

PLANNING BOARD MEETING of October 9, 2012: Town Hall Banquet Room

I. ADMINISTRATIVE BUSINESS

Chairman Wayne Hayward – Opened the meeting at 6:30pm

Quorum/Attendance

Members Present – Chairman, Wayne Hayward, Francis Budryk, Rene Fleurent Jr., Jeffrey Lucas, Peter Nopper and Gary Staffon

Members Absent - Albert Borges and Joseph Morra

Wayne Hayward stated that he tried to get in touch with Mr. Morra and at this point he is 'unreachable'; his phone number was disconnected.

Planning Director William Roth was also in attendance.

Acceptance of Minutes September 11, 2012

Gary Staffon made a motion to approve the minutes of September 11, 2012, and it was seconded by Jeffrey Lucas. The motion passed by unanimous vote.

Planning Board Bills

1. **CPTC** – UMass Workshop – Rene Fleurent - \$30.00

Francis Budryk asked what was the UMass Workshop?

William Roth said that he had sent an email to everyone on the information. Citizens Planner Training Collaborative.

Rene Fleurent, Jr. stated the training was an introduction to the Zoning Act.

Francis Budryk asked if anybody can go, you just submit a bill for gas?

Wayne Hayward said, "No. This was the cost of the actual training class."

Rene Fleurent, Jr. recommended anyone that is able to go to the Spring Conference to take advantage of going. "I found it very very helpful," he said.

Gary Staffon made a motion to pay the CPTC, UMass Workshop bill, and was seconded by Jeffrey Lucas. The motion passed by unanimous vote.

2. **Fairhaven Neighborhood News** – AD – SubDiv Bylaw-Chip Seal - \$110.00

Wayne Hayward said he would just like to say that he went by Wayne Street today to see chip seal, and there were a lot of stones that weren't adhering. He said they put the chip seal to the end of the road.

Rene Fleurent, Jr. said that Potter Street was done the same way. 'You can see a lot of stones coming off Potter Street.'

Gary Staffon made a motion to pay the Fairhaven Neighborhood News bill, and was seconded by Jeffrey Lucas. The motion passed by unanimous vote.

3. Registry of Deeds – Subdivision Regulations Recording Fee - \$75

William Roth explained this is the cost for the recording the new Subdivision Regulations at the Registry of Deeds.

Gary Staffon made motion to pay the Registry of Deeds bill, and was seconded by Wayne Hayward. The motion passed by unanimous vote.

II. CURRENT PLANNING:

Receipt of Plans:

None.

William Roth said there has been some interest on different projects.

Wayne Hayward asked him 'what kind of plans?'

William Roth said, 'Pharma Health was looking for an expansion; along with others.' He said there have been an increase in general inquiries across the Board.

Approval of Plans:

None

III. PUBLIC HEARING

NONE

IV. LONG RANGE PLANNING:

1. Chapter 316 Procedural Rules: Street Acceptance Procedure Flow Charts

William Roth stated that Jeffrey Ousch was on vacation and he forwarded the charts to Jeff, will speak to him when he gets back.

2. Chapter 198-29.5 Wind Energy Facilities: Bylaw Review

Wayne Hayward began by explaining to the Board that this was a 'workshop' meeting to discuss the draft put together by him & William Roth on this bylaw. He stated that he wanted the Board to just bring up discussion or questions on the information and they could just talk about it. The meeting was not being televised because it was a working meeting. Mr. Hayward passed out a sheet to the Board members that included wind turbines' information that are built in other places in MA & RI.

William Roth advised the Board he put the Draft together as single sided spaced for now, because it's easier to read.

Gary Staffon first asked what the cutoff date to the Town Clerk is for the Annual Town Meeting?

Wayne Hayward said they would want to give them a few months.

William Roth said he would recommend by the 1st of the year.

Gary Staffon asked, 'how about just for private people?'

William Roth stated, 'usually first of the year.'

Wayne Hayward explained the only window is no greater than six months prior to Town Meeting.

Wayne Hayward explained to the Board there are 3 major by-law regulations, and they are as follows: 198-16 – Use Regulation Schedule; 198-29.5 – Wind Energy Facilities, and 198-33 – Definitions and word use.

