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The Island Regulatory  
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## Notice of Appeal

(Pursuant to Section 28 of the *Planning Act*)

Reset Form

TO: The Island Regulatory and Appeals Commission  
National Bank Tower, Suite 501, 134 Kent Street  
P.O. Box 577, Charlottetown PE C1A 7L1  
Telephone: 902-892-3501 Toll free: 1-800-501-6268  
Fax: 902-566-4076 Website: [www.irac.pe.ca](http://www.irac.pe.ca)

**NOTE:**

Appeal process is a public process.

**TAKE NOTICE** that I/we hereby appeal the decision made by the Minister responsible for the administration of various development regulations of the **Planning Act** or the Municipal Council of Eastern Kings (name of City, Town or Community) on the 22 day of October, 2020, wherein the Minister/Community Council made a decision to deny an application for a Special Development Permit for the Expansion of a Wind Farm in Eastern Kings by The PEI Energy Corporation. A copy of the October 22, 2020 decision to deny the application is attached. (attach a copy of the decision).

**AND FURTHER TAKE NOTICE** that, in accordance with the provisions of Section 28.(5) of the **Planning Act**, the grounds for this appeal are as follows: (use separate page(s) if necessary)  
The Appellant contends that the decision is in conflict with the intent and objectives of the Community of Eastern Kings Official Plan and Subdivision and Control Bylaw; that the decision does not have merit based on sound planning principles and is contrary to sound planning principles; that the Community of Eastern Kings did not provide sufficient reasons for its decision to deny the Appellant's application; and any further grounds as counsel may advise. A further explanation is provided on the attached 3 pages.

**AND FURTHER TAKE NOTICE** that, in accordance with the provisions of Section 28.(5) of the **Planning Act**, I/we seek the following relief: (use separate page(s) if necessary)  
A hearing de novo, that the Commission allow the appeal, quash the decision to deny the special development permit application for the expansion of the Wind Farm in Eastern Kings and substitute its own decision for the one appealed.

Name(s) of Appellant(s): The PEI Energy Corporation  
Please Print

Signature(s) of Appellant(s): [Signature]

Mailing Address: 65 Queen Street, PO Box 522

City/Town: Charlottetown

Province: PE

Postal Code: C1A 7L1

Email Address: jgmackay@csmlaw.com

Telephone: 902.892.4156

Dated this 12 day of November, 2020.  
day month year

### IMPORTANT

Under Section 28.(6) of the **Planning Act**, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council or the Minister as the case may be.

**Service of the Notice of Appeal is the responsibility of the Appellant**

Information on this Form is collected pursuant to the **Planning Act** and will be used by the Commission in processing this appeal.  
For additional information, contact the Commission at 902-892-3501 or by email at [info@irac.pe.ca](mailto:info@irac.pe.ca).

**NOTICE OF APPEAL (CONTINUED)**  
**(Pursuant to Section 28 of the *Planning Act*)**

**The grounds for this appeal are as follows:**

The Appellant, The Prince Edward Island Energy Corporation (the "Energy Corporation"), submitted a Special Development Permit (Preliminary) Application to the Community of Eastern Kings in June of 2019 regarding a proposed Wind Farm Development. A copy of the Special Development (Preliminary Application) is attached. The Appellant is currently proposing seven (7) turbines in a development area south of the existing wind farms in Eastern Kings.

On November 1, 2019 the Energy Corporation submitted the final Special Development Permit Application (the "Application") to the Community of Eastern Kings for a 30 MegaWatt wind farm expansion. A copy of the final Special Development Permit Application is attached. Again, the Energy Corporation proposed seven (7) turbines in a development area south of an existing wind farm in Eastern Kings.

On January 29, 2020 the Energy Corporation provided the Community of Eastern Kings with supplementary information for the application with additional details on distances, the foundations of the wind turbines and responses from government agencies. A copy of the supplementary information provided on January 29, 2020 is attached hereto.

Following the submission of the Application, there was significant and ongoing communication between the Energy Corporation and the RMEK Council and the community at large.

On September 2, 2020 the PEI Department of Environment, Water and Climate Change approved the Energy Corporation's project with 17 conditions attached. A copy of the September 2, 2020 Approval from the PEI Department of Environment, Water and Climate Change is attached hereto.

