



Fairhaven Board of Selectmen

July 1, 2013 Meeting Minutes

Present: Chairman Charles Murphy, Vice Chairman Robert Espindola, Clerk Geoffrey Haworth, Executive Secretary Jeffrey Osuch, and Administrative Assistant Anne Kakley.

Chairman Charles Murphy called the meeting to order in the Town Hall Banquet Room at 6:32 p.m. The meeting was telecast and video recorded by Government Access and video recorded by John Methia.

MINUTES

- Mr. Espindola motioned to approve the minutes of the **June 10, 2013** meeting, **open** session. Mr. Haworth seconded. Vote was unanimous. (3-0).
- Mr. Espindola motioned to approve the minutes of the **June 10, 2013** meeting, **executive** session. Mr. Haworth seconded. Vote was unanimous. (3-0).
- Mr. Espindola motioned to approve the minutes of the **June 24, 2013** meeting, **open** session. Mr. Haworth seconded. Vote was unanimous. (3-0).
- Mr. Espindola motioned to approve the minutes of the **June 24, 2013** meeting, **executive** session. Mr. Haworth seconded. Vote was unanimous. (3-0).

EXECUTIVE SECRETARY'S REPORT

In his report, Mr. Osuch updated the Selectmen on the following meetings:

- Thursday, **July 4** –
 - Town Offices are closed (open on July 5)
- Monday, **July 8** –
 - 10:00 a.m. – Fire Negotiations
 - 4:00 p.m. – Police Negotiations
- Tuesday, **July 9** –
 - 7:00 a.m. – New School Building Committee meeting
 - 3:30 p.m. – Mattapoisett River Valley Advisory Committee
 - 4:30 p.m. – Mattapoisett River Valley Water District

CHANGE ORDER #10

The Board reviewed Change Order #10 for the New Wood School project, which was a credit in the amount of \$96,486.49. Part of the credit was due to asbestos removal on the old school not costing as much as it was expected to, said Mr. Osuch. Mr. Espindola motioned to approve Change Order #10 in that credited amount. Mr. Haworth seconded. Vote was unanimous. (3-0).

REQUISITION #13

The Board reviewed Requisition #13 for the New Wood School project, in the amount of \$948,726.00. Mr. Espindola motioned to approve Requisition #13 in that amount. Mr. Haworth seconded. Vote was unanimous. (3-0).

FAIRHAVEN SKYLINE WATERCOLOR PRINT

The Chairman recognized John and Sally Medeiros for the presentation of a watercolor print.

Mr. Medeiros said that, in the mid-1990s, he had commissioned a three-foot watercolor mural of the Fairhaven skyline, which was then transposed to the side of a 40-foot motor coach for his company. He said that he gave permission to the Fairhaven High School Class of 1961 to reprint the image.

Betsy LeBeau was also present, and was an important part of the effort. She said that the class printed and framed the painting, selling them for about \$150 each to raise money for landscaping and maintenance around the High School Memorial Park. She said that every classmate was proud of the garden made possible by the print sales.

The Board unveiled the print to the public and thanked Mr. and Ms. Medeiros, and Ms. LeBeau.

CULTURAL COUNCIL APPOINTMENT

The Board reviewed a letter of interest from Michael Luey, asking to be appointed to the Fairhaven Cultural Council. Mr. Espindola motioned to appoint Mr. Luey to the Fairhaven Cultural Council. Mr. Haworth seconded. Vote was unanimous. (3-0).

CONSERVATION COMMISSION APPOINTMENT

The Board reviewed a letter of interest from Louise Barteau, asking to be appointed to the Conservation Commission. The ConCom is currently very low on members and has difficulty achieving a quorum. As such, the Board was eager to have Ms. Barteau join, and they considered her a qualified applicant. Mr. Espindola motioned to appoint Louise Barteau to the Conservation Commission. Mr. Haworth seconded. Vote was unanimous. (3-0).

PUBLIC HEALTH NURSING CONTRACT

The Board reviewed a contract for public health nursing with the Community Nurses Association. The Board of Health had already signed the contract and asked the Board to also approve and sign the annual contract.

Mr. Espindola asked if the Board of Health was at all involved in the process of Emergency Preparedness. Mr. Osuch said that the Community Nurses Association was involved and would collaborate with the Board of Health in an emergency if their assistance were needed. Mr. Haworth added that there was a combined CERT (Community Emergency Response Teams) to which both the Nurses and the Board of Health contributed.

Mr. Espindola motioned to approve and sign the contract. Mr. Haworth seconded. Vote was unanimous. (3-0).

OUTDOOR MOVIE NIGHT

The Board reviewed a letter from Wayne Oliveira, Chairman of the Bicentennial Committee, and John Medeiros and Vicki Paquette, co-chairmen of the Bicentennial Committee, requesting permission to use Livesey Park for a family outdoor movie night, which will be free to the public and funded privately by civic organizations. The Board was supportive to the request and it was so approved, with Mr. Espindola motioning and Mr. Haworth seconding. Vote was unanimous. (3-0).

TAX TITLE

At 6:54 p.m., the Board met with Treasurer Wendy Graves and Town Planner Bill Roth to discuss possibilities for three Town-owned tax title properties: 124 Alden Road, 12 Diamond Street and 14 Grandview Ave.

124 Alden Road – Mr. Roth said that the former Staffon property is 4.2 acres zoned industrial and assessed at about \$500,000.00. It was not auctioned off last year because the bidding could be set as low as \$100,000.00 and the Selectmen had wanted to get as much as it could for the property.

Ms. Graves said that the market value is typically higher than the assessed value. Mr. Roth discussed the structure on the property, which cannot be salvaged and will have to be demolished. Mr. Espindola said that he thought the Board should look into getting an appraisal on the property. Ms. Graves thought that the Board could look into finding a volunteer realtor to sell the property at no cost to the Town. Mr. Haworth indicated that one realtor in the audience (Dawn Devlin) might be willing to help. It was decided that the Board would revisit the matter in two weeks when it had more information about the lot's appraisal, and/or how much it could be sold or auctioned off for.

12 Diamond Street – Mr. Roth said that the Building Inspector has said that this lot is likely unbuildable due to the prevalence of wetlands. As such, Mr. Roth said that the Board of Selectmen should seek a more detailed answer on the lot from the Conservation Commission. There is currently a structure on the property but it is dilapidated. Mr. Roth said that the Board would have to decide that, if the lot was buildable, if they would be willing to offer the lot for a Habitat for Humanity home, which would place the lot back on tax roles.

The Board indicated that it would like more information – namely, how much the average Habitat home is worth, and a comparison of the tax revenue to the revenue produced by auctioning/selling the lot (and recuperating \$23,000.00 from tax default).

Both Mr. Haworth and Mr. Espindola said that it was a nice thought to consider the social aspect of Habitat for Humanity, but that the Town would have to consider the financial impact of such a donation as well. Mr. Roth said that he would contact Habitat for Humanity to get more information on the value of the average Habitat home, and Ms. Graves said that they would contact a realtor to get more information on selling the lot. The issue of 12 Diamond Street was tabled to July 15.

