Rural Municipality of Eastern Kings

SPECIAL MEETING MINUTES

Tuesday, June 27, 2023 - 6:15 p.m.

In attendance: Mayor Larry Fitzpatrick, Deputy Mayor Danelle Elliott, Councillors Nathan Paton, Don Humphrey, Arthur Baker, Donna Campbell Dixon, Bernadette McInnis, Development Officer Michelle Paquet Monette and Chief Administrative Officer (CAO) Sonya Martin.

Guests: Municipal Affairs – Marley Kingston and Kevin McCarville

Purpose of the Meeting: RMEK Development Officer, Michelle Paquet Monette will present to Council, Upland Senior Planner, Ian Watson's responses to the May 30th, 2023 Public Meeting feedback related to the new RMEK draft Official Plan and Development, Zoning & Subdivision Control Bylaw.

1. **Call to Order**
   The special meeting was called to order at 6:18 p.m.

2. **Agenda Approval**
   It was moved by Councillor Arthur Baker and seconded by Councillor Bernadette McInnis to approve the agenda as presented. All were in favour and the motion was carried.

3. **Business**
   Mayor Fitzpatrick greeted the community and turned the meeting over to the Development Officer for the municipality, Michelle Paquet Monette.

   There were 18 residents in attendance.

   Michelle proceeded to read through the Planners responses, stopping to answer Councils questions. [See Appendix "A"]

   Points and questions raised by Council included:
   - Request for the Development Fee Schedule
   - Development in forested lands-re: "Special priority places in Canada"
   - What records go to the Minister in regards to the Bylaw
   - Wind Turbines special permit process vs. a Standard permit process for Wind Turbines
   - Would the development agreement include terms for decommissioning and reclamation plan of large-scale wind turbines

- Council discussed increasing minimal fee for large scale wind turbine permits from it's current 2,000 to an appropriate fee based on the expertise required to process the application (legal, engineers, planners, other subject matter experts, etc.)
- There is no MGA requirement for a "Planning Committee Bylaw" this item has been updated to a "Terms of Reference".

4. **Adjournment**
   The meeting was adjourned at 7:31 p.m. It was moved by Councillor Arthur Baker and seconded by Councillor Bernadette McInnis. All were in favour and the motion was carried.

Signed in accordance

Municipal Government Act S.116(4)

Larry Fitzpatrick, Mayor — Date: 11 July 2023

Sonya Martin, Chief Administrative Officer — Date: July 11, 2023

Appendix "A" – Upland Planner Ian Watson - Feedback Responses from May 30th, 2023 Public Meeting as presented by DO Michelle Paquet Monette.

Section of OP or Bylaw	Comment	Response
Bylaw 5.20	Setback from top of bank: 150 minimum	The current draft Bylaw requires a setback of 23 metres (75 feet) from embankments with slopes greater than 30 degrees from horizontal, and increases to 50 metres (164 feet) from sand dunes. The Prince Edward Island *Planning Act Subdivision and Development Regulations* have a minimum setback of 23 metres or 60 times the annual erosion rate from top of bank, whichever is larger. The base number aligns with the proposed setback for the Municipality. Consideration of erosion rates is not included in the Municipality's draft as this can be difficult for a municipality to determine. Prince Edward Island is, on average, eroding at a rate of 0.3 metres per year. At that average, the 23-metre minimum exceeds 60 times the annual erosion rate (60*0.3 metres = 18 metres) and is sufficient by this standard. However, this is an average and does not account for higher-risk areas. Council could direct an increase in the standard setback from top-of-bank as a precaution, or direct the inclusion of erosion rates in the calculation. However, including erosions rates would be challenging for municipal staff to include in their permitting reviews given the lack of comprehensive data. The burden and cost would need to be placed on applicants to hire a surveyor to identify site-specific erosion rates. A blanket increase of the base standard (the 23 metres) for all

		properties would likely be heavy-handed for those properties that are not at high risk. When it comes to sand dunes, the draft Bylaw already doubles the requirement established in the *Planning Act Subdivision and Development Regulations*; no further increase is recommended.
Bylaw 5.19	Watercourse Buffer 60m or 80m	Watercourse buffers are intended to protect the riparian area, the thin interface of land and water. This is important animal habitat and fulfills an important role in controlling erosion and runoff into waterways. The current draft Bylaw requires a buffer of 15 metres (49.2 feet) from watercourses. A buffer of 15 metres is common for municipal planning in Atlantic Canada. Indeed, the *Environmental Protection Act Watercourse and Wetland Protection Regulations* establish a 15-metre buffer where all activities require a permit. The *Planning Act Subdivision and Development Regulations* establish an additional setback of 23 metres between buildings and watercourses. Some municipalities in Atlantic Canada use 30.5 metres (100 feet) as a watercourse setback for certain, potentially impactful, classes of development (*e.g.* industrial uses). Council could direct the establishment of a watercourse setback for buildings in addition to the 15-metre activity buffer that is in the current draft. However, we would recommend that this be 23 metres to align with the *Subdivision and Development Regulations*. A setback of 60 or 80 metres would be excessive, and far exceed the typical extent of the riparian area.
OP Policy 7-6	A permit should be required but no fee	Processing development permits requires substantial staff time and comes at a cost to