A Special Meeting of the Rural Municipality of Eastern King (the "RMEK")'s was held on Thursday, October 22, 2020 (the "Special Meeting"). At this Special Meeting, three (3) out of the four (4) councillors voted to deny the Energy Corporation's Application. In correspondence dated October 27, 2020 addressed to Heather MacLeod of the Energy Corporation, the RMEK Council advised that they denied the Application as the proposed development was not in the best interests of the residents of Eastern Kings.

The Appellant, the Energy Corporation, submits that the RMEK Council's decision to deny its Application failed to follow the intent and objectives of its Official Plan and Subdivision and Control Bylaw in denying the Application and that the RMEK failed to engage and follow sound planning principles. A copy of the RMEK's Official Plan and Subdivision and Control Bylaws are attached hereto.

According to section 4.5 of the RMEK's Subdivision and Control Bylaw, which deals with Special Permit Uses, Special Permit Uses, which includes wind turbines, may be permitted if Council is satisfied that the development would not be contrary to the general intent and purpose of these Regulations, the Official Plan, and to the public interest, and if Council has given notice of the application in accordance with the procedures established in section 13.2 (4), and has considered any objections or representations which may have been received on the matter.



A copy of the transcript from the Special Meeting is attached. While the councillors reference that they received a number of correspondences in both support and opposition of the Application, they did not discuss these positions in detail.

The Appellant submits that the RMEK Council did not provide sufficient reasons for their decision to deny the Application, as they simply stated that the proposed development was not in the best interest of the residents of Eastern Kings. While the Transcript shows that the councillors referenced the RMEK's Official Plan and Subdivision Bylaw's, there is nothing to suggest that the discussion concerning the Application was a fulsome discussion. Furthermore, the decision provided to the Energy Corporation did not reference the RMEK's Official Plan and Subdivision Bylaws as reason for its denial.

The language found in section 4.5 of the of the Subdivision and Control Bylaw suggests that the RMEK Council needs to consider the general intent and purpose of the Regulations, the Official Plan and the public interest. The wording suggests that all of these must be considered and not just one. Based on the decision received from the RMEK Council, there is nothing to suggest that the RMEK Council considered anything other than the public interest.

Section 3 of the RMEK's Official Plan (the "Official Plan") deals with the visions, goals, objectives, policies and plan actions for the RMEK. The vision for the RMEK, as provided for in section 3.1 of the Official Plan, is to develop a long term sustainable economy which is in harmony with the natural carrying capacity of the local and physical environment. To protect and enhance the existing natural environment and rural lifestyle while promoting a variety of housing choice and commercial and recreational opportunities within the community.

Section 3.4. of the Official Plan, dealing with the "goals" of the RMEK, provides that one of its goals is to promote the local economy based on the natural environment. Section 3.4.3 of the Official Plan deals specifically with the "economic goals" of the RMEK and provides that its goal is to develop a long term sustainable economy which is in harmony with the natural carrying capacity of the planning area and to promote innovative economic development.

It is arguable that the Energy Corporation's proposed Expansion of the Wind Farm in Eastern Kings could be considered an innovative economic development and a way in which to provide a long-term sustainable economy for the RMEK as the proposed development will bring new sources of long-term revenue for the community.

Additionally, section 3.16 of the Official Plan, dealing with "Regional Resources", specifically references that the Community of Eastern Kings supports some regional resources, such as wind turbines. The "objectives" of this section of the Official Plan provides that it is the Community's objective to permit windmills within the Community for the purposes of electrical power generation. The section requires that Council be provided with evidence that any proposed windmill does not pose any significant aesthetic, environmental or public safety threats to the Community residents or the travelling public. Arguably, the Energy Corporation has complied with all of these requirements when it submitted the Application for final consideration by the RMEK Council.

Adherence to sound planning principles is important as it provides for a common feature of development throughout Prince Edward Island. Sound planning principles are a guard against arbitrary decision making, especially where a regulatory checklist does not address a concern.

The Energy Corporation's Application was quite extensive. Arguably, this is not simply a decision to be made by following a regulatory checklist. Rather, this was an application in which, at a minimum, a professional land use planner should have been consulted. There is no evidence to suggest that a professional land use planner was consulted prior to the denial of the Energy Corporation's Application.

Based on the information that has been provided to the Energy Corporation, there does not appear to be evidence to suggest that the RMEK Council's decision to deny the Application was one that was based on sound planning principles within the field of land use planning.

The Prince Edward Island Energy Corporation appeals the Rural Municipality of Eastern Kings Community Council's (the "Council") decision to deny its application for a Special Development Permit for the Expansion of a Wind Farm in Eastern Kings on the grounds that the RMEK Council failed to provide sufficient reasons for its decision, failed to properly consider the RMEK's Official Plan and Subdivision and Control Bylaws, and the denial of the Energy Corporation's Application is contrary to sound planning principals.

