

PLANNING BOARD MEETING of February 12, 2013: Town Hall Banquet Room

**I. ADMINISTRATIVE BUSINESS**

Chairperson, Wayne Hayward - Opened the meeting at 6:30pm

Quorum/Attendance

Members Present – Chairperson, Hayward, Francis Budryk, Kaisa Cripps, Rene Fleurent, Jr., Jeffrey Lucas, Peter Nopper and New member, John Farrell

Members Absent - Gary Staffon (Arrived at 8:40 pm)

Planning Director William Roth was also in attendance.

Acceptance of Minutes January 22, 2013

Jeffrey Lucas made a motion to approve the minutes of January 22, 2013, and it was seconded by Francis Budryk. The motion passed by unanimous vote.

Planning Board Bills:

1. *Office Supplies – Staples* - \$54.46

Jeffrey Lucas made a motion to pay the Staples bill of \$54.46, and was seconded by Peter Nopper. The motion passed unanimously.

2. ADS – Southcoast Media Group - \$195.50 – **Hoines & Martin** - \$97.75/each

Jeffrey Lucas made a motion to pay both bills, and was seconded by Francis Budryk. The motion passed unanimously.

3. **CPTC** – Umass Conference – Rene Fleurent & Kaisa Cripps - \$100.00

William Roth explained this was thru UMass extension, an annual conference; and advised the Board they had funds to send the two people to attend. Mr. Fleurent and Ms. Cripps both advised they would like to attend.

Jeffrey Lucas made a motion to approve the \$100.00 and was seconded by Francis Budryk. The motion passed unanimously.

**II. CURRENT PLANNING:**

Receipt of Plans:

1.) Special Permit - **Baycoast Bank** – 75 Alden Road (PH 2/26/13)

Wayne Hayward made a motion to schedule the Public Hearing for 2/26/13, and was seconded by Jeffrey Lucas. The motion passed unanimously.

2.) Unacc Street Disc – **111, Huttleston Ave., LLC - Kenneth Melanson** – Maciel Street-northerly from Bridge Street (PH 3/12/13)

William Roth explained it was an Unaccepted Street Discontinuance, and there may be one other for the same night.

Wayne Hayward made a motion to hold the Public Hearing on 3/12/13, and was seconded by Jeffrey Lucas. The motion passed unanimously.

Approval of Plans:

None.

**III. PUBLIC HEARING**

1. Bylaw Amendment – Chapter 198.29.5 – **Wind Energy Facilities**

Wayne Hayward began by introducing the Board Members. He then read a brief opening statement from the Board, and that some comments were from him personally. Mr. Hayward explained that the Board didn't want to hear the health complaints from the community, but to focus on the Draft By-law, and any comments that people wanted to suggest regarding the By-Law.

Zachary Aubut, of 16 Mill Road was the first resident to speak. Mr. Aubut started that he was a 'little disappointed' that the Board didn't want to hear about the residents' health concerns, because he felt that was a big part of the By-Law for the future. Mr. Aubut said he agreed to stick to the guidelines, and that he wouldn't 'bore the Board with the fact that these two Wind Turbines keep him up at night.' He said that he believes the Board is stepping in the right direction. He said based on his experiences with the Wind Turbines, he would like to see the Board err on caution as far as height and setbacks. Mr. Aubut said that he works sixty hours a week, and is seeking a peaceful night of sleep, and that he is being denied that by the current Wind Turbines at this time.

Wayne Hayward asked if Mr. Aubut has read the Draft By-Law?

Mr. Aubut said he has read the 'Reader's Digest' version. He said 'in reference to the tripling the distance,' he wasn't sure that would help.

Karen Isherwood, of 3 Teal Circle spoke next. She said she lives 900' from the current Wind Turbines. Ms. Isherwood asked, 'Why a new By-Law was even being written?' She said they are still being told there is not a problem currently, when there is. She expressed that she was really upset. She made reference that the CEC's minimum setback is 5 times the height, and thinks that would be somewhat safer to residents. Ms. Isherwood continued to ask why a new By-Law was being proposed, if the existing one is 'ok'? She said, "I want people to agree that what we have NOW, is wrong."

Wayne Hayward thanked her for her opinion.

Ms. Isherwood said she would like to see setback at the minimum of 5 times the tip height, and to the property line of residents.

Next, resident, Louise Barteau of 5 Fisherman Road. Ms. Barteau would be emailing William Roth her suggested comments for the By-Law, please reference that information. She did state that she would like to see the Setback at least 10 times the height.

Referring to the sign in sheet, William Roth asked Board of Health member, Barbara Acksen if she was representing herself as a private citizen or the Board of Health?

Ms. Acksen replied that she was present as a private citizen, but has data she was submitting on complaints and distances was received through the Board of Health.

Kenneth Pottel, of 22 Wampanoag Drive, spoke to the Board saying that he would like Board to take cautionary note to the size of the turbines, setbacks to be at least 10 times the height. Mr. Pottel then asked if there was a basis to granting waivers that is referenced in the Bylaw? (To which, Mr. Hayward nodded, 'yes'.) He asked what the impact would be on the Wind Turbines?