Wayne Hayward explained that there are 3 types of Wind Turbines (& explained where to find them in the Draft document). “G” is the 1st class – Utility – Scale is a Wind Turbine on a parcel all by itself on page 3-4. He explained that “H” is the 2nd class – Wind Facility – On-site is a classification of a wind-turbine on-site providing power on that site, located on page 5-6 of the Draft. And “I” is the 3rd class-Wind Facility – Small Wind Energy Systems, on page 7.

William Roth explained there is a lot of repetitiveness in the document; however the requirements, for example for On-Site Facility are everything under the “H”.

William Roth explained that the proposed by-law sets a limit of 600kw, which is half the size of the 1.5kw that the Town currently has. To put it into perspective, the turbines at UMass and Mass Maritime are 660kw.

Rene Fleurent, Jr. stated that he had a concern regarding Little Bay & Fairhaven/New Bedford Harbor being sites for future Wind Turbines.

Wayne Hayward stated that there are so many feet from the shore in the water are Town Property, and then it is State Property. “Town Property doesn’t stop at the shoreline,” he said, “This by-law would address it if it was within Town limits.”

William Roth explained that the way the by-law is set up the maximum is 600kw, the general sighting and design is for everything, he said the Draft does have some repeats, which makes it lengthier but he was trying to make it clear under each type of wind facilities what was required.

Wayne Hayward said, ‘For example, flicker study would fall under “I” for small residential Wind Turbine. He said it is explained by Requirements, Setbacks, and Sound.

William Roth brought the Board’s attention to “K” in the Draft for Safety, which applies to everything.

Gary Staffon brought up under “G” that it may 600kw. He stated that most of the 600kw in RI/MA power up most buildings in Town. He referred to the height at 265’.

Wayne Hayward advised that currently the Fairhaven by-law in effect is 515 Maximum Tip Height (MTH).

Rene Fleurent, Jr. said that ‘600kw just be used for certain facilities.’

Wayne Hayward made reference to 6-8 Wind Turbines on West Island in the future. He said, “I don’t know if we could prevent the State from putting up 6-8 Wind Turbines on West Island; however, I’m telling everyone here we wouldn’t appreciate those Wind Turbines on West Island.

William Roth said in regard to the “Wind Turbines on West Island”, that the State did a feasible study and it is a planning document to look at all possible scenarios. The State Legislature would have to amend the laws to allow wind turbines on West Island because it is a State Reservation, which is conservation land. Mr. Roth said, ‘this is a larger statewide debate that would take years to resolve.’

Wayne Hayward stated that the governor’s vision is 75% offshore wind; and 500 mega watts on land.

Rene Fleurent, Jr. stated, ‘in person, once you inhibit size of generator it’s going to limit what gets built.’

Wayne Hayward stated there is no longer measure to Nacelle. They would just use a universal measurement of MTH.

Wayne Hayward said, 'We've always regulated power.' And even though the State can supersede you, doesn't mean you can't take them to court. The State can trump you.' He also stated that he brought up the West Island possibility, because it is a remote possibility.

Gary Staffon said he also brought it up to say 'where it is', and that the FAA would have some concerns as well, it's in a flight plan. "The FAA is going to have something to say about it," he said.

Wayne Hayward started to say, "By limiting to 600kw..."

And was interrupted by John Methia in the audience who said, "I'd love to see output".

Wayne Hayward said that a couple things have changed, and they've provided for Setbacks and Fall Zones.

Rene Fleurent, Jr. said he thinks that Fall Zones should be expanded. He referred to the Catastrophic Propeller Breaking (Blade Failure).

Wayne Hayward stated that 'not all zones require fall zones.'

A brief discussion around blade failure was made between Rene Fleurent, Jr. and Jeffrey Lucas on the information they read.

Jeffrey Lucas stated that he has read some material on-line regarding the blade failure, and some of the material is undated. He said that what he has read is that if one breaks down, the other one catches', he just doesn't know how accurate the information he read on-line actually is.

Rene Fleurent, Jr. agreed. "I agree 100%," he said. "Basic law of physics."

William Roth referred to page 4 of the Draft #5-Setbacks, (a) which is intended to be for Fall Zone.