14 Grandview Ave – Mr. Roth said that part of the structure on this lot has caved in. Ms. Graves said that the building will definitely be a tear-down. \$25,000.00 needs to be recuperated on this property. It is assessed at \$177,000.00.

Mr. Espindola said that he would also like to see this property be looked at by a realtor, and get more information about how much the Town could get for the property. The issue of 14 Grandview Ave was also tabled to July 15.

Mr. Roth said that the last time the topic of tax title was discussed with the Selectmen, he had suggested forming an ad-hoc committee to review tax title properties. The committee, he said, could consist of the Town Planner, the Treasurer, the Executive Secretary, the Building Commissioner/Conservation Agent, and possibly a representative member of the Board of Selectmen. Mr. Haworth was supportive to this suggestion, and said that he did not think that a Selectman would have to sit on such a committee, as the duties would be appropriate to Mr. Roth's role.

Mr. Espindola motioned to appoint the ad hoc committee as described by Mr. Roth, to consist of the Town Planner, the Treasurer, the Executive Secretary, and the Building Commission/Conservation Agent. Mr. Haworth seconded. Vote was unanimous. (3-0).

PARK MOTORS STAGING AREA

At 7:17 p.m., the Board initiated a discussion with Mr. Roth regarding the use of the “Park Motors Property” on Main Street for the staging of equipment for CDBG work. The meeting was prompted by a letter from Lianne Girard, who claims that she has had to accept less than market value for the properties she has sold on Main Street, due to the unsightly staging area at the Park Motors property.

Mr. Roth said that the property is owned by the Schwartz family and is not Town-owned, but that the Town is granted a contractual right from the Schwartz family, to use the site at no cost. The current contract is valid through November 2013, he said. Pavao Construction uses the site to store equipment for two concurrent CDBG projects. He said that the two projects he is referencing – one on Fort Street and the other on Park Ave – are close to completion with only “punch lists” remaining. However, he has another CDBG project potentially forthcoming on Eliot Lane. If the CDBG grant is approved, he said, he would again seek to use the Schwartz

land as a staging area. He said that debris piles at the Park Motors site is gone now, and if the neighbors have an issue to dust, that he would take care of it.

Mr. Espindola said that he thought the neighbors just wanted to see a “light at the end of the tunnel” in regards to the Park Motors use. Mr. Roth said that, other than the Elliot Lane project, the only other potential village project would be on Water Street, and the property owners on Water Street have so far voiced opposition to a CDBG project there. He said that if anyone has any additional concerns about the Park Motors site staging, they should contact him at his office.

CDBG PROJECT AMENDMENT

At 7:25 p.m., the Board voted to transfer \$50,000.00 from the Park Ave and Main Street road project to place into CDBG housing and rehab. Mr. Espindola motioned to sign the document. Mr. Haworth seconded. Vote was unanimous. (3-0).

REVOLUTION ENERGY

At 7:26 p.m., the Board met with Clay Mitchell and Mike Behrmann of Revolution Energy, and Jack Eggelston of Blue Sky Power, to discuss the solar landfill project. Mr. Eggelston explained that Blue Sky Power’s role in the set-up of the solar array was now concluded and that the primary contact person for solar maintenance would be Mr. Behrmann from this point on. Mr. Mitchell and Mr. Behrmann introduced themselves and told the Board a little about their company, Revolution Energy.

Discussion ensued on the Revolution Energy invoice cycle versus the NSTAR billing cycle, and how the Town could manage to reconcile the two. NSTAR bills reflect monetary credits that must be reconciled with the KWH reflected on invoices by Revolution Energy. Hastings Middle School has been named the main recipient of the energy credits, but the school is using less than is produced and the Town will have to name additional buildings to help in using up the credit.

Mr. Osuch said that he had seen a Hastings Middle School NSTAR bill, but that the Town would need help in figuring out what is actually being earned. Mr. Behrmann said that they would go back and make sure that everything adds up, and will adjust invoicing cycles if necessary.

Mr. Behrmann and Mr. Mitchell also noted that there was a rate error on the invoice that had been given to the Town. They said they would rectify the mistake and resubmit an invoice.

Mr. Osuch said that the Town would like to collaborate with Revolution Energy and Blue Sky Power to have a ribbon cutting ceremony for the landfill solar project. The Board will contact Mr. Eggelston, Mr. Mitchell and Mr. Behrmann with potential dates.

SEEAL SOLAR CANVASSING

At 7:43 p.m., the Board met with Jennifer Marshall Grantham, Karen Stewart, Megan Boyle and Diana Painter, all of SEEAL, Tem Ferreira of Next Step Living, and Deidre Healy, Ann Richard

and Vincent Marron of the Sustainability Committee to discuss the ongoing issue of solar canvassing and complaints.

Ms. Marshall-Grantham, Director of SEEAL, said that she submitted a letter to the Board outlining remedies that the NSL representatives have taken to address complaints about pushy sales tactics and transparency. She said that the representatives have canvassed 500 to 700 homes and over 50 solar site visits have been completed with nine new solar contracts being signed in Fairhaven. She said that they have reached 25 percent of their goal. At this time, due to concern expressed from the Board of Selectmen relative to complaints received by the Selectmen's Office, Ms. Marshall-Grantham said that they would be respectfully withdrawing all references to being "supported by the Town of Fairhaven", though a couple old lawn signs may remain until they can collect them all. She said that they were committed to working with the community and that she thought they could reach their goal within six months. She asked that the Selectmen's Office continue to forward any complaints or comments to them so they can continue to improve their program.

Mr. Espindola said that the Board had had some concerns regarding the Town's affiliation with the solar canvassing project, and he thought the separation of support from the Board of Selectmen would be best. He said that he hoped people would continue to be interested in the program and he said he apologized if anyone had an issue with the program.

Mr. Haworth also said he was glad that the SEEAL and NSL organizers were making the decision to discontinue affiliation with the Fairhaven Select Board, as he was going to ask the Selectmen to withdraw their support. Mr. Haworth said that he thought the Board of Selectmen should be very careful with supporting individual businesses in the future. He said that he was supportive of solar power and that he hoped the NSL representatives would continue to address issues and improve their techniques.

The Board thanked the SEEAL and NSL representatives and wished them well. Ann Richard was recognized by the Chairman. She said that she wanted to focus on the good work that SEEAL and NSL has done. She praised their work and encouraged residents to still participate in the solar program.

BOARD OF HEALTH ELECTION

At 7:52 p.m., the Board broached the topic of the Board of Health election. The Banquet Room was filled to capacity with members of Windwise and Friends of Fairhaven Wind present. Some residents stood in the hallway and listened.

Mr. Murphy said that he had received a final court decision via Town Counsel in regards to the April 1, 2013 Board of Health election. The court order indicates that, due to improprieties related to the election made by the Town Clerk, the election results are inconclusive and a new election will be needed. Mr. Murphy said that a minimum of 51 days is needed to hold an election. As such, the suggested date from the Town Clerk was September 9, 2013. Other candidates will be considered if they pull papers and get the necessary 50 signatures to get on the ballot.