Wayne Hayward answered briefly what the waiver in the By-Law was all about. He explained that the Utility Class waiver is in essence an 'easement' between private parties. He said nobody can force

compliance and that the Planning Board is not saying they are going to 'waiver.' Mr. Hayward said the other two areas they would see 'waiver' is On-Site Class, and Standard. Mr. Hayward said that these are some of the strictest proposed regulations in the State.

Mr. Pottel said he would like to congratulate the Board on working on this By-Law.

Wayne Hayward asked if he was in support of the By-Law?

"I wouldn't say that," Mr. Pottel said. He said he would like to see a more on height and setback regulations.

Ann Richard of 46 Hedge St., was next to speak. She said that she was one of the members of Town Meeting that voted for the original By-Law in 2004; and the original purpose of the By-Law said, "Encourage Wind Energy". Emphasis on the word, "Encourage." She felt that the new By-Law has completely different wording from the previous. Ms. Richard didn't think that the Town should be proud of being one of the "strictest regulations" in the State. She felt that the proposed By-Law was catering to the small voice of Towns people who are in opposition.

Wayne Hayward said he didn't think they changed the wording to 'discourage'. Mr. Hayward asked if Ms. Richard would like a 515-foot tower 515-feet from her home?

Ms. Richard said that was a blanket statement and one that Mr. Hayward shouldn't be making.

Wayne Hayward asked Ms. Richard to send in her comments or suggestions for height and setbacks to Mr. Roth for review.

William Roth reiterated that the Draft By-Law was on the website in both PDF and WORD version to edit, if anyone would like to do that.

Barbara Acksen spoke from a Board of Health prospective, but not on behalf of the Board, that they have received complaints and health concerns and using google earth created clusters to how far the health concerns were away from the turbines. She gave information to the board members, in hopes that the distance between homes would be more looked at. She said, "Complaints do exist." She believes we should be friendly to developers that are friendly to our citizens, and information from developers shouldn't be considered proprietor information. Developers should have to share their information with to the public, and have certain data available, ie: on-going testing/for on-going measure.

Wayne Hayward said that the Board has looked at State language ordinance and has adopted it as ours. He said that he felt some people in the room were comparing a moratorium with a ban; which it is not. A moratorium is an authorized period or delay, giving the example that Martha Coakley gave the Town of Heath a "12 month moratorium" while they drafted by-laws. A ban of Wind Turbines, Mr. Hayward said, was not going to happen in the State of Massachusetts.

Barbara Acksen asked Mr. Hayward why he didn't allow the Board of Health to openly discuss the Wind Turbines at their previous meeting?

Wayne Hayward responded that he wrote a letter to the Chairman's of both the Selectman and the Board of Health to advise that the Planning Board is the current avenue of communications regarding the Wind Turbine By-Law. "We wouldn't think of publicly making comments at our meeting regarding cigarette smoking resell or Board of Health by-laws," he said.

Wayne Hayward then turned to the Board and said that he was going to recommend to the Board one amendment, and that was that these regulations do not apply to the existing two Wind Turbines.

Mr. Hayward said that he used Wind Wise documents that were provided to him in this By-Law. The height regulations that are in the By-Law are propositions he received by Wind Wise recommendations. The Board feels we need to control it a little bit, he said.

Curt Devlin of 252 Main Street was the next to speak. Mr. Devlin was very passionate in his speech. He said, 'Industrial wind turbines are toxic, they make people ill.' He was upset that the Board didn't want to hear any health concerns regarding the two Wind Turbines in Town, because there were a lot of health concerns out there. He said, 'Infrasound is what's toxic to the human body.' He continued that it would be no different if we put up three smaller Wind Turbines, then one big one; the infrasound would be the same.

Board member, Kaisa Cripps, through the Chairman asked that Mr. Devlin refrain from discussing the two Wind Turbines in Town, and keep to what this meeting was about, which was any comments relating to the amending of the Draft By-Law.

Mr. Devlin referred to Dr. Nina Pierpoint who said that less than 1.25 miles as a "safe minimum", and Mr. Devlin said there was no place in Town to do that safely; he then stated that his recommendation for setbacks would be 16 times the height.

Mr. Devlin then turned to the audience and asked who wanted a Wind Turbine in their back yard?

Wayne Hayward advised Mr. Devlin he was "out of order"; and asked him to keep his testimony restricted to the new By-Law.

Mr. Devlin asked the Board members if they were ready to sign a new By-Law that would cause ill effects; again he was called "Out of Order," by the Chair; and Mr. Hayward explained that the Board was here to take your testimony.

'If you sign that By-Law, each and every one of you...' Mr. Devlin said as he stood and left the room. (Referring to the health effects that would each be causing)

Wayne Hayward brought the meeting back to the next speaker, but did say he understands that this is affecting people; and that the previous speaker was very passionate about what he believed.

Daniel DeNardis, of 5 Mark Street, spoke. Mr. Denardis asked about if an account would be set up in escrow from the Developer if the Wind Turbines had to come down.