Wayne Hayward used an example that you wouldn't put a Wind Turbine and a radio facility in a fall zone, because there would be a lot of codes, and the setback at 1.1 x the height of the towers, if it fell would be more catastrophic.

William Roth referred to page 4, of the Draft #5-Setbacks (c) 1.5 times the MTH of the turbine from the nearest property line and or private or public way.

"For example, if Southcoast wanted to put up a Wind Turbine (WT)," Rene Fleurent, Jr. said.

Wayne Hayward said it wouldn't be under this section because power would be used for their on-site facility.

Jeffrey Lucas asked that "Fall Zones" be in the definition page in the back.

Francis Budryk referred to what would happen if a Wind Turbine was incorporated in a building as new technology is coming out and this is happening.

Jeffrey Lucas referred him to Section "J", page 7 of the Draft.

Wayne Hayward said that there are a lot of different scales, from large off-shore to large on-shore, to the small residential & etc.

William Roth stated that the height depending on the zone is between 35-45'.

John Methia from the audience asked the Board to consider some language to add "Wind Farm" vs "Wind Facility". This terminology may be able to protect West Island in the future.

William Roth told the audience members they can always email him suggestions and or comments; that this Draft is a work in progress.

John Methia said that West Island is literally in the bull's-eye, and he appreciated what the Board was doing here, but he thought they were a little late in the dance.

William Roth said that our by-law might not be applicable; if the State were putting up the turbines because they would be exempt.

John Methia suggested creating a by-law just for West Island.

Audience member, Gary Lavallette said that Gellette Road would be perfect for a Wind Farm.

William Roth said if you look at a Town map there are a few spots, which are the farms off of Shaw Road that would have the area and wind for a wind farm.

Wayne Hayward said that "Wind Farm" did come in to their thinking; however, they were trying to avoid #'s.

Louise Barteau, Town resident that was in the audience said that the Board was making assumptions that 600kw WIND TURBINE doesn't cause health problems.

William Roth said, "We're not saying that."

'I'm concerned we're making a leap," Ms. Barteau said. She said she was concerned for people's health and there are significant problems even with smaller turbines. She also said that she would urge the Board to look at 600kw, and she isn't sure that's the right number.

Audience member, Andrew Grot said, "Good point"; referring to Ms. Barteau.

Louise Barteau stated that she just was looking over the Draft and it was very geographical, random and assorted. "Setbacks seem very short to me," she said. She gave examples of Woods Hole, and Mass Maritime that have issues.

Wayne Hayward made a reference to building high-ways everyday and people's health on them, and said that the by-laws are protected people's health.

Louise Barteau said she wasn't sure if that was a good analogy.

Wayne Hayward said from cars to electricity, just to the risk of being alive there is some element of risk to everything. He referred to setbacks as 1.2 times the MTH; saying that they are definitely proportion to the size.

Louise Barteau said that if 600kw is where we want to stay, we have to then review and look at setbacks.

Gary Lavallette said that Sound is amplified near the water. "If you can see it, you can hear it," he said.

Andrew Grot said that UMass Wind Turbine is having issues with electrical component and he wasn't sure it was going to go up.

Wayne Hayward said that it was still in commission. "I assure you it's going to go on," he said.

Gary Lavallette said that he has made sound studies, unofficially and it sounds like grinding popcorn; and that it's a very unusual noise; he said, 'no matter where you put these he doesn't ever think they'll be a solution.'

Wayne Hayward stated that the issues they've had at Little Bay is the reason why they're doing what they are doing.

Louise Barteau said "it's below audible hearing."

Wayne Hayward stated that it was important to keep scale appropriate for our community; a lot of the issues minimized not eliminated but definitely minimized.

Kathy Starr, of 15 John Street referred to infrasound. She said that she has constant jaw and ear pain, when the blades are going east.

Louise Barteau said that Nantucket High was reporting significant health problems.

Wayne Hayward said that every single Wind Turbine in the world probably has reported health issues.

Robert Espindola was present, and also sent an email to the Board on his views/opinions of the Wind Turbines. He said that it was his opinion that the most important thing is setting standards to noise, and the onwance should be on the developer to meet compliance. His opinion was there should be stricter sound testing. He referred the Board back to his email that William Roth stated was in each Board members packet.