Mr. Espindola asked if the Town Clerk was satisfied with the September 9, 2013 election date. Mr. Murphy said yes. Mr. Osuch noted that Town Clerk Eileen Lowney had been asked to attend the July 1 Selectmen's meeting, yet was not in attendance.

Attorney Ann Ponichtera-DeNardis was recognized by the Chairman. She asked for a "point of clarification", asking if the previous candidates named in the lawsuit – John Wethington and Peter DeTerra – would again have to pull papers to be on the ballot. Mr. Murphy said yes. Atty. Ponichtera-DeNardis said she objected to her client, John Wethington, having to pull papers again. She said that she saw no basis in the court's order for the original candidates to pull papers again.

Mr. Murphy said that it was expressed to him that the two original candidates would indeed have to pull papers and get signatures again to make sure that they get onto the ballot.

Atty. Ponichtera-DeNardis requested the Board of Selectmen to ask a representative of the Secretary of State's office to come to Fairhaven and "re-educate" the Town Clerk and the Board of Registrars so the Town would not suffer another faulty election. Mr. Murphy said that he was aware of the Town Clerk already going through some additional training since April 1.

Mr. Haworth motioned to hold the election on September 9, 2013. Mr. Espindola seconded. There was discussion on the motion:

- Dan Freitas, representative of "Friends of Fairhaven Wind" ("Friends"), indicated that the Friends felt the entire election was flawed, and that the entire ballot – which included Selectmen candidates, Town Meeting members, etc. – should be set aside and redone. "It's pretty bad the way things were handled," said Mr. Freitas, who called it "an unfair election". Mr. Murphy agreed that there have been problems in the matter, especially related to communication. Mr. Murphy said that he did not know about an additional ballot found in the ballot box in preparation for the State Senate Primary, until he heard about it from the media, despite the fact that the Town Clerk and Town Counsel had been aware of the additional ballot.
- Ken Pottel said that he only disputed the results of the Board of Health race. He argued against the previous speaker, saying that there was not a dispute in the machine count in the race, and that the newly found ballot had been counted by the machine.
- Gregory Bettencourt said that he did not understand the desire to push for a September election. He asked the Board to "slow down". "I trust my Town fathers and the Town Clerk to do their jobs," he said. "Let's slow it down [and] talk to Town Counsel." He said that the Board should offer the ballot as additional evidence to Judge Robert Kane. "Please, I beg you, don't tear this Town apart," said Mr. Bettencourt.
- Atty. Ponichtera-DeNardis refuted earlier speakers, saying that the election results are final for everyone other than Mr. Wethington and Mr. DeTerra. She said that the other candidates had a 30-day window in which they could have appealed, but did not. She

said that the Selectmen had no authority to set aside any other races, and that there was no intention to appeal the Bristol County court decision. To this statement, Peter DeTerra, who was present, said something unintelligible to Atty. Ponichtera-DeNardis.

- Dan Freitas again spoke. He refuted Mr. Pottel's statement, saying that there was indeed a count problem with the machines. He again stated that the entire election had been flawed and it warranted further attention.
- Eddie Freitas said that the only fair thing to do is to hold another election.
- Curt Devlin spoke to the issue of slowing down the matter. He disagreed with Mr. Bettencourt's plea to slow down the process. Mr. Devlin said that the Board should act as quickly as it could, saying that there was a need to have a sit-in Board of Health with the power to act, as soon as legally possible.
- Pat Crabbe asked the Board if the newly found ballot, which had been cast for Mr. DeTerra, could be counted now. The Board indicated that Town Counsel had said the ballot was invalid now that the whole Board of Health election had been set aside. However, said Mr. Murphy, the ballot in question had not been destroyed.
- Henry Ferreira said that even if the judge had known about the ballot, there were enough doubts cast in the very close Board of Health race for a judge to throw out the results. He said that he wanted the Board of Selectmen to announce the new election date as soon as possible so the Board of Health could "get someone competent".
- Curt Devlin again spoke, this time asking the Board if they had received any legal advice on the current membership of the Board of Health and its ability to act. Mr. Murphy said that he had been advised by Town Counsel that the Board of Health can continue to act and its membership will include candidate and incumbent Peter DeTerra until such time an election can be completed.
- Dawn Devlin said that she felt a new election should be completed as soon as possible.

Upon Mr. Haworth's motion to set an election for the Board of Health for September 9, 2013, and Mr. Espindola's second, it was so voted unanimously. (3-0).

FAIRHAVEN WIND LLC

At 8:16 p.m., the Board met with Sumul Shah, Gordon Deane and Jim Sweeney, all of Fairhaven Wind, LLC.

Mr. Shah handed out a response to the Board of Selectmen's June 14 Notice of Default letter. See Attachment A for the Fairhaven Wind LLC's response to the Notice of Default.

Mr. Shah said that Fairhaven Wind LLC disagrees that there has been a default on the lease. He added that they disagree on the DEP's methodology, and claimed that the project was ready to be fully in compliance. He said that Fairhaven Wind has completed testing as recent as last week. He said that during the summer months, the background ambient sound is high enough that the turbines do not risk exceeding the 10 decibel threshold. He said that because the turbines are in compliance, there is no reason for the turbines to be shut down. Mr. Shah said that certain conditions and times are more problematic than others. He said that the particular problem was winter when the ambient noise is lower and there is no foliage on the trees to buffer the sounds of the blades.

Mr. Shah said that the letter he distributed (Attachment A) would outline a draft mitigation plan. He said that they would consider "feathering" the blades, but they were not certain the feathering would work. He said that it was more likely that they could achieve certain compliance by shutting down one turbine under certain conditions, at certain times of the day, at certain times of the year. "According to the lease, our default, if any, has been cured," said Mr. Shah. "We are ready, willing and able to implement the plan."

Mr. Shah said that he had spent some time reflecting on the matter, and had spoken with Town residents. His first thought was that the plan, as outlined in Attachment A, would work. His second thought was that, no matter what plan they proposed, there would be some residents who would be critical of it. He noted that the last time they came before the Board, they had heard about a "United Fairhaven", but he said that he did not see a United Fairhaven forming. He stressed the importance of compromise for the sake of the Town's financial and environmental health. He said that Fairhaven Wind, LLC, had a right to be free to conduct a successful business.

Mr. Shah said that the residents also deserve to be able to sleep at night. He said that the mitigation plan could facilitate that, but that timing was critical because the 12-hour ordered shut-down of the turbines was costing \$1,600.00 a day in lost revenue. He said that the \$1,600.00 liability – whether it should be borne by Fairhaven Wind LLC or the Town – can be decided at a later date.

On July 15, said Mr. Shah, Fairhaven Wind LLC will submit a finalized version of their mitigation plan to present to the Board of Health.

