



**TOWNSHIP OF WOOLWICH**  
**ENGINEERING & PLANNING SERVICES**

**REPORT: E25-2009**

**MEETING DATE: March 31, 2009**

**MEETING TIME: 6:00 p.m.**

**MEETING LOCATION: Council Chambers**  
24 Church Street West, Elmira

**TITLE: Proposed Biogas Power Generation Facility**  
**Walter Fedy Partnership on behalf of Marbro Capital Inc.**  
**Part of Part 9, Plan 58R-14363**

**FILE ID:**

**PREPARED BY: Dan Kennaley dk**

**REVIEWED BY: Dan Kennaley dk**

**DATE REVIEWED BY MANAGEMENT TEAM: March 23, 2009**

**C.A.O.: \_\_\_\_\_ (signature not required if reviewed by SMT)**

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**RECOMMENDATION**

THAT Council of the Township of Woolwich receive Report E25-2009.

**BACKGROUND**

An application for site plan approval under Section 41 of the Planning Act for a proposed biogas power generation facility was received by the Township of Woolwich on August 26, 2008. The biogas facility is proposed to be located on lands north of the former Canadian Pacific Railway lands and west of the current terminus of Martin's Lane, as shown on the attached location sketch (Appendix "A"). The owner of the property is Marbro Capital Inc. and the applicant, on behalf of the property owner, is The Walter Fedy Partnership.

The proposed biogas power generation facility is also the subject of an application to the Ministry of the Environment for a Certificate of Approval under the Environmental Protection Act. In the context of the Certificate of Approval process the proposed facility is defined as a form of waste disposal site and described as a renewable energy anaerobic digestion facility that will process 750 tonnes per day of organics into biogas. These organics will include kitchen and food processing wastes, livestock manure, energy crops, fats, oils and greases. The proposed facility will produce renewable electricity and heat energy to be sold to the power grid and will also produce a fertilizer type material for application to agricultural land. According to the Ministry of the Environment, energy from the facility will be sold to the Province of Ontario and the facility will operate 24 hours a day, 7 days per week.

## **COMMENTS**

The subject property is designated "Industrial" in the Township of Woolwich Official Plan and is located in the "North-east Policy Area". The policies which apply to the North-east Policy Area include Section 7.18.14.2 (a) (i) which states in part:

"a) Prior to consideration of the development of this area for industrial uses the following studies shall be undertaken to the satisfaction of the Township:

i) A Land Use Study examining the compatibility of the proposed development with the existing residential development within the High Street Policy Area, potential buffering options and alternative development options for the lands subject to the application".

The subject property is zoned "M1 Industrial" by the Township's Comprehensive Zoning By-law 55-86. Uses permitted by the M1 zone include "any manufacturing, fabricating, assembly, processing, repair, indoor storage or warehousing, distribution or transportation operation". However, these uses must also be a "dry industry" as defined by the By-law. A dry industry is defined as "any industry that does not use water as part of an industrial process, but the foregoing is not meant to include water used for sanitary needs of the employees". In addition, the M1 zone also prohibits the following uses

"(a) A use which is or may become obnoxious, offensive, or dangerous by reason of the presence, emission or production in any manner of odour, dust, smoke, noise, fumes, vibration, refuse matter or water-borne wastes.

(b) The recycling of animal, oil, or waste products, a rendering plant, abattoir or slaughter house."

Initially, the Planning Section of the Engineering and Planning Services Department believed that the proposed bio-gas power generation facility conformed with the M1 zoning on the subject property. However, this determination had been made based on information provided by the applicant that indicated that the only water required by the facility was required for employee washrooms. When it was subsequently determined that the facility's processing of organics required approximately 1,200 cubic metres of water per year the applicant was advised that the bio-gas facility no longer met the definition of a dry industry and that a zone change would be required in order for the use to be permitted. Township staff also provided this same information about the requirement for a zone change to the Ministry of the Environment on March 2, 2009 in the context of the Certificate of Approval having been posted on the Environmental Bill of Rights Registry.

