.

On May 21, 2019, PEIEC returned to RMEK for a Special Council Meeting (IRAC – 033) with further details on proposals delivered at the public meeting held May 14, 2019. At this meeting, after four Council Meetings at which conflict had not been declared, Mayor Grace Cameron and Councillor Bernadette McInnis recused themselves from this and future meetings. (see IRAC – 035 re mayor)

### **3. POLITICAL INTERFERENCE**

Further pressure mounted on the municipality when Minister Steven Myers became personally involved.

On June 07, 2019 Energy Minister Steven Myers and Heather Macleod paid a visit to the RMEK office. Later that day Ron Coffin, CAO RMEK, emailed to Spencer Long, PEIEC (IRAC - 1915):

“We had a good meeting today with Heather and Steven Myers, and I certainly feel everyone is supportive that we can move forward collaboratively.”

Prior to the formal application, PEIEC had already started work on clearing access roads. Counsel for PEIEC has stated in his closing submissions that PEIEC has already spent hundreds of thousands of dollars. During testimony it emerged that the seven wind turbines had already been purchased, prior to the submission of the Special Permit Use (SPU) Application. Email correspondence (August 14, 2019) between Spencer Long, PEIEC and RMEK (IRAC – 1988) indicates that a decision by Executive Council allowed PEIEC to continue with the SPU Application.

An exact purchase date was not established but according to Kim Horreft (44:50), “it [the decision to continue] meant an EIA” and “had to procure our turbines”. This was reiterated at (53:45). Carl Brothers also offered an explanation at (5:03) and (39:15).

The compelling financial exposure of PEIEC fundamentally altered the nature of the application process. Realization of the East Point wind farm expansion was imperative. The risk taken by PEIEC prior to receiving all approvals was inappropriate and reckless for a Crown corporation.

Moreover, PEIEC had advised RMEK in November 2019, in response to a question from RMEK Councillor Stewart – “Given the gross public interference perpetrated by the Minister of Transportation, Infrastructure and Energy Mr. Myers, I would like to know if the turbines have already been ordered?” - that they had not been ordered (though there was a turbine supply agreement pending) (IRAC - 096). This was at a time when PEIEC was fully aware of the public interest issues that the RMEK was grappling with – the well documented environmental, ecological and community concerns.

That PEIEC was pushing ahead at this time, in the face of those documented concerns, perhaps was not surprising. On May 14, 2019 PEIEC made a presentation to RMEK. In that power point presentation (IRAC - 014) it states that the community may need time to consider the financial implications of project, but “Project design and procurement can’t wait”. Then on September 30, 2019, Minister Myers stated, on the public record (IRAC - 122) as follows: **“I don’t want to leave it in the air that there is a possibility that we’re not going there. We think the whole project is in order and as we move through the steps, we will pass them. Our homework is done and the plan is set.”**

This was a profound and unabashed disrespect for a duly elected council with a mandate to act in the public interest (and not the interest of an applicant – in this case, the PEIEC, no matter how much pressure they brought to bear). PEIEC counsel has submitted that RMEK based its decision on irrelevant considerations, because in their view the only relevant considerations were financial and political considerations – this is PEIEC’s preferred location for financial reasons - urged by PEIEC and the Minister. But that is not necessarily what is in the public interest of the community of RMEK. Counsel for PEIEC stated in submissions that while these are large turbines (a gross understatement given that at roughly 60 stories high, they would be taller than any building east of Montreal), they **will not** interfere with views or the landscape – a disdain for many expressed views of the residents of RMEK. PEIEC submits, in effect, that once the Environmental Impact Assessment was issued permitting the wind turbine development, that should have ended the matter. But that would be an abdication of responsibility by Council. They are required to consider and weigh all of the evidence before them in accordance with the Official Plan when making their decision, which they did, with due regard to their responsibilities under the applicable legislation, including the Official Plan and bylaws, meeting the standard required of them, and with courage and conviction in the face of the onslaught of financial and political pressure by PEIEC.

#### **4. Environmental concerns**

The Council received submissions from the following groups and individuals regarding environmental issues: Island Nature Trust, Eastern Kings Community Assoc., ECOPEI, Souris and Area Wildlife and Holland College. The Council also had access to the complete submissions filed on the EIA which included many submissions that were opposed to the application for good reasons related to the environment and the character and rural lifestyle of the area.