Mr. Espindola said that he would like to regroup with the Board of Health to delineate the duties and roles of each board in this process. He refuted a claim of Mr. Shah, saying that he scanned the packet just given to him (Attachment A) and could not find any evidence that the turbines had passed recent testing by the DEP.

Mr. Shah said that they were waiting on one more wind/weather condition to occur so they could complete their testing, but that it could take some time.

Mr. Murphy noted that both the Mass DEP and the CEC had agreed to be a part of any additional meetings.

Mr. Haworth said that he was happy to see a spirit of cooperation from Fairhaven Wind LLC. He said that he would prefer to find a middle ground over taking the matter to a court level and spending hundreds of thousands in legal fees.

Grant Menard said that the whole matter “saddened” him. He said that his next-door neighbors do not suffer from the wind turbine noise as much as his family does, due to situation, angle and foliage. “Whether it’s 9.9 decibels or 10 decibels – it’s the repetition that drives you crazy,” said Mr. Menard. He said that he respected people’s right to advocate for the wind turbines, but not at the cost of his family.

Discussion ensued regarding the formation of an all-inclusive group to establish a compromise for the Town, Fairhaven Wind LLC, Windwise, and Friends of Fairhaven Wind.

Barbara Acksen, member of the Board of Health, was recognized by the Chairman. She said that the Board of Health has not had a chance to form an agreement with Fairhaven Wind LLC and that the Board of Selectmen should sit down with the Board of Health before going ahead with their own agreement.

Dan Freitas was recognized by the Chairman. He said that the wind turbine advocates have stayed “on the sidelines” for a long time hoping the issue would settle. Instead, he said, it has reached a “fevered pitch” and for that reason, the Friends of Fairhaven Wind chose to organize. He said that they want to see the turbines in compliance, but that the 7:00 p.m. to 7:00 a.m. shut down was not commensurate to the times when violations occurred. He said that two separate Town Meetings approved the wind turbines, and that a contract was signed. He said that the turbines could not be expected to come into compliance if they are not allowed to operate. He said that the decisions that the Board of Selectmen and the Board of Health make will affect everyone who pays taxes in the Town, and could lead to layoffs for Town employees. Mr. Freitas said that the Friends of Fairhaven Wind was a bigger group than Windwise, and that it would now be the “vocal majority”. He asked the Board if it would favor the turbines operating 24/7 if they are brought up to compliance.

Mr. Haworth said that the developer was before them and that they needed to seize the opportunity to work to a resolution. He said that when he motioned to send a Notice of Default to the developer on June 10, he was acting within his authority as a member of the Board of Selectman. He said that he was hopeful that a discussion would lead to a resolution.

Mr. Murphy said that he just wanted to help residents get a good night’s sleep and he wanted to do it without creating a financial burden to the Town.

Donald Mulcare said that he thought the problem required a “scientific” approach, to include surveying neighborhoods to see how individual homes can be amended to reduce their complaints.

Dan Freitas said that, at the first meeting of Friends of Fairhaven Wind, roughly half of the 30 people in attendance said that they lived in the wind turbine area. He said that not all the wind turbine neighbors claim to be suffering. He said that if the matter winds up in court, a judge will

likely rule in favor of Fairhaven Wind LLC. Mr. Freitas said that the Friends of Fairhaven Wind would be meeting again on July 11, and he invited everyone, including Windwise, to attend.

Mr. Murphy said that everyone could agree that the primary goal is to improve Fairhaven. He said that he did not hold the authority to make a motion to lift the 7:00 p.m. to 7:00 a.m. ban.

John Methia was recognized by the Chairman. He said that the matter was not between the “victims” and Friends of Fairhaven Wind. He said that the matter was now between Fairhaven Wind, LLC, and the Board of Selectmen and the Board of Health. He directed his comments to the developers when he said the machines were out of compliance, and that the Board of Health has labeled the turbines a hazard, despite Mr. Shah’s contention regarding the DEP testing methods.

Henry Ferreira said that he did not think the developers would do well in court. In addition to purported health impacts, property values are affected by the turbines, said Mr. Ferreira.

Curt Devlin said that the developers should grant access to its data related to the turbines. Mr. Shah said that the data was proprietary and that hundreds of local jobs could be risked if the data were not shared with discretion. Mr. Shah did say that Fairhaven Wind LLC could consider an agreement with the Town to authorize one person to access and digest the information for the Town’s use. Details on an agreement could be determined at a later date, said Mr. Shah.

Linda Therrian was recognized. She said that she was very close to the turbines and that she did not have an issue with the turbines.

The Board expressed appreciation to the representatives of Fairhaven Wind, LLC, for coming before the Board to cooperate. Mr. Haworth said that he wanted to see a resolution prior to July 15 and the Board agreed it was important to find a representative from the Board of Health to work on resolution with Fairhaven Wind LLC.

RECESS

The Chairman recessed the meeting from 9:12 p.m. to 9:22 p.m.

CUSHMAN PARK EASEMENT

Per the Chairman’s request, Ms. Kakley furnished the Board with the filing fees for an easement for 188 Green Street, which was \$75.00. Mr. Osuch said that there was still some question as to the cost of preparing the documents for filing, which had been discussed at a prior meeting. It was resolved that the Board would look into the cost further and revisit the matter of the easement at a later meeting.

TOWN COUNSEL

Upon request from Bob Espindola, the Board discussed Town Counsel. Mr. Espindola said that he had researched by visiting the Massachusetts Municipal website and looking over the various municipal law firms listed.

Mr. Haworth said that he was not happy with current Town Counsel (Thomas Crotty) for the fact that Atty. Crotty had known about the extra ballot and had not informed the Board, or the court. But before acting, said Mr. Haworth, he wanted to give Atty. Crotty a chance to explain what had happened regarding the found ballot. Mr. Haworth said that he thought the Board should start by accepting proposals from other firms. Upon request from the Board, Atty. Crotty had also submitted curriculum vitae.

Mr. Murphy said that the Town Counsel was a large line item and it should be carefully considered. He presented to the Board a Legal Services Authorization form (Attachment B) that all departments are supposed to use when they request use of Town Counsel. Departments are not using the form to completion, or at all, said Mr. Murphy. He said that if the form had been properly used, they might have found out about the ballot that Ms. Lowney and Atty. Crotty discovered.

The form was reviewed by the Board. The form will be altered to strike the phrase “with the first billing”. Mr. Espindola motioned to send the form out to all departments, along with a memo requiring the completion of the form prior to a request for Town Counsel services. In this manner, a standing rule would be created, requiring the form prior to Town Counsel use. Mr. Haworth seconded. Vote was unanimous. (3-0). The Board also asked Mr. Osuch to tell Atty. Crotty not to issue legal services until the form is complete.

OTHER BUSINESS

Mr. Murphy noted with regret that that the organizers of the annual Fairhaven Homecoming had canceled the 2013 Homecoming, due to extreme weather conditions. The Fairhaven Improvement Association still managed to sell all of its cacaoila.

Mr. Espindola said that he was looking forward to the July 4 parade, which will take place on July 4 at 9:30 am.

