

REGULAR MEETING OF THE FAIRHAVEN BOARD OF HEALTH  
July 30, 2013

A Regular Meeting of the Board of Health was held at the Town Hall on Tuesday, July 30, 2013 at 6:30 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 present.

Chairman DeTerra called the meeting to order at 6:30 p.m.

The Chairman asked that the minutes of the Regular Meeting of July 23, 2013, be amended or approved. Ms. Lopes motioned to accept the minutes; Ms. Acksen seconded. The vote was unanimous.

The Chairman asked that the minutes of the Executive Meeting of July 23, 2013 be amended or approved. Ms. Lopes motioned to accept the minutes; Ms. Acksen seconded. The vote was unanimous.

The Chairman asked that the minutes of the joint Executive Meeting with the Board of Selectmen of July 15, 2013, as written by Selectmen Secretary Anne Kakley be amended or approved. Ms. Lopes motioned to accept the minutes; Ms. Acksen seconded. The vote was unanimous.

The Chairman asked that the minutes of the Regular Meeting of July 9, 2013, be amended or approved. Ms. Lopes motioned to accept the minutes; Ms. Acksen seconded. The vote was unanimous.

The Chairman asked that the minutes of the Executive Meeting of July 9, 2013, be amended or approved. Ms. Lopes motioned to accept the minutes; Ms. Acksen seconded. The vote was unanimous.

Health Agent's Report:

Septic system inspections:

32 Nakata Avenue inspected by Ronald Arruda, Fairhaven Honeywagon, Fairhaven, on July 9, 2013. The septic system failed the inspection requirements due to groundwater intrusion. An upgrade of the system is required.

6 Saltmarsh Road inspected by Ronald Arruda, 30 Bay Street, Fairhaven, on July 26, 2013. The system failed the inspection requirements due to groundwater intrusion. An upgrade of the system is required.

247 Huttleston Avenue inspected by Darren Michaelis, Foresight Engineering, Wareham, on July 30, 2013. The system passed the inspection requirements. No upgrade to the system is required.

Ms. Lopes motioned to accept the reports as written and observed by the health agent; Ms. Acksen seconded. The vote was unanimous.

The health agent informed the Board that the Department of Public Health's (DPH) most recent arbovirus mosquito report this week notified all health departments in Bristol, Plymouth and surrounding Counties to assume that West Nile Virus is present in all areas. Information is based on mosquito pool testing performed by the DPH and County Mosquito Control Departments. The Board is giving away to any Fairhaven resident, mosquito larvicide in the form of "mosquito dunks". Information on the product is available at the Board office or on the town website.

There were no bills to sign.

The Chairman stated the meeting of the Board would be in open session. There would be no executive session. He stated multiple mitigation proposals regarding the wind turbines as offered through negotiations and received in writing and through the Board representative to negotiations Ms. Acksen had been reviewed previously. The Chairman asked Town Counsel Crotty if he wished to make a statement or discuss anything relative to the turbine matter.

Mr. Crotty stated that on July 23, 2013, the Board met in executive session to craft a response to Fairhaven Wind's mitigation proposal. Mr. Crotty was not present at the meeting but the Board did speak to him on the telephone. As was reported out by the Board at its regular meeting after the executive meeting on July 23, 2013, the Board did not reach a consensus. Fairhaven Wind was informed of that outcome and requested the Board hold a public hearing as is allowed per law, with possible litigation to follow. Ms. Acksen stated there was no consensus because she believes the Board cannot act without a consultant to interpret data, an independent acoustician without whom there is no inter-operability reliability of the data Fairhaven Wind provides.

Mr. Crotty stated the town has no funds allocated for a consultant. The Board can seek funding by involving the Selectmen, asking the developer, seeking assistance from the Clean Energy Committee (CEC), a grant through the Department of Environmental Protection (DEP) or town funding through the Finance Committee. In any case it is most unlikely that anything will happen before September.

The Chairman asked if there was any further discussion on the matter.

Ms. Lopes stated she had a motion she wanted to make. Ms. Lopes read the following motion, a copy of which is part of this record:

"I make the motion to amend the order of abatement of nuisance dated June 17, 2013 to provide that

Subject to further testing and verification, the operation of two turbines in compliance with the specific terms set forth in the Fairhaven Wind mitigation plan dated July 1, 2013, shall be deemed sufficient to abate the nuisance resulting from the violation of 310 CMR 7.10.2. And that the terms of that mitigation plan be incorporated into the amended order.

And that the remaining provisions of the original order are revoked and that this amendment is without prejudice to such further orders as the Board deems appropriate from time to time to protect public health including but not limited to orders respecting compliance with 310 CMR 7.10."

Mr. DeTerra asked for a second. Ms. Acksen declined. Mr. DeTerra seconded.

Discussion on the motion:

Ms. Acksen stated there is no data to verify compliance referred to in the motion. The testing done by DEP is poor and not complete. The developer will not share the data they have collected and as a result there is no interoperability reliability. The motion should not stand because it was not discussed at the original meeting.

Mr. Crotty stated the Board should look at the facts. The DEP is not done testing its original protocol that began August, 2013. There are still a couple of wind speed and directional data points to collect. The operation changes proposed in Fairhaven Wind's mitigation plan were tested but for only one night on June 26, 2013 and that data has been responded to by DEP stating the changes should lessen the decibel levels by 3-4 decibels thereby bringing the sound levels into compliance with 310 CMR 7.00. The data also allows Fairhaven Wind to project the proposed operational changes forward to anticipated outcomes in April and May when the most recent violations were observed.

There was no further discussion.

The Chairman stated a motion has been made and seconded. He called for a vote. Ms. Lopes voted in favor of the motion. Mr. DeTerra voted in favor of the motion. Ms. Acksen voted against the motion. The motion passed by a majority vote of two in favor and one opposed.

Ms. Acksen stated the Board needs to do more.

Mr. Crotty stated he would redraft a new order of abatement of a nuisance based on the vote of the Board. The new order will replace the June 17, 2013 order of abatement.

Mr. Crotty recommended the Board make a motion to authorize a Board member to speak with the Selectmen, the Finance Committee and other organizations such as CEC and DEP to secure funding to hire an independent consultant/acoustician. Ms. Acksen added that part of that action would be to develop a scope of services for the independent consultant, including a review of the SCADA data from Fairhaven Wind and associated costs. Mr. Crotty stated the authorized member would act as the liaison reporting back to the full Board of Health.

Ms. Lopes made a motion to authorize Chairman DeTerra to be the liaison for the Board, to create a scope of work for an independent consultant and to secure funding through the means discussed. Ms. Acksen declined to second. Mr. DeTerra seconded.

Discussion on the motion:

Ms. Acksen stated she is concerned about the possibility of the Chairman hiring a consultant without Board input. His involvement is politically based with the upcoming election September 9, 2013.

The Chairman stated a motion has been made and seconded. He called for a vote. Ms. Lopes voted in favor of the motion. Mr. DeTerra voted in favor of the motion. Ms. Acksen voted against the motion. The motion passed by a majority vote of two in favor and one opposed.

The Chairman asked the health agent if there was any further business. There was no further business.

Ms. Lopes motioned to adjourn; Mr. DeTerra seconded. The vote was unanimous. The meeting was adjourned at 6:45 p.m.

Respectfully submitted,

Patricia Fowle,  
Health Agent