		the Municipality. Development permit fees help re-coup some of this cost so that the burden is placed on the benefactor (the applicant) rather than the general taxpayer. We do not recommend removing the permit fee. Some classes of development are exempt from requiring a permit in the draft (Bylaw S2.6). These are small developments where the impact on the community is expected to be minimal, and where requiring a permit may represent an unnecessary burden on applicants and on staff time.
Bylaw 2.12.1	*"The Development Officer may require any applicant to enter into a development agreement. This agreement shall be a contract binding on both parties, containing all conditions which were attached to the development permit."* Development officer MAY require should be replaced with WILL require an applicant to enter into a development agreement	This change is not recommended. A development agreement is a tool available to the Development Officer to more firmly establish project requirements for developments that are complex or potentially impactful. They take additional time and expense to write, negotiate, sign, and record. Changing this to "shall" would put an unnecessary time and expense burden on staff and applicants when approving small developments. For example, such level of detail is typically not required when approving a detached home on a large lot or when approving a small expansion to a business. The draft Bylaw does already specify certain developments, *e.g.* wind turbines, where a development agreement shall be required.
Bylaw 2.11	• How is it decided what is a special permitted use? • Special Permit should be required for Large Scale Development. Includes windfarms. • Special permits are needed for other types of green energy, like solar farms or even communication tower or cemeteries.	• In general, the approach with the draft documents was to move away from special permitted uses as much as possible. For example, the Residential Zone went from seven special permitted uses in the existing Bylaw to two in the draft Bylaw. The goal is to establish transparent standards up-front, so that applicants know what standards they need to meet, and community members know what standards they can expect of

	• Telecommunication towers, solar collectors as main use, need to have Council approval as a special permitted use. Windmills are equivalent • "Council can't decide if it is for the people if the special permitted use has been reduced to check, check. In some cases it is ok. In some cases not ok because it shuts our voice down. That's not right if a policy is rewritten, but you have removed the council and the people's voices from the process. I think you are wrong." • "I believe opposite. The more the process is clear, the better it is. The more you take subjectivity out of it, the better you are. They are applied equally across the board, the more it is not a special permit."	development in their community. When determining if something should be a special permitted use, we typically applied the following thought process: ○ Are the potential land use impacts of this type of development well established? If not, consider special permitted use as an appropriate tool. If yes, continue to next point. ○ If so, do they tend to vary much based on the particular design of the development (*i.e.* are there qualitative aspects that need to be considered and/or do the quantitative aspects vary widely)? ○ If yes, then special permitted use may be the appropriate tool. If no, then just make it a permitted use and write clear standards that address potential land use impacts. • We do not recommend special permitted use as the appropriate tool for all large-scale developments. Wind turbines have well established land use impacts (noise, ice throw, shadow flicker, *etc.*) that can be addressed with clear standards. Aspects that potentially vary from project to project, such as risks to bird life, are environmental aspects that are not typically within the purview of municipalities and are better addressed by provincial and federal (where applicable) environmental reviews. • Special permitting is not used in the draft for solar collectors. It is indeed used for cemeteries in the Mixed Use Zone and telecommunications towers in the Agriculture Zone. In establishing the list of special permitted uses, both of these were borderline in terms of whether they were clear-cut enough to just be permitted

		uses. We could consider removing them from special permitted use. • Permitting uses does not take Council's authority away. Their authority is over the Official Plan and Development Bylaw. Council, with input from the public, sets the standards that development needs to meet. The goal is to have a clear set of rules and expectations so you come into the community knowing what can go on around you.
	The previous Official Plan stated there would not be any wind turbines east of Elmira Rd.	This was not in the previous Official Plan; it was in the last draft of this proposed Official Plan. However, there was no clear basis for establishing this specific boundary as meaningful and treating one area of the municipality different than another. Council, at its March 21st meeting, directed that this stipulation be removed from the draft.
	No wind farm development in forested lands or within 2km of a forest	There is nothing inherently special, from a land use perspective, about forests that would warrant a setback from them. Setbacks for wind turbines are typically established to address safety concerns due to ice throw and blade failure, to reduce impacts on human settlements from "shadow flicker" (the blade passing in-between the observer and the sun, causing a strobing effect), and to reduce the risk of noise impacts on human settlements. Any specific forests that are particularly valuable or sensitive would be more appropriately addressed through provincial and federal environmental review, as applicable.
	The Official Plan should include community input	Absolutely, and indeed it has. The *Planning Act* requires municipalities to hold at least one public meeting for community input when adopting or amending a Plan. During a State of Emergency this can be reduced to posting draft documents

		(digitally, and print when requested) and accepting written comments.
		