Mr. Murphy said that July 6, 2013 will be a Festival Day on West Island

EXECUTIVE SESSION

At 9:46 p.m., Mr. Espindola motioned to enter Executive Session pursuant to MGL Ch 30A § 21:

- To discuss strategy with respect to collective bargaining – Clerical, Fire, Police, Dispatchers Union negotiations
- To discuss strategy with respect to collective bargaining or litigation – Fairhaven Wind LLC

Mr. Haworth seconded the motion to enter Executive Session for the aforementioned reasons. Vote was unanimous. (3-0). Roll call vote: Mr. Espindola in favor. Mr. Murphy in favor. Mr. Haworth in favor.

Respectfully,

Anne Kakley

Selectmen's Secretary
Minutes approved 7/15/2013



c/o Palmer Management Corporation
13 Elm Street, Suite 200
Cohasset, MA 02025
Tel: 782-383-3200

July 1, 2012

Via Hand Delivery – July 1, 2013

Selectman Charles K. Murphy, Sr.
Selectman Robert J. Espindola
Selectman Geoffrey A. Haworth, II
Town of Fairhaven
Fairhaven Town Hall
40 Center Street
Fairhaven, MA 02719

Subject: Wind Turbines – Notice of Default Dated June 14, 2013

RECEIVED
2013 JUL - 1 P 9:17
BOARD OF SELECTMAN
FAIRHAVEN MASS

Gentlemen:

This letter is in response to your letter dated June 14, 2013, mailed on June 17, 2013, and received on June 19, 2013, asserting a potential default under the Lease of Town Land for Wind Turbine Electric Generation dated July 30, 2007, as amended on March 14, 2011 (the "Lease"). The Lease, entered into pursuant to a Request for Proposals from the Town to locate two wind turbines on Town property to supply power to the Town of Fairhaven (the "Project"), has been assigned to Fairhaven Wind LLC ("Fairhaven Wind") with the consent of the Town.

The subject notice of default claims that Fairhaven Wind, as the Lessee, is in default for its failure to comply with a Material Term of the Lease, which is defined in Section 7(b) of the Lease to "mean the obligation to pay rent, comply with material provisions of applicable laws and regulations, maintain insurance and pay an indemnity" under the Lease.

The subject notice of default goes on to refer to the report issued by the Massachusetts Department of Environmental Protection ("MassDEP") on May 21, 2013, entitled *Interim Report/Preliminary Results Attended Sampling of Sound from Fairhaven North Wind Turbine and South Wind Turbine* (the "Interim Report") by referring to "five separate instances where the turbines exceeded the 10 dBA noise threshold." Fairhaven Wind presumes the Town is referring in part to that section of the Interim Report which states:

Preliminary results indicate that in 19 of the 24 samples, the project was in compliance. In 5 of the samples, the sound impact at 12 Little Bay Road, Teal Circle and 7 Peirce's Point Road in strong northwesterly and/or easterly wind conditions can exceed the MassDEP 10 dB(A) above the ambient levels and constitute "noise" pursuant to 310 CMR 7.10.

Based on such statements in the Interim Report, the Town appears to believe that the Project is not currently operating "in compliance with relevant laws and regulations." Fairhaven Wind respectfully disagrees.

Selectmen Murphy, Espindola, Haworth
Re: June 14, 2013 Notice of Default
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First, as the Town accurately states, “the 10 dBA threshold [is] contained in the MassDEP Noise Policy.” The MassDEP Noise Policy is neither a relevant law nor regulation. Rather it is simply a policy statement. While Fairhaven Wind strives to operate within the 10 dBA Noise Policy, failure to do so is not *per se* a violation of any law or regulation. In fact, in MassDEP’s own interpretation of its policy,¹ it states: “Noise levels that exceed the criteria at the source’s property line by themselves do not necessarily result in a violation or a condition of air pollution under MassDEP regulations.”

Second, Fairhaven Wind believes that MassDEP is inappropriately² and unscientifically measuring the sound from the Project to seek to determine if the Project is operating within the Noise Policy. This latter point has been an ongoing concern voiced by the wind industry, acoustical engineers, and project opponents, which apparently MassDEP is now willing to study.³ As stated by Fairhaven Wind at the Fairhaven Board of Health meeting on May 21, 2013, at which time the Interim Report was presented, using any comparable measurements of sound (L_{90} to L_{90} , L_{eq} to L_{eq} , L_{max} to L_{max}), the Project is within MassDEP’s 10 dBA Noise Policy.

Third, even assuming MassDEP’s methodology for measuring the sound of the Project, MassDEP was clear in its transmittal of the Interim Report that the so-called “exceedances” occurred only during limited times: “The five exceedances occurred at three locations when sampling was conducted during the quiet overnight hours during the late fall/winter season, and under certain wind speeds and wind directions.” MassDEP did not find any “exceedances” during its summer and early fall sampling. Hence, one would expect that the Project is currently in compliance with MassDEP Noise Policy even using what Fairhaven Wind believes is flawed methodology from MassDEP.⁴

Fairhaven Wind’s expectation that the Project is currently operating in compliance with MassDEP Noise Policy was confirmed with testing results last week when, with the approval of the

¹ <http://www.mass.gov/eca/agencies/massdep/air/programs/noise-pollution-policy-interpretation.html>

² In permitting of power projects, like the turbines in Fairhaven Wind, which produce air emissions in addition to sound, MassDEP has consistently applied a comparison of noise of L_{90} background to L_{90} source. This is consistent with guidance provided by the Massachusetts Clean Energy Center (“MassCEC”) and is the basis of the original acoustic study done for the Town by MassCEC. Fairhaven Wind believes applying a higher (and not scientifically justifiable) standard to wind projects that produce no other emissions is inappropriate and inconsistent with the objectives of the Commonwealth to encourage clean energy projects.

³ On June 27, 2013, MassDEP announced that it will convene a technical advisory group of experts to solicit input on wind turbine sound policy: <http://www.mass.gov/eca/pr-2013/comunity-wind.html>

⁴ Given the current order from the Fairhaven Board of Health for curtailment of operations between 7 pm and 7 am, despite the statement from MassDEP that “exceedances” only occurred during quiet overnight hours, the Project is automatically in compliance with MassDEP Noise Policy (as measured by MassDEP) and hence the default is cured under the Board of Health order. However, Fairhaven Wind objects to the extent and other terms of the Board of Health order and will seek to have it lifted or amended.

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Fairhaven Board of Health, MassDEP and Tech Environmental conducted side-by-side noise testing on the morning of June 26 downwind and crosswind from the turbines at locations which would be comparable to the closest residence.

In Tech Environmental's June 28 report to Fairhaven Wind from that testing, submitted as Exhibit A to this letter, Tech Environmental shows that the highest dBA increase over the L_{90} background with both turbines operating was 8.6 dBA, which is less than the 10 dBA MassDEP Noise Policy threshold. As stated by Tech Environmental: "Tech's testing results also show that, under all turbine operating scenarios including both turbines on, the turbines are operating in compliance with the MassDEP 10 dBA Noise Policy using MassDEP's current testing methodology." (Emphasis added.)

