



Fairhaven Board of Selectmen

Fairhaven Board of Health

June 10, 2013 Meeting Minutes

Present: Selectmen: Chairman Charles Murphy, Vice Chairman Robert Espindola, Clerk Geoffrey Haworth, Executive Secretary Jeffrey Osuch and Administrative Assistant Anne Kakley. Board of Health members: Peter DeTerra, Jeannine Lopes and Barbara Acksen. Also present: Town Counsel Thomas Crotty. For a full list of attendees, please see Attachment A.

Chairman Charles Murphy called the special meeting to order in the Town Hall Banquet Room at 12:03 p.m. The meeting was video recorded by Mark Curtis of ABC6 News Providence, and Skip Tenczar.

WIND TURBINES

Mr. Murphy thanked everyone for being present for the special joint meeting of the Board of Selectmen and the Board of Health. Specifically, Mr. Murphy thanked representatives of the Department of Environmental Protection, the Massachusetts Clean Energy Center, Windwise, Fairhaven Wind, the Board of Health, the Board of Selectmen, and residents. Mr. Murphy said that he wanted to help unite a divided Fairhaven. "We cannot go back and change the beginning, but we can change the ending," said Mr. Murphy. He added: "I want immediate action... beginning tonight."

Mr. Murphy turned over the meeting to Board of Health chairman Peter DeTerra for comment. Mr. DeTerra stated that as of June 6, there have been 486 complaints from 56 households. He said that complaints included lack of sleep, headaches, nausea.

Mr. DeTerra offered the chance for the other Board of Health members to comment. Ms. Lopes had no comment. Dr. Acksen said that she was glad to be meeting with the Board of Selectmen. She said that the Board of Health has read every complaint. She said she was glad to be at a meeting in which the people were being treated in a respectful manner. Mr. DeTerra started to ask for comment from Fairhaven Wind LLC representatives, but Mr. Murphy stopped him and said that he wanted the meeting to be a dialogue between the Board of Selectmen and the Board of Health to discuss the health impact of the wind turbines, and that he did not want to open it up to the public.

Mr. Espindola said that he wanted to take action based on what they heard at that meeting.

Mr. Haworth said that he was glad to be having the meeting. He said that the matter of the wind turbines was an ongoing issue that was dividing the town. He agreed that the two boards needed

to make an immediate decision. He said that he receives complaints about the wind turbines every day and that this meeting could be the beginning of some sort of resolution.

Mr. DeTerra said that most of the complaints are at night. Mr. DeTerra motioned to shut the turbines off from 7:00 p.m. to 7:00 a.m., citing them as a public health nuisance. Dr. Acksen seconded. Vote passed with no answer from Ms. Lopes, and with no objection.

Mr. Espindola welcomed the opportunity to hear from the DEP and Fairhaven Wind LLC. He said that people had lost confidence in the sound testing process because he said they had been told that the DEP would validate the testing, yet it was a Town resident that found fault with the testing process. He said that he would like to know if there is a way the DEP could validate the testing.

Mr. Murphy said that the Board had to sit down and get the matter of the wind turbines resolved. He said that he would like to achieve resolution within a three-week period. He said that he did not want to drag it out in court for the next two years. He cited the data from the DEP that indicated that the turbines were out of compliance.

Mr. Espindola noted that there are contractual issues that may need to be discussed in executive session. He said that because the DEP was present for the meeting, he would like to take the opportunity to ask them questions.

Additionally, Mr. Espindola motioned to ask on the Town's behalf to be a volunteer for part of an upcoming Massachusetts Clean Energy Center (CEC) sound study.

Martin Suuberg, Deputy Commissioner for Massachusetts DEP said that the DEP has not completed its study on the Fairhaven wind turbines. He described the current results as "interim" and said that further studies are planned. He said results would be shared with the Town and that the DEP was willing to participate in any discussions with the Board of Selectmen and the Board of Health going forward, including discussion on mitigation scenarios. Mr. Suuberg said that the CEC sound study to which Mr. Espindola was referring was already underway, but that the existing contract may be flexible enough to include Fairhaven.

Nils Bolgen of the MA CEC said that they have collected from three sites. He said that it's a challenge to find the right wind conditions to evaluate the acoustics under a variety of conditions. He said that if the CEC could not work out including Fairhaven in the current study, they could work something else out. He said that the MA CEC has shown a willingness to cooperate with communities.

Discussion ensued regarding the method by which the Town would conduct additional testing. Laurel Carlson of the DEP said that contractor assistance is what the DEP was using for long term testing.