Rene Fleurent, Jr. asked what statistics, what standards do they go by?

Gary Staffon said they have six years of DEP regulations.

Gary Lavallette stated that within 100 yards you could hear them. He said that on Shawmut Avenue it is louder, amplified. He asked, 'how far do you go for sound study?'

Wayne Hayward said at the property line its 60 db.

Gary Staffon asked Ms. Barteau when she goes out with the study person and the developer, how far do they go out?

Ms. Barteau responded that they go to five different properties.

John Methia stated they go to his property, which is 2600 feet.

Gary Lavallette said they've gone out 1.2 miles.

Wayne Hayward said they have to reference the master EP, "we can't make up a sound decibel," he said.

Louise Barteau said that 'Dartmouth is being proactive in doing their own study with their Planning and Board of Health.' 'They are extremely proactive," she said.

Wayne Hayward said that it's just a proposal; and that we are going to reference the state law.

William Roth reference page 8 of the Draft, Section "K", #5 regarding the noise. "We are referring to DEP Regulations, if they change our by-law changes

Rene Fleurent, Jr. thought there should be some restrictions on noise.

Jeffrey Lucas referred to the MA guidelines, DEP regulations; a conversation ensued regarding noise.

Jeffrey Lucas stated that it depends on the position of the blades to which the noisiest part is.

Gary Lavallette stated that the loudest wind noise was from Mill Road. He said 'behind the blades' is the loudest.

Jeffrey Lucas said he has heard different from that.

Wayne Hayward asked Mr. Lucas how he would go about regulating that.

Jeffrey Lucas said he knew that they couldn't regulate that.

Wayne Hayward said that 'specific to specific turbines, I don't see independent owners with our by-laws.'

Gary Staffon said that 'commercial would be 200kw per our by-law.'

Francis Budryk referenced page 5, the words "Independent Consultants", and asked what that meant?

William Roth explained, 'We would hire an independent engineer, paid for by the applicant.'

"Who's we?" Mr. Budryk asked.

William Roth said, "the planning Board. We'd go out and seek and find someone."

A discussion ensued with Francis Budryk asking for more learning tools, more graphics or pictures of what the towers actually look like out of scale. Wayne Hayward gave examples, as in John Hancock building is 790' tall; Statue of Liberty is 300' ish; and UMass tower is at the maximum size.

Jeffrey Lucas gave William Roth a few corrections in the Draft document related to spelling and/or context. For example, he asked that page 2 #5 ROW, for the first time be spelled out as "Right of Way", and then throughout the document can be ROW. William Roth agreed.

Rene Fleurent Jr. asked if 198-29.5 was for all wind facilities; to which Wayne Hayward said it was.

Jeffrey Lucas asked a question on proof of liability insurance?

Wayne Hayward advised them to refer back to the 3 types of wind turbines; for residential or small it would fall under the homeowners insurance.

Peter Nopper asked if the Town gets a bond?

William Roth said, "No."

Jeffrey Lucas asked how would we be able to track it? Does it have to be tracked? He said he was just putting it out there for discussion.

Wayne Hayward said that he thinks other agencies would have that covered.

Francis Budryk asked about property value?

Wayne Hayward referred him to page 1 (a) for the answer.

William Roth said he didn't know how they could identify or regulate compensation for property values in the code.

Wayne Hayward referred to the Draft document and told the Board if they read it carefully, there were provisions in there.

Gary Staffon said, 'Part G'.

Jeffrey Lucas questioned page 2-3 on tracking the bond, #E9 removal and asked if they should require a bond for the removal of any wind turbine.

Wayne Hayward said it would never become an issue to bring these down; it has values to it. He said, "the actual tower could be sold."

Jeffrey Lucas said, 'If that's not an issue..., my question is how do we monitor the bond to not fall short?'

Wayne Hayward ask William Roth 'how do we track a bond?'

William Roth said he wasn't sure how far out a bond can go.

Wayne Hayward said, "In my opinion, we don't need to worry about it." He said that this was a meeting that didn't have to follow Robert's Rule of order, and be more back and forth; and he doesn't want to come across as he doesn't want to hear anyone's opinions, but he's not going to worry about something that may not have merit.