Earlier today, MassDEP released a memo from Laurel Carlson to Martin Suuberg (Deputy Commissioner) and Nancy Seidman (Assistance Commissioner) showing similar results from the June 26 testing. (See Exhibit B.) In that report, the highest differential between L_{90} and L_{max} was 8.8 dBA, which also demonstrates current compliance with MassDEP 10 dBA Noise Policy using MassDEP's own testing.

As stated in the above cited reports, the sound testing conducted last week was not only to check current compliance but also to determine means of reducing the sound from the turbines to ensure continued compliance during 24-7 operation, 365 days per year. The results from this testing show that the sound levels can be reduced approximately 2-4⁵ dBA by turning off one turbine. The maximum "exceedance" reported by MassDEP in its Interim Report was 2.9 dBA, and this "exceedance" occurred during extremely variable wind conditions which call this particular "exceedance" into question.⁶ Hence, continuing to operate within compliance during the limited conditions cited by MassDEP in its Interim Report as potentially causing problems (winter, late overnight hours, northwesterly and/or easterly wind conditions) should not be a problem.

Attached as Exhibit C is a draft mitigation plan which is still being refined and is expected to be presented to the Fairhaven Board of Health on July 15. This draft plan explains the steps that Fairhaven Wind anticipates taking to ensure compliance with MassDEP Noise Policy while maximizing the production from the Project. Notwithstanding the attached draft or any actual plan that might be submitted on July 15, Fairhaven Wind expects to continue investigating those conditions and alternate operating scenarios to seek to minimize the loss of production and hence revenue to the Town of Fairhaven.

In reviewing this draft plan and Fairhaven Wind's ongoing efforts, please be cognizant that, pursuant to the Lease, Fairhaven Wind "shall not be in default hereunder and the Town shall not

⁵ Actual reductions were 1.8 (MassDEP) to 2.2 (Tech Environmental) in the first test and 3.6 (MassDEP) to 3.7 (Tech Environmental) in the second test.

⁶ The next highest "exceedance" was 1.5 dBA.

Selectmen Murphy, Espindola, Haworth
Re: June 14, 2013 Notice of Default
July 1, 2013
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terminate this Lease if any default by [Fairhaven Wind] under subsections (i) -(v) is cured within thirty (30) days of written notice to [Fairhaven Wind] from the Town of such default, or if such default is of such a kind that it cannot be cured within such thirty (30) day period, then within such longer period of time as may be reasonably necessary to cure such default, provided, that [Fairhaven Wind] begins to cure the default as soon as is reasonably practical and diligently pursues such cure to completion, and provided further that such cure is completed within twelve (12) months of the Town's initial written notice of the default."

In summary, the attached reports show that the Project is currently in compliance with MassDEP Noise Policy. Notwithstanding such compliance, Fairhaven Wind is diligently pursuing other mechanisms for ensuring that the Project remains in compliance with MassDEP Noise Policy, as currently interpreted, by the time that the "late fall/winter season" commences. Some of this work is being constrained by the order from the Fairhaven Board of Health. Further, the results of the proposed mitigation measures cannot be fully confirmed or refined until the late fall/winter season. However, Fairhaven Wind expects that a complete cure (to the extent one is needed) will be firmly in place well before the twelve (12) months allowed within the Lease.

We thank the Town for its willingness to continue to work with Fairhaven Wind.

Respectfully,
FAIRHAVEN WIND LLC
by its Manager, Palmer Management Corporation



Gordon L. Deane
President

cc: Thomas P. Crotty, Esq.

EXHIBIT A



June 28, 2013

Mr. Gordon L. Deane, Manager
Fairhaven Wind LLC
c/o Palmer Management Corporation
13 Elm Street, Suite 200
Cohasset, MA 02025

Re: Fairhaven Wind Turbines Modifications Sound Test Results

Dear Mr. Deane:

Tech Environmental (Tech) conducted parallel sound testing with the Massachusetts Department of Environmental Protection (MassDEP) to measure the sound levels and potential sound reduction of modifying the operation of both the north and south wind turbines. On the morning of June 26, 2013 between 12:00 a.m. and 4:00 a.m., Tech and MassDEP conducted sound testing at two locations to determine the effects on the total sound level of feathering the blades of a single turbine and of turning off one turbine. Monitoring locations were selected on public property and at downwind distances that would closely approximate the nearest residence at 12 Little Bay Road. Weather conditions were favorable for sound testing with cloudy skies, winds at ground level from the southwest at 2 to 11 mph (1 to 5 m/s) early in the sound testing and becoming near calm later. Hub height wind speeds were fairly constant at around turbine cut-in wind speed throughout the sampling (3 to 5 m/s).

The first location was on the Phoenix Rail Trail bike path at the 2nd creek crossing approximately 955 feet from the north turbine and 1,390 feet from the south turbine. This location was directly downwind of the turbines.

After collecting 15 minutes of background data with both turbines off ($L_{90} = 36.4$ dBA), three additional scenarios were tested:

1. South turbine only, operating normally.
2. Both turbines, operating normally.
3. Both turbines, south operating normally, north turbine blades feathered 12.5 degrees.

We then moved our position to another location on the bike path, south of the turbines. This location was 90 degrees from downwind. We were approximately 1,115 feet from the south turbine, and 1,850 feet from the north turbine. At this location, Tech and MassDEP performed sound testing for the following scenarios:

1. Both turbines - south turbine blades feathered 12.5 degrees, north turbine operating normally.
2. North turbine only, operating normally.
3. Both turbines off (15-minute background, $L_{90} = 34.1$ dBA).
4. Both turbines on, operating normally.

Both Tech's and MassDEP's initial field observations indicated that turning one turbine off lowered the sound impact by 3-4 dBA, while feathering the blades only lowered sound levels by 1 dBA or less. Tech downloaded our data and confirmed our initial observations. Table 1 presents a summary of monitoring results. The table provides an L_{max} - L_{90} comparison of each operating scenario at each monitoring location. The results reveal that, under low wind speed conditions, the blade feathering of one wind turbine produced less than 1 dBA change and turning off one of the turbines produces a 2 to 4 dBA change.

Tech's testing results also show that, under all turbine operating scenarios including both turbines on, the turbines are operating in compliance with the MassDEP 10 dBA Noise Policy using MassDEP's current testing methodology.

Sincerely yours,

TECH ENVIRONMENTAL, INC.