The application in this case involves a much more environmentally sensitive area than the existing wind farm. Nevertheless, in his report, at p.13/14, Mr. Heseltine states “The proposed development, furthermore, would take place in area of established wind energy generation...”.

The turbines of the established Vestas development were placed on uplands mainly at the rear of agricultural fields (‘a natural ridge’, according to Carl Brothers, 22:50). The proposed development area is the complete opposite of the area occupied by the existing wind farm- adjacent, but totally different. The project area is to the south, a different terrain, low, level, difficult to traverse, composed of woods, streams, and wetlands.

The observations and the overall dismissive attitude towards the public and the “public interest” reflected in the Heseltine Report make it apparent that Mr. Heseltine conducted his review from afar and has little

discernable empathy with the community of Eastern Kings. There is no evidence of his visiting East Point. Much of the Heseltine Report is given to quoting the Subdivision and Development Bylaw and the Official Plan. Original content offered in the Heseltine Report is minimal. Other pages in the report are taken up summarizing the Environmental Impact Statement and providing a list of concerns from the public.

In his testimony (26:05) Mr. Heseltine states that sound planning uses established concepts, one of which is a holistic approach. He is apparently indifferent to the great number of submissions both in person and in writing given at the December 04, 2019 Special Meeting of Council and to the multitude of submissions (IRAC – 1129-1211 and 1212-1236) to the PEI Department of Environment, saying only that the wind farm expansion was “the subject of lively debate”.

For almost two years RMEK afforded PEIEC an enormous amount of time and effort in considering its proposal. The East Point expansion project would have 7 turbines, each having an overall height of 175 meters (57 storeys) which is 40% taller than the existing V-90s. The proposed turbines would have a blade-sweep area 2.3 times the V-90s. The forethought of the authors of the Official Plan is exhibited by the last sentence of 3.16.1 which requires any such development to be “appropriate in size and scale” and the bylaw which places the burden and authority to make this judgment in the hands of Council. The provision affords the latitude for councillors to decide what is appropriate now and in the future. The array of seven gargantuan turbines is a reality that Council would have had to consider in relation to Windmill Policies. Economic opportunity amounted to a handful of jobs. There were also the unintended consequences that might follow to be considered. The Council had to make this decision for residents of the area that they live in and represent.

## **Conclusion**

I understand that one option the Commission could consider if it were to allow this appeal is to substitute its decision for that of RMEK. I urge that you do not, but rather that you uphold RMEK’s decision. It may not have been an artfully worded decision, but it was a carefully considered decision, weighing all the relevant factors, not merely those that PEIEC deemed relevant. And again, for PEIEC to assert at this hearing, that it does not know the reasons why the decision was made after all that transpired through 2019 and 2020, and all that was a matter of public record, is a deliberate effort to obfuscate.

Also, PEIEC knew that the project has caused division and acrimony in the community. RMEK councillors have spent their lives in Eastern Kings and have a very strong relationship to it. They know better than others what is good for the community. The decision to deny the permit can be viewed as a ‘do no harm’ stance which serves the community best. Whatever the Commission might think about the opinions of the experts hired by the PEIEC, the Council are the only decision-makers qualified to make this determination and the Commission should provide them appropriate deference in this regard.

Respectfully, this panel is not in a position to substitute its decision for that of a duly elected council and decide what is in the public interest of the residents of RMEK. That would effectively undermine the public trust in our democratic process. Frankly, I have the sense that the Commission is concerned with the lack of expert planning evidence being tendered on behalf of RMEK. It is my submission that nothing turns on this, because the decision is also based on the failure of the PEIEC to satisfy the Council on requirements where the local knowledge of the Council is determinative. However, if the Commission were inclined to overturn the Council’s decision on this basis, the only appropriate remedy would be to remit the matter back to the Council to obtain such advice, not to substitute its own decision. The Commission, with all due respect, is not in possession of such expertise either and certainly does not have the local knowledge of the Council to make determinations on the other relevant factors on which the decision is based.

Providence has bestowed this precious natural habitat area of East Point. It should never have been considered for industrial exploitation.

Thank you for the opportunity to make these submissions.

Dated: April 16, 2021.

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Don Humphrey