

Sanford launches Dufferin ERT appeal

The wind turbine wars have taken a new twist with the filing last week of an appeal of December's decision by the Environmental Review Tribunal's decision to uphold Dufferin Wind Power's Renewal Energy Approval (REA).

The appellant is Melancthon resident Dennis Sanford, who had been a party to the ERT hearing, on health issues and a Constitutional challenge.

The filing coincided with a Divisional Court hearing of an appeal of another ERT decision, this one over-ruling Gilead Energy's REA of a 22.5 MW (9 turbine) wind farm at Ostrander Point, Prince Edward County, near Kingston and Picton, on the basis that the access roads would imperil the habitat of the threatened Blanding's turtle.

Lawyer Eric Gillespie, or his firm, is representing Mr. Sanford and also the Gilead wind farm opponents, Prince Edward County Field Naturalists.

In the Sanford appeal, Mr. Gillespie will be fighting to have the ERT decision overturned. In the Gilead case, he is fighting to have the ERT decision upheld by the court.

In the Ostrander Point case, the appeal of ERT's rejection of the wind farm's approval was launched by Gilead and the Ministry of Environment. Here in Dufferin, the wind farm proponent and MOE will be expected to defend ERT's decision.

The timing of Mr. Sanford's appeal coincides with Dufferin County Council's decision to negotiate with DWP for a rail corridor power line easement, rather than to fight a hopeless expropriation battle.

Mr. Sanford, in a letter to county clerk Pam Hillock and the warden, has urged the council to delay negotiations, as he is confident of victory in his appeal.

?We believe we have a good chance of overturning the ERT's decision in the Divisional Court, where judgments are based on balance of probabilities and on fundamental justice, not on the impossible, reverse onus test established by the Green Energy Act legislation designed to insure that renewable projects are not refused.

?This is a landmark case, not only in that it is the first to do so, but the lack of fairness inherent in the GEA in its dealings with rural residents, and rural municipalities will be on display and challenged in the Divisional Court,? he said in his letter.

The Divisional Court website says appeals must follow the Rules of Civil Procedure, however those apply.

In the Ostrander Point appeal last week, the three member panel of Superior Court justices would not permit Gilead to introduce evidence that had not been brought before the ERT.

Justice Ian Nordheimer said written reasons would be given later.

The new evidence would have been that the gates to the offending access roads are closed to the public, ergo the roads not a turtle threat, but Mr. Gillespie has been reported as saying Gilead could have brought that information to the ERT, but chose not to.

The arguments continued last Wednesday and Thursday.

By Wes Keller