Marc C. Wallace, QEP
Principal

TABLE 1
SUMMARY OF TURBINE BLADE FEATHERING MONITORING RESULTS
JUNE 26, 2013


LOCATION	OPERATING SCENARIOS	BACKGROUND L90 -TURBINE OFF (dBA)	Lmax-TURBINE ON (dBA)	INCREMENTAL CHANGE (dBA)
Bike Path Location #1	Both Turbines On	36.4	45.0	8.6
	North Turbine Feathered, South Turbine Normal Mode	36.4	44.5	8.1
Blade feathering sound improvement				-0.5
Bike Path Location #1	Both Turbines On	36.4	45.0	8.6
	South Turbine On Only	36.4	42.8	6.4
One turbine-on only sound improvement				-2.2
Bike Path Location #2	Both Turbines On	34.1	42.3	8.2
	South Turbine Feathered, North Turbine Normal Mode	34.1	41.6	7.5
Blade feathering sound improvement				-0.7
Bike Path Location #2	Both Turbines On	34.1	42.3	8.2
	North Turbine On Only	34.1	38.6	4.5
One turbine-on only sound improvement				-3.7

EXHIBIT B

MEMORANDUM

To: Martin Suuberg, Deputy Commissioner
Nancy Seidman, Assistant Commissioner

Cc: Marc Wolman, Branch Chief
Phil Weinberg, Regional Director

From: Laurel Carlson 

Date: July 1, 2013

SUBJ: Fairhaven Wind LLC: Sound Mitigation Study Inspection Report : 26 June 2013

On Wednesday, June 26, 2013 I conducted sound sampling in Fairhaven at the behest of Fairhaven Wind LLC to validate sound level impacts resulting from wind turbine mitigation options being considered by Fairhaven Wind LLC. Also attending the sampling was Sumul Shah of Fairhaven Wind LLC and Ryan Callahan from Tech Environmental.

The purpose of the sampling was to document the changes in sound that would result from operating the two wind turbines under the following scenarios:

1. One wind turbine operating at full power and the second (closer) turbine shut down.
2. One wind turbine operating at full power and the second (closer) turbine operating with the blades pitched at 12.5%.

Sampling was conducted at a set distance from the turbines that represented the distance to the closest residence from the turbines (approximately 900 ft). Sound sampling was done in both the downwind location and the crosswind location (cross wind to the right and slightly behind perpendicular to the closest turbine). Samplers were positioned to be line-of-site to the turbines with no intervening trees or other structures¹. In all tests, the mitigation was applied to the turbine closest to the sampling location so as to determine what the impact of mitigation might be at the closest downwind or crosswind residence. Winds were from the Southwest and relatively steady at 3-5 m/s at the hub during the entire sampling period. Sampling started at 12:23 am and ended at 3:43 am.

Data collection followed the same protocol as is being used by MassDEP for the wind turbine compliance testing. The meter is set to collect data in "slow" response and 1 second average sound power levels are logged every five seconds. For each mitigation approach, we performed three five minute sampling runs. Any data that represented sounds such as cars or planes (otherwise known as interference sound) was noted in the data set and discarded from the data before determining the maximum sound level impact from the wind turbines. In addition to the data collected for each of the two mitigation options, we collected data with both wind turbines operating at full power and data with both wind turbines turned off (ambient).

¹ There are trees between the wind turbines and all three sampling sites where exceedences were found during compliance testing. For the mitigation testing, sites were chosen so there would be no masking influence from trees or other structures.

1 July 2013

The downwind sampling location (Test Site #1) was located along the Fairhaven Phoenix Bike Path at the Nasketucket River crossing. In this location, the north turbine was approximately 940 feet away and the south turbine was approximately 1380 feet away. Mitigation measures were applied to the north turbine. The results were as follows:

Downwind of Wind Turbines (Test Site #1)

Operating Condition	L90 (dBA)	Lmax (dBA)	Leq (dBA)	Lmax-L90 (dBA)	Range (dBA)	dBA Impact of Mitigation
Ambient (both turbines off)	36.4				34.9 - 42.8	
Both Turbines Operating full		44.5	43.1	8.1	41.4 - 44.6	
Closest Turbine Off/ Other Turbine operating full		42.7	41.1	6.3	38.8 - 42.9	-1.8
Closest turbine blades feathered 12.5%. Further turbine operating full		44.2	42.9	7.8	41.3 - 44.3	-0.3

The crosswind sampling location (Test Site #2) was located along the Fairhaven Phoenix Bike Path spur that leaves the main bike path at the wastewater treatment plant and proceeds south to a parking lot at the end of Little Bay Road and then connects with Sconicut Neck Road at Orchard Street. The sampler was set up in a clearing north of the Little Bay Road parking lot and in direct line of site with the turbines (no intervening trees). In this location, the south turbine was approximately 960 feet away and the north turbine was approximately 1680 feet away. Mitigation measures were applied to the South Turbine. The results were as follows:

Crosswind and Behind Wind Turbines (Test Site #2)

Operating Condition	L90 (dBA)	Lmax (dBA)	Leq (dBA)	Lmax-L90 (dBA)	Range (dBA)	dBA Impact of Mitigation
Ambient (both turbines off)	33.7				32.6 - 40.6	
Both Turbines Operating full		42.5	41.1	8.8	39.4 - 42.7	
Closest Turbine Off/ Other Turbine operating full		38.9	36.6	5.2	35.1-39.7	-3.6
Closest turbine blades feathered 12.5%. Further turbine operating full ²		42.4	40.8	9.2	38.6 - 42.8	-0.1

² Wind speeds increased to between 1 and 2 m/s above background during the testing for this run which may have caused mitigation impacts to be slightly underestimated.

1 July 2013

In order to draw some conclusions on how the results from this testing might be applied to mitigation of the specific exceedences in MassDEP's Interim report, the position of the properties where the exceedences were found should be considered. On March 20, 2013, the Peirce's Point sampling site with an exceedence of 11.4 dBA was downwind of the wind turbines in a similar wind speed (4-5 m/s). On April 12, 2013 and under similar wind conditions (3-5 m/s), the Little Bay Road sampling site was also in the downwind position with an exceedence of 11.0 dBA and the Teal Circle sampling site was halfway between downwind and crosswind (exceedence of 11.5 dBA).

The wind conditions that resulted in exceedences at Little Bay Road on both November 9, 2012 and April 2, 2013 (wind speeds of 7-9 m/s) have not yet been evaluated for mitigation impacts. Additional testing of mitigation measures at higher winds speeds was conducted on Friday, June 28, 2013. A separate inspection report will be provided once the data from that sampling night has been reviewed and validated.

EXHIBIT C

DRAFT

FAIRHAVEN WIND MITIGATION PLAN

July 1, 2013

This DRAFT Mitigation Plan is being submitted by Fairhaven Wind LLC ("Fairhaven Wind") to the Fairhaven Board of Health ("Board") in response to the Board's Order for Abatement of Nuisance issued on June 17, 2013, pursuant to M.G.L. c.111§§ 122 et seq, citing alleged violations¹ of the Massachusetts Department of Environmental Protection ("MassDEP") noise regulation set forth at 310 CMR 7.10. These alleged violations² were apparently derived from the May 21, 2013, report issued by MassDEP entitled *Interim Report/Preliminary Results Attended Sampling of Sound from Fairhaven North Wind Turbine and South Wind Turbine* (the "Interim Report") in which MassDEP referred to five separate instances where the turbines exceeded the 10 dBA MassDEP Noise Policy. Specifically, the Interim Report states:

Preliminary results indicate that in 19 of the 24 samples, the project was in compliance. In 5 of the samples, the sound impact at 12 Little Bay Road, Teal Circle and 7 Peirce's Point Road in strong northwesterly and/or easterly wind conditions can exceed the MassDEP 10 dB(A) above the ambient levels and constitute "noise" pursuant to 310 CMR 7.10.