The Planning Section has also considered again whether the proposed bio-gas facility conforms with those sections of the Zoning By-law which deal with uses that are or may become obnoxious, offensive, or dangerous by reason of odour (etc.) and with the recycling of waste products. Again, initially, the proposed use was felt to conform.

With regard to odour, this determination was based on information submitted by the applicant that provided some assurances, but was also based on a willingness to rely on the Ministry of the Environment's Certificate of Approval process to ensure that odour would not be a problem. The Planning Section is now of the view that there is a responsibility for the Township to reach its own conclusions with respect to odour in order to finally determine whether the proposed use satisfies the section of the Zoning By-law prohibiting uses that are, or might become, obnoxious,

offensive or dangerous because of odour. The requirement for a zone change created by the fact that the use is not a dry industry provides a good opportunity to address the odour issue.

With regard to recycling of waste products, the Planning Section's determination that the proposed bio-gas facility did not involve the recycling of waste products was initially based on an interpretation of the By-law which suggested that recycling involved the conversion of waste products into a intermediary product which would then be processed again in order to produce a final product. If the processing of waste products results in a final product, than the processing would not be considered recycling. This interpretation had been used in the past to permit uses similar to the proposed bio-gas facility and had, therefore, become something of a precedent. However, in considering the issue again, the Planning Section is now of the view that the previous interpretation of what was meant by recycling within the Zoning By-law was too narrow an interpretation and that the intent of the By-law was to acknowledge that the recycling of waste products often brings special concerns with it that require special scrutiny within the land use planning process. In order to trigger the land use planning process and ensure this special scrutiny, a broader concept of what constitutes recycling of waste products is necessary.

Accordingly, the Planning Section is now of the view that, in order for the proposed bio-gas power generation facility to be permitted at the subject location, a rezoning is required not only to address the dry industry aspect of the Zoning By-law, but also to address the prohibition of uses that are, or may become, obnoxious, offensive or dangerous by reason of odour (etc.) and the prohibition of uses that involve the recycling of waste products. Despite the Zoning By-law treating such uses as prohibited uses, the applicant should be provided with the opportunity, in the context of a rezoning application, to satisfy concerns with respect to the two aspects relating to prohibitions. But, at the same time, the applicant must appreciate that the prohibition wording of the Zoning By-law, and the Official Plan's concern for ensuring compatibility with existing residential development in the High Street Policy Area, creates a high threshold which must be reached by the applicant before the rezoning may be able to proceed.

### **Green Energy and Green Economy Act 2009**

The Provincial Government introduced the Green Energy and Green Economy Act 2009 into the legislature on February 23, 2009. The Act is intended to boost investment in renewable energy projects, increase conservation, and create green jobs and green economic growth in the Province. While the goals of the proposed legislation are desirable, under the guise of streamlining the approval process for renewable energy projects, the legislation is proposing to exempt green energy projects from requiring approvals under the Planning Act. This approach would greatly reduce the participation of people at the local level in the consideration of what green energy projects should be permitted and it would eliminate any jurisdiction of municipalities with respect to such projects. Staff will bring a further report with regards to the Green Energy and Green Economy Act 2009 at a later date and will make recommendations with regards to the proposed Act which Council may wish to forward to the Province as comments on the legislation.

### **CONCLUSION**

Staff are now of the view that, in order for the proposed bio-gas power generation facility to be permitted at the subject location, a rezoning is required not only to address the dry industry aspect of the Zoning By-law, but also to address the prohibition of uses that are, or may become, obnoxious, offensive or dangerous by reason of odour (etc.) and the prohibition of uses that involve the recycling of waste products.

**FINANCIAL IMPLICATIONS**

None

**OTHER DEPARTMENT IMPLICATIONS**

None.

**LIST OF ATTACHMENTS**

Appendix "A" – Location Map

Appendix A