		The Plan Eastern Kings process included substantial additional engagement beyond the requirements of the Act:
		• Initial Engagement in the summer of 2021
		  ○ Advertising on the website, local newspaper, Community Centre sign, pamphlets at the municipal office, pamphlets handed out at the general store
		  ○ A public survey
		  ○ Council workshop
		  ○ A public workshop on September 23, 2021
		  ○ Interviews with 15 stakeholder groups
		• Draft public meetings and feedback periods
		  ○ November 30, 2022
		  ○ May 30, 2023

	Official Plan should state that PEI Energy must notify RMEK of any wind turbines that are down for maintenance including leaking oil turbines which must be reported to the ministry of the environment	Policy 5-79 of the Official Plan and Section 6.1.5 of the Bylaw require any applicant (PEI Energy or otherwise) for a large-scale wind turbine to provide an Emergency Response Plan and a Decommissioning and Reclamation Plan, which will form part of the development agreement for the proposal.
	The official plan should require PEI Energy to advise RMEK of any broken wind turbines parts, including blades damaged beyond repair. All such parts must be removed properly and sent a disposal site in a timely fashion not to exceed 60 days. Any violation of RMEK bylaw could result in fines and or RMEK hiring a company to remove and dispose	Violation of these terms would be a violation of the Bylaw and be subject to enforcement under Part IV of the *Planning Act*.

	of the turbine waste at the expense of PEI Energy.	
Bylaw Appendix B	The Official Plan should state any project that cost 1 million or more must apply for a special non refundable permit of $25,000 minimum.	We do not recommend establishing permit fees based on a project value of $1,000,000. This does not scale with inflation. Additionally, there are many potential $1,000,000+ projects that are relatively simple from a land use approvals perspective and do not warrant this additional cost (*e.g.* a large home could quite reasonably reach this value). However, the Municipality's experience has shown that there is indeed a high cost to the Municipality for processing all the various aspects of a large-scale wind turbine approval. Therefore, we recommend increasing the minimum fee for a large-scale wind turbine permit from its current $2,000.
Official Plan	I am concerned about the large number of objectives that remain in the Plan...with no mention of performance measurement system being established (to measure progress against)	The Official Plan is an aspirational document, and as such does not set objectives in place in the same way that a Strategic Plan and resulting Operation Plan would. These other planning processes and documents would indeed tie back to the Official Plan at a higher level, but would speak more clearly to measurable goals. Council, at its March 21st meeting reviewed a previous version of this suggestion and directed that the proposed objectives remain in the Official Plan.
OP- 6.1.3	RE: Non-conforming lots: This is better stated in Bylaw 5.11 and 5.13. These sections should better reflect one another and 5.11 and 5.13 should not be interrupted by 5.12. 6.1.3 – was that intended to be removed and wasn't?	The draft will be re-worked to address these points
7.1.1	Reference to Planning Committee's "bylaws". Terms of Reference was approved previously and there is not	The draft will be re-worked to address this. "Bylaws" will be changed to "Terms of Reference"

	requirement from Municipal Affairs re a bylaw	
2.17.1 Bylaw	Permits shall be "visible from the street" Is this realistic in our environment	The draft will be re-worked to address this incongruity.
Standards in Bylaw 8.1.4 and 8.2.4	These differ, please explain	The purpose of having different zones is to reflect the specific context where that zone is applied, or to achieve a specific goal or intent by using that zone. For example, lot standards in the Agriculture Zone (8.1.4) are generally larger than the Residential Zone (8.2.4) to encourage larger open areas that can better facilitate agricultural activities. Conversely, having smaller standards in the Residential Zone enables more efficient use of land in areas where non-agricultural uses are to be prioritized.
10.10.1	Why do you need seven copies of a plan?	Two are kept for the office. Two are sent to the registry office. Three stamped and approved copies are given back to the applicant. This could be reduced to five copies (*i.e.* one for the applicant) but past experience has shown that the additional cost of two extra copies is minor compared to the time it takes when applicants lose or damage their one copy and come back to the Municipality to ask for new copies to be made.
10.12.6	The DO shall file copies with the Registrar of Deeds. Is this done currently and who bears the cost?	It is done currently and there is no cost to the municipality or the applicant.
	Recreational Vehicles (RVs) Those permanently attached – are they a non-conforming use? Must people apply for a temporary permit? How do we enforce?	Currently, these are not permitted on a permanent basis. When a resident applies for a permit, it is under the understanding that this is a temporary arrangement and they intend to build on the lot at some point. We do not currently have an Enforcement Officer.