Louise Barteau asked how the process is going to be done after this meeting?

William Roth said that if she had any additional comments, at any stage, she could email him back. He said he'd be happy to forward her a draft and she can send it back with her comments, etc. He then explained that the Board would meet hold as many 'workshop' meeting until they felt it was ready, then it would go to the Selectman who have 14 days to give it back to the Board to start the formal public hearing process.

Louise Barteau asked when would they come back?

William Roth said he would email her the word document.

Wayne Hayward said that everything is posted on their agenda.

Rene Fleurent, Jr. asked where the 'sign' would go.

William Roth said that it would go on the entrance fence or the tower itself.

Francis Budryk asked who's responsibility it would be if vandals put graffiti all over the place, do they need to clean it right away? "Whose responsibility would it be," he asked.

Wayne Hayward said, "Think of the uses. If it's your house, it's your responsibility."

Wayne Hayward said the tower would be painted a neutral color.

William Roth said, 'if they required neutral color in the permit, page 3 #8, they would have to add 'must be neutral color'.

Gary Staffon went back to talking about the fall zone, which is listed as 1.5 x's from property line in the Draft. He said he didn't think the setback for noise was enough.

Rene Fleurent, Jr. said he was happy with 3 x's.

Gary Staffon said he thought 4x's would be more efficient.

Wayne Hayward said these are major decisions, and that these numbers mean something. He referred to the closest resident is close to 900' away and that's 2x's.

William Roth said his belief was if it was on your property that's your issue if it falls on a structure.

William Roth referred to page 4, #5 a) and c) as confusing, and he needs to look at it to reword. "In essence it's saying the same thing," he said.

Rene Fleurent, Jr. said, "Yes."

Wayne Hayward said, 'they would have to meet all three.'

William Roth explained the Setbacks for a) and c), saying that c) is clearly the fall zone has to be from the property line or ROW; and that a) it's not needed to regulate on-site buildings.

Jeffrey Lucas said that the fall zones are usually 1.1x.

Wayne Hayward said, "Yea, and ours is 1.5."

Rene Fleurent, Jr. recommended they take out the word "building" on #5 Setbacks (a).

Wayne Hayward said he wasn't sure how they would regulate a setback. "This is a utility scale.." he said. "There should be nothing in a fall zone."

Rene Fleurent, Jr. asked about "accessory buildings?"

Wayne Hayward said they are looking at accessory structures and primary buildings.

A brief discussion ensued around an example of the farmer, the barn on his property and according Wayne Hayward protecting the boy and girl in bed sleeping in the barn. More discussion on the fall zone occurred.

Rene Fleurent, Jr. argued that it was up to the individual owner/farmer (in the said above discussion).

Wayne Hayward said they had to be clear on the property owner or commercial; he said there are four different uses here and they have to remember that. He referred back to the farmer, and even though the Wind Turbine is on his land, is he the owner or is there someone else that owns the WIND TURBINE but it's on his property.

Rene Fleurent, Jr. said, "If it's your own property, I believe you're taking a risk, and we shouldn't regulate setbacks on individual homeowners."

William Roth advised the chairman that it was 9pm, and perhaps they need to continue to another meeting. Wayne Hayward agreed, advising they weren't going to get everyone's opinions or concerns done tonight.

Francis Budryk made a motion to adjourn, and was seconded by Gary Staffon.

Rene Fleurent, Jr. said that this information is all up for debate.

Wayne Hayward agreed it wasn't going to get done tonight. He said, 'You're going to get a lot of opinions, and it requires Town Meeting 2/3 of the vote; and Selectman need to vote.'

Wayne Hayward asked the Board to think of the bigger concepts, and to really go thru the Draft page by page; and truly try to understand it. He said the next meeting would be 10/23, and the Board members should send any comments to William Roth, and he will put it in the Draft.

Frank made a motion that the meeting be continued to October 23, 2012, and was seconded by Jeffrey Lucas. The motion passed unanimously.

Meeting adjourned at 9:20pm.

Respectively Submitted,

Patricia A Pacella
Secretary to the Planning Board