Mr. Espindola said that his motion to offer Fairhaven as a volunteer for a potential sound study test subject for the CEC testing still stood. Mr. Murphy seconded. Vote was unanimous. (3-0).

Mr. Haworth said that he reviewed the matter from the perspective of a Selectman. He said that the Selectmen do not enforce noise nuisances, but were lease holders on the land on which the turbines are situated. He said that the turbines are out of compliance of the local sound bylaw Section 9g. 60 dBa is the highest decibel limit allowed, and Mr. Haworth said that he thought the turbines had exceeded that limit. "In my opinion, there is a clear breach of a lease agreement," said Mr. Haworth. He said that Fairhaven Wind, LLC had not made any attempts to mitigate the problem, but "let it truck on". "We have a town in turmoil," said Mr. Haworth. "There is a violation of law here. This is a breach of the lease agreement."

Mr. Haworth said that the Board had to give Fairhaven Wind, LLC, 30 days to mitigate the issue or it would be the Board's right to break the lease. He added that he wanted the mitigation to stand for 365 days a year, not just for the 30 day period. He said that this was being a good neighbor. Mr. Haworth therefore motioned the following:

"I motion to hereby put Fairhaven Wind, LLC, on notice that they are in breach of the Lease Agreement under Section 9. Therefore, they have 30 days from today to prove that they have brought both turbines in full compliance as stated in the Lease Agreement. Failure to prove full compliance within 30 days, the Board of Selectmen will exercise their right under the Agreement for breach of the Lease Agreement."

Mr. Espindola seconded Mr. Haworth's motion. In discussion: Atty. Crotty said that, per the lease, this was the proper procedure. He said that Fairhaven Wind, LLC, would have 30 days to mitigate, possibly longer, depending on the actions of a judge.

Mr. Espindola asked if Mr. Haworth's motion should be amended to allow for night testing. Dr. Acksen said that previous testing had been shown to be proprietary and the results had been previously denied to the Town. If the Town were to continue with testing, she said she wanted all the data available. As such, Dr. Acksen motioned to include all proprietary data.

Atty. Crotty advised the Boards to keep the motion "clean". He said that part of the 30-day period would include information sharing. He added that there was nothing in the lease that indicated Fairhaven Wind, LLC, was obligated to release all their data to the Town.

Dr. Acksen's motion to release all proprietary data failed with no second.

Upon Mr. Haworth's motion and Mr. Espindola's second, the Board of Selectmen voted unanimously to put Fairhaven Wind, LLC, on notice for 30 days. (3-0).

The Selectmen agreed that they would like to meet with representatives of Fairhaven Wind, LLC, MA Clean Energy Center and the DEP, while they were present. Atty. Crotty confirmed that the Board could meet with the state agencies, but he said that the Board may have to meet separately from Fairhaven Wind, LLC representatives in Executive Session.

At 12:32 p.m., Mr. Espindola motioned for the Board of Selectmen to enter Executive Session pursuant to MGL Ch 30 § 21:

- To discuss strategy with respect to collective bargaining or litigation – wind turbines

Mr. Haworth seconded the motion to enter Executive Session for the aforementioned reason. Vote was unanimous. (3-0). Roll call vote: Mr. Espindola in favor. Mr. Murphy in favor. Mr. Haworth in favor. The members of the Board of Health left the meeting.

Respectfully,

Anne Kakley

Selectmen's Secretary
Minutes approved //2013

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Nils Bolgen	Mass. Clean Energy Ctr.
Seth Pickering	Mass DOER/Green Communities Div.
Martin Suuberg	MassDEP
Laurel Carlson	MassDEP
Sumul Shah	Fairhaven Wind LLC
Jim Sweeney	Fairhaven Wind LLC
Gordon Deane	Fairhaven Wind LLC
Cathy Coffey	Resident
Kenneth Pottel	Resident
Dawn Devlin	Resident
Daniel A. Gomes	Resident
Lisa Pereira-Silva	Resident
Arnaldo Silva	Resident
James C. Cappuccio	Resident
Malcolm Matheson	Resident
Lorraine Matheson	Resident
Sue Powers	“Turbine Victim”/Resident
Shawn Elliot	Resident
Sandra Elliot	Resident
Michelle Furtado	Resident
Janet Leshyk	Resident
Sharon LaCroix-Andersen	Resident
John Methia	Resident
Cheryl Methia	Resident
John Wethington	Resident
Jim Phillips	WBSM
Phil Weinberg	MassDEP – Southeast Region Director
John Roderiques	Resident
Wayne Hayward	Resident
Monika Whalley	Resident
Donna McKenna	Resident
Grant R. Menard	Resident
Kathleen Audette	Resident