

REGULAR MEETING OF THE FAIRHAVEN BOARD OF HEALTH
June 17, 2013

A Regular Meeting of the Board of Health was held at the Town Hall on Monday, June 17, 2013 at Noon. The meeting was duly posted. Board members in attendance: Mr. DeTerra, Ms. Acksen and Ms. Lopes. Health Agent Patricia Fowle. Town Counsel Thomas Crotty joined the meeting at 12:06 p.m.

The Chairman called the meeting to order at Noon and opened the meeting by reading the initial statement of the proposed Order for Abatement of Nuisance which is to be issued to Palmer Management Corporation-Fairhaven Wind LLC to abate the noise nuisance by order of the Board to shut the turbines down from 7:00 p.m. to 7:00 a.m. daily until a mitigation plan submitted by the company and approved by the Board can be put in place. The members were given an opportunity to review the two versions of the order. The first version was referred to as the "short version" consisting of 3 pages. The second version was referred to as the "long version" consisting of 5 pages. The basic order was written by Town Counsel Thomas Crotty and reviewed in concert with the health agent who, along with Town Counsel, made some changes and was forwarded via email to each of the Board members. The long version differs from the short version in that 11 itemized conditions were placed into the order detailing Board of Health requirements to be met by Fairhaven Wind LLC's mitigation plan submittal to the Board for the Board's approval. Ms. Lopes questioned where the stipulations came from in the long version. Ms. Acksen stated she had done much research on the matter and had spoken to an acoustician and others. Ms. Lopes questioned if any of the stipulations had come from Selectman Espindola. Ms. Acksen stated she had spoken to him and others in her research. Ms. Lopes asked who particularly. Ms. Acksen stated acoustician Steve Ambrose who informed Ms. Acksen of the necessity of requiring certain stipulations so that the Board could discern data and patterns. She believes the stipulations should be stated in the order to abate the nuisance so the Fairhaven Wind LLC mitigation plan would contain what the Board requires for Board approval. Town Counsel Crotty entered the meeting at this time and was briefed on the discussion.

Attorney Crotty addressed the differences in the versions. The short version is open ended and allows for more flexibility by the Board. The longer versions makes stipulation that, upon discussion with the Board, may need to amended and this may cause some problem for the Board based on the written order. Mr. Crotty stated that legally the operators of a business are allowed to make their own decisions on how to bring the business into compliance. The Board cannot tell the business how.

Ms. Acksen stated she is in favor of the long version because it will ensure that data is available both historically and moving forward to compare events as they occur. Ms. Acksen asked if the company were to state they are in compliance, how would the Board know that indeed they were? She is in favor of the lon version. Mr. Crotty stated there will be difficulty in getting funding from Fairhaven Wind and the Board should look to other resources such as DEP or a grant to hire its consultant. Additionally each of the conditions may be a give and take situation with Fairhaven Wind. He recommends the short version for these reasons. Mr. DeTerra asked if through the process the Board would be allowed to add or subtract these conditions. Mr. Crotty stated yes.

Mr. DeTerra called for a motion to accept either order of abatement of a nuisance. Ms. Acksen motioned to accept the long version with an amendment that item 4. of the stipulated conditions be amended to exclude "may not occur between 11:00 p.m. to 4:00 a.m. and" thus to read: "Initial testing segments may not exceed two (2) hours in total duration;"; Mr. DeTerra seconded. No other motion was offered.

Members voting to approve the motion: Ms. Acksen and Mr. DeTerra

Member voting not to approve the motion: Ms. Lopes.

The motion is approved by a vote of two in favor and one opposed.

Ms. Lopes stated that she will not sign the order because she did not vote.

The owners of Fairhaven Wind LLC will be notified by certified express next day delivery USPS mail. The Board of Selectmen will be copied on the signed order of abatement of a nuisance.

Mr. Crotty recommended the Board enter Executive Session to discuss the legal possibilities based on the order of abatement of a nuisance to Fairhaven Wind.

At 12:31 p.m. Mr. DeTerra motioned to enter Executive Session pursuant to M.G.L. C. 30A § 21:

To discuss strategy with respect to possible litigation-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 12:31 p.m.; Ms. Acksen seconded. The vote was unanimous.

Respectfully submitted,

Patricia Fowle,
Health Agent