

REGULAR MEETING OF THE FAIRHAVEN BOARD OF HEALTH  
July 9, 2013

A Regular Meeting of the Board of Health was held at the Town Hall on Tuesday, July 9, 2013 at 3:00 p.m. The meeting was duly posted. Board members in attendance: Mr. DeTerra, Ms. Acksen and Ms. Lopes. Town Counsel Thomas Crotty and Health Agent Patricia Fowle were also in attendance.

The Chairman called the meeting to order at 3:00 p.m. and asked for the minutes of June 24, 2013 at 6:30 p.m. be amended or approved. Ms. Lopes motioned to approve the minutes; Ms. Acksen seconded. The vote was unanimous to approve the minutes with the amendment as stated.

The Chairman asked for the minutes of June 10, 2013, Noon, written by Anne Kakley, Secretary to the Board of Selectmen, be amended or approved. Ms. Acksen motioned to approve the minutes; Ms. Lopes seconded. The vote was unanimous.

The Board received a written request from Selectmen Chairman Charles Murphy, Jr. asking the Board to appoint a Board member to the Town/Fairhaven Wind, LLC negotiations. The chairman indicated he could not perform this task as he is occupied up with his re-election campaign. He asked the members to step up to the plate. Ms. Acksen stated she would like to do the task. There was no further discussion. Motion to assign Ms. Acksen to the Town/Fairhaven Wind, LLC negotiations was made by Ms. Lopes; seconded by Mr. DeTerra. The vote was unanimous.

**Health Agent Report:**

A septic system inspection was performed by John S. Golda of Acushnet at 35 Berkley Drive. The system was installed in 2008 and passed the inspection. The Board reviewed the written inspection report. The health agent was present during the inspection. Ms. Lopes motioned to accept the report as written; Ms. Acksen seconded. The vote was unanimous.

The Board reviewed a proposed septic system upgrade for 4 Wilbur's Point Drive designed by Rick Charon, Charon Associates, Inc. of Rochester. Mr. DeTerra abstained from discussion. The pumped geo-flow system is for an existing 3 bedroom dwelling and requires variances to 310 CMR 125.000, Title 5: 15.212: 2' to groundwater, 15.211: 5' to the north street line; 15.255: overdig on 3 sides of the leaching facility.

Motion to approve the design with the required variances was made by Ms. Lopes; seconded by Ms. Acksen. The vote was two in favor. Mr. DeTerra abstained.

The health agent reported there are two new food eateries opening: Kool Moose at 8-1 Sconticut Plaza, a frozen yogurt national chain hoping to open in August and The Phoenix at 140 Huttleston Avenue, a breakfast and lunch eatery hoping to open August 1.

Attorney Crotty then addressed the Board regarding Fairhaven Wind, LLC (FW) and the Board's situation. The negotiation to which Ms. Acksen was appointed has met once. The Selectmen and FW saw no use in continuing unless a member of the Board of Health (BoH) was also present. The hope is to have another meeting as early as Wednesday, July 10 though it has not been confirmed. FW submitted a draft mitigation plan to the Selectmen and would consider asking for a hearing date extension with the BoH so that both the BoH and Selectmen could review the proposal collaboratively. Ms. Acksen stated there has been no contact with the BoH from FW since FW's hearing request and the BoH is being circumvented. Mr. Crotty explained it is necessary for the BoH to attend the negotiations because the Department of Environmental Protection (DEP) is not interested in forcing compliance with FW and the Selectmen are bound by the terms of the contract only. The BoH is not bound by the contract and has nuisance regulations it may rely on to make a determination of a health problem and thus analyze mitigation

proposals to bring about resolutions of the declared “public nuisance”. Noise is subjective and difficult to measure as perceived by an individual. The BoH needs to have expert advice as to what is or isn’t acceptable for what the BoH requires. The BoH and Selectmen have a commonality in these matter yet distinct responsibilities. Mr. Crotty recommended the BoH enter into Executive Session to discuss possible litigation aspects of the negotiations and the proposed public hearing.

At 3:15 p.m. Mr. DeTerra motioned to enter into Executive Session pursuant to M.G.L. C. 30A, § 21:

To discuss strategy with respect to possible litigation and negotiations with Town Counsel on wind turbines.

Ms. Acksen seconded. The vote was unanimous.

Roll call vote: Mr. DeTerra in favor, Ms. Acksen in favor, Ms. Lopes in favor.

Mr. DeTerra motioned to adjourn the regular meeting at 3:15 p.m.; Ms. Lopes seconded. The vote was unanimous.

Respectfully submitted,

Patricia Fowle,  
Health Agent