In the Interim Report, MassDEP identified specific instances during certain wind directions, wind speed, time of day, time of year, and at certain locations where sound levels are of concern. The locations of concern are Teal Circle, Peirce's Point, and Little Bay Road. Although there were a high number of complaints from Mill Road and Shawmut Street, MassDEP did not identify any instances of concern in these neighborhoods despite multiple rounds of testing. MassDEP also did not identify any concerns during its testing in the summer and early fall at any locations since the background sound levels in the neighborhoods adjacent to the wind turbines increase significantly during the summer months.³

¹ This plan being presented to the Fairhaven Board of Health cannot be construed as an admission by Fairhaven Wind that it has in any way violated any laws or regulations with respect to noise or that Fairhaven Wind has exceeded the MassDEP Noise Policy. In fact, for reasons previously stated to the Town of Fairhaven, Fairhaven Wind believes that its operation is consistent with any reasonable scientific interpretation of the MassDEP Noise Policy as well as consistent with the guidance provided to the Town via the acoustic study paid for by the Massachusetts Clean Energy Center (formerly known as Massachusetts Technology Collaborative, "MasCEC").

² MassDEP did not cite Fairhaven Wind for being out of compliance for the so-called "exceedances" in the Interim Report.

³ Although not an objective of the MassDEP testing, MassDEP also found no indications that the wind turbines were exceeding the 60 dBA noise limits in the Town of Fairhaven's wind bylaw as applicable at the time the turbine were constructed.

These specific instances identified in the Interim Report and the concurrent meteorological conditions were as follows:

Instance	Wind Direction	Wind Speed (m/s)	Time of Day	Time of Year	Target dBA Decrease
1	NNW	7-9	12 am – 4 am	November	0.7
2	WNW	4-5	12 am – 4 am	April	1.4
3	WNW	5-7	12 am – 4 am	April	2.9
4	NE	3-5	12 am – 4 am	April	1.0
5	NE	3-5	12 am – 4 am	April	1.5

Fairhaven Wind, with approval from the Board of Health, performed additional studies alongside MassDEP to identify potential operating procedures which could decrease the A-weighted decibels emitted from the project. The information and plan presented below reflect the data collection taken alongside MassDEP on the morning of June 26, 2013.

During the testing period, the wind at the hub height was consistently between 3 and 5 meters per second (m/s). The average wind speed at the hub was 4.1 m/s. The wind speed during the sampling was similar to the wind speeds identified by the MassDEP as being of concern as shown in the above table. The wind was coming from the southwest.

The tests were designed to inform mitigation options by measuring the sound output from different scenarios: two turbines operating; one turbine operating and one turbine off; two turbines off; two turbines operating with one turbine feathered. Similar to the testing protocol being applied in Fairhaven for compliance testing by MassDEP, sounds that were not attributed to the turbine(s) were discarded manually during data collection while the project was operating. This method, according to MassDEP, identifies the maximum sound that may be caused by the turbine(s). Sound measurements were recorded manually at five second intervals. Samples were taken at two separate locations: 1) on the bike path approximately 955 feet from the North Turbine and 1,390 feet from the South Turbine, 2) at the end of Little Bay Road where it meets the bike path, approximately 1,850 feet from the North Turbine and 1,115 feet from the South Turbine. The locations and testing procedures were selected through consultation with MassDEP and represent downwind (Sampling Site 1) and crosswind (Sampling Site 2) scenarios.

The results of these tests are included both in the MassDEP July 1, 2013 memo from Laurel Carlson to Deputy Commissioner Martin Suuberg and to Assistance Commissioner Nancy Seidman and in Tech Environmental's June 28, 2013 report to Fairhaven Wind. [To be attached as Exhibits to final plan.] The results from this testing show that the project is currently operating in compliance with the MassDEP 10 dBA Noise Policy. Hence, there is no reason during these summer months to curtail operation to comply with the MassDEP Noise Policy as currently being interpreted by MassDEP and the Board.

The testing also showed that the sound levels may be reduced by approximately 2-4⁴ dBA by simply turning off one turbine. The maximum "exceedance" reported by MassDEP in its Interim Report was 2.9 dBA, and this "exceedance" was suspect since it occurred during extremely variable wind conditions which could call this particular "exceedance" into question.⁵ Hence, continuing to operate on a 24-7 basis for 365 days per year basis while remaining in compliance (as currently defined by MassDEP) during the limited conditions cited by MassDEP as causing problems (winter, late overnight hours, northwesterly and/or easterly wind conditions) can be accomplished simply by shutting one turbine off during those conditions.

Such a mitigation plan is likely to be the maximum amount of curtailment required to comply with the MassDEP Noise Policy as currently being interpreted. During the summer months, Fairhaven Wind plans to continue investigating those conditions and alternate operating scenarios to seek to minimize the required downtime and hence loss of revenue and savings to the Town of Fairhaven. For example, while the feathering of blades of one turbine did not result in significant reduction in sound in the June 26th test, alternate feathering of blades, feathering of both turbines, and/or feathering under higher wind speeds may result in more sound reduction.

As another example, to further limit the downtime necessary for the project's operation, given the light wind conditions during which "exceedances" were reported by MassDEP, Fairhaven Wind proposes to increase the cut-in speed for the South Turbine to 7 m/s when winds are from the WNW, NNW, and NE, during the winter months (November through April), between midnight and 4 am, and when there are no weather events (e.g., rain). According to the measurements taken by MassDEP, this operational change should decrease the sound output from the project by approximately 1.8-3.6 dBA.

Implementing this mitigation plan would require developing new software code to control the South Turbine automatically. Fairhaven Wind intends to commission this code after receiving acceptance of the mitigation plan, but before November when background sound levels decrease. This code change, once implemented, would also require further testing to ensure that the functions described above occur automatically. Since automating this plan may take months, Fairhaven Wind asks the Town to move expeditiously to approve the mitigation plan and allow Fairhaven Wind to commence commissioning the necessary code.

While this mitigation plan is being implemented, Fairhaven Wind plans to work with the Boards of Health and Selectmen, MassDEP and MassCEC to develop an appropriate protocol for periodic monitoring to demonstrate that the above approach ensures compliance with the MassDEP Noise policy. Fairhaven Wind is currently working with the MassCEC for technical guidance and potential financial support for compliance testing. We expect to more fully present the details of this testing program and mitigation plan at the Board of Health meeting on July 15, 2013.

⁴ Actual reductions were 1.8 (MassDEP) to 2.2 (Tech Environmental) in the first test and 3.6 (MassDEP) to 3.7 (Tech Environmental) in the second test.

⁵ The next highest "exceedance" was 1.5 dBA.