# Rural Municipality of Eastern Kings

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27 October 2020

PEI Energy Corporation  
16 Fitzroy St.  
Charlottetown PE C1A 1R1

Attn: Heather MacLeod

RE: Special Development Permit Application – Expansion of Wind Farm in Eastern Kings

Dear Ms. MacLeod:

Attached please find a copy of the resolution from the Municipal Council Meeting of October 22, 2020, where the Council declined to approve the Corporation's application for a special development permit to expand the wind farm in Eastern Kings.

After careful examination of the application and consideration of the feedback from various members of the Community, in the estimation of the Council, this development is not in the best interests of the residents of Eastern Kings.

Respectfully submitted,



Sonya Martin  
Chief Administrative Office



# Rural Municipality of Eastern Kings

**Rural Municipality of Eastern Kings**

**85 Munns Rd., Rte 301, Kingsboro PE C0A 2B0**

**Special Council Meeting – Thursday, October 22 – 2020 | 6:15 p.m.**

**WHEREAS** the Council of the Rural Municipality of Eastern Kings ("Council") received a special development permit application from the PEI Energy Corporation ("Corporation") on November 1, 2019;

**AND WHEREAS** the Corporation's special development permit application seeks approval from the Council, pursuant to Section 5.33 of the Rural Municipality of Eastern Kings' Subdivision and Development Control Bylaw ("Bylaw"), to develop seven (7) large scale wind turbines in the Rural Municipality of Eastern Kings ("Municipality");

**AND WHEREAS** on July 31, 2019 and December 4, 2019, the Council held a public meeting to solicit input from residents of the Municipality in relation to the special development permit application, pursuant to Sections 4.5 and 13.2. 4. of the Bylaw;

**AND WHEREAS** on January 15, 2020, the Chief Administrative Officer of the Municipality sent a letter to Heather MacLeod, acting Chief Executive Officer of the Corporation, requesting further information from the Corporation prior to the special development permit application's review by Council;

**AND WHEREAS** the Corporation provided the further information requested to the Municipality on January 29, 2020;

**AND WHEREAS** the Council has reviewed the Corporation's special development permit application, together with the Municipality's Official Plan and Bylaw, and has considered the objections and representations which were received at the public meeting held on December 4, 2019 in relation to the special development permit application;

**AND WHEREAS** the Corporation has agreed to indemnify the Council in respect of the costs incurred in the preparation of a development agreement, in the processing of the special development permit application, and in defending and/or participating in any proceedings with the Island Regulatory and Appeals Commission, the Supreme Court of Prince Edward Island, and the Prince Edward Island Court of Appeal, and the Corporation has agreed to sign an indemnity agreement ("Indemnity Agreement") to that effect forthwith should Council approve the Corporation's special development permit application.

# Rural Municipality of Eastern Kings

## NOW THEREFORE BE IT RESOLVED:

That the Council approve the Corporation's application for a special development permit subject to the following conditions:

1. That the Corporation obtain written approval from the Minister of Environment, Water and Climate Change, prior to proceeding with the development set out in the special development permit application;
2. That the Corporation provide to the Council the wind turbine manufacturer's specifications and professional engineer's design and approval of the wind turbine foundations, prior to proceeding with the development set out in the special development permit application;
3. That the Corporation execute an Indemnity Agreement forthwith upon the passing of this Resolution;
4. That the Corporation enter into a development agreement with the Municipality in relation to the development set out in special development permit application ("Development Agreement"), imposing conditions on the Corporation's development which are related to and consistent with the Official Plan and Bylaw, within fourteen (14) days of the date of this Resolution;
5. That the Mayor and Chief Administrative Officer; as per Section 156 of *the Municipal Government Act* (MGA); the Mayor and the Chief Administrative Officer sign all documents on behalf of the Municipality; be and hereby are authorized to sign the Development Agreement, the Indemnity Agreement and the Community Compensation Agreement on behalf of the Council; and
6. That the Corporation not be permitted to begin any development on the special development permit application until all of the above conditions have been met.

Moved by Councillor: Arthur Baker

Seconded by Councillor: David Stewart

All in favor: Councillor Arthur Baker

Opposed: Councillors Anne McPhee, Bradley MacDonald, and David Stewart.

**MOTION FAILED**

  
Ms. Sonya Martin  
CAO - RMEK