William Roth referred Mr. Denardis to p.4 of the Draft By-Law, letter "H", #1. Financial Surety.

Mr. DeNardis said that he would recommend re-wording it to make sure the money is available. Mr. Denardis then mentioned the 'waiver' that was discussed and in the document. He said if in fact the waiver was an easement, what benefit would it be to the future owner of the abutter, if they sell their property. He suggested the words, "renewable license" instead of easement.

Wayne Hayward said it was more of a Setback Waiver. And there would be a deed restriction, like an easement; and it would be recording at the Registry of Deeds. He said it's a civil matter between the two parties, and someone buying the property would know that they are buying close to the Wind Turbines.

The last thing that Mr. DeNardis brought up was the noise. He said that perhaps in the evening hours the speed of the rotation of the blades could be reduced, to perhaps reduce the noise level.

Wayne Hayward said that issue was beyond the scope of the Planning Board. He said 'it's not in the By-Law'; and could be done by another Board.

Wayne Hayward went on to explain that this proposed By-Law requires 2/3 of the votes at Town Meeting, and he can see that apparently both sides are still upset. He explained that if it doesn't get done this time around, they would have to wait two years to do it again.

'As someone that was previously on the Finance Committee,' Mr. Deardis said, 'Everyone says Location! Location! Location, but I think we should've held out for more money.' Referring to the current Wind Turbines.

Dawn Devlin of 252 Main Street was next to speak, visually upset. She said she wanted to address a few comments made by the Chairman. She said that she believed that some people believed that people only complain when there is money involved; but that is far from the truth. She does not live near the Wind Turbines, but she has seen a lot of sickness because of them. She said people are abandoning their homes, and running out of Fairhaven. She would like to see that if, perhaps, a health concern is documented by a Physician that the person cannot live in their home anymore that the Developer would have to buy the persons home at a fair market price, prior to the Wind Turbine being erected. She expressed that she believed the Wind Turbines are dividing the Town.

Ms. Devlin expressed that as stated in the By-Law, five Wind Turbines can go up in a residential area, or an open area like Riverside Cemetery. "I don't live near these things; but I've seen the suffering, and it's not made up," she said. 'The height needs to be addressed,' she said. And she said we're paying higher costs right now in electric than we did prior to the Wind Turbines going up.'

Wayne Hayward asked, 'Don't you think the height is being addressed in the new By-Law?'

Ms. Devlin responded that she did think some things were being addressed, but not everything. She said she understood that changes need to be made at the State level as well. She would like to see more built-in, adding a little more to protect the Town people. She said that if it went to Town Meeting as it was, she would support it because it's protecting a little more than the previous By-Law.

Wayne Hayward said that there are 351 communities in the State, and there was no way that the State was going to allow 351 different noise ordinances. "They are looking to see uniformity." He also said, the Board was looking to eliminating Industrial Wind Turbines in Fairhaven. That's not what this By-Law is about.

Ann DeNardis of 5 Mark Street was next to speak. Ms. DeNardis went thru a complete revision of the wording of the actual document. She said she thought the language of the Draft was very vague. In particular she mentioned, re: waiver, "all the requirements"; "Special Permit Authority" (who was going to authorize?); "Minimizes Shadowing". She referred to p. 8, 'L', Safety. "unless waived"

Wayne Hayward asked if she wouldn't mind sending Bill Roth her opinions or suggestions on different wording.

Ms. DeNardis said there were no specific guidelines for the "waiver"; there was no protection to the community. Again referring to the document, p. 10, 'M' (1), 'A Special Permit "shall be granted".' "As an attorney, I have issues with the wording. It's your job to protect this community." 'Another concern, there's been photos of dead birds, and bats; then in the document, P. 10, 'L' (7), you have the owner doing a species analysis. 'In my opinion, I think it would be biased.' You word it, "applicant shall continually monitor".

Jeffrey Lucas asked Ms. DeNardis to put in writing her changes and suggestions to Mr. Roth so the Board could review it at their next meeting.

Kaisa Cripps seconded what Mr. Lucas was asking for and asked anyone else who would like to make suggestions to get a copy of the Draft, which is on-line and make their suggestions right on it, and send it to Mr. Roth.

Francis Budryk said, "This is exactly what we want to see, we need the input."

Wayne Hayward read from the "Procedural Rules to the Planning Board Public Hearing", # 14: "In addition to accepting oral testimony of witnesses, the Board encourages two (2) copies of written comments...."

John Robson, of 45 Jerasulem Road was next to speak. He stated that he has lived in Fairhaven at that address since 1997; and hasn't been bothered with the Wind Turbines, he was far enough from them, he thought. However, once the fall happened and the leaves were down, he started to hear a low frequency sound in his home; he discussed with the neighbors and they said it was a faulting heating system from another neighbor, then the neighbor put in a new heating system; and he still hears the sound. He said he hears it constantly. "I work at home, it's affecting me," he said. "And I only hear it inside my home."

Wayne Hayward asked if he read the By-Law, and if he had any suggestions to it?

Mr. Robson said he was just getting involved with it now, because it was the sound that was the issue for him.

Last to speak was John Methia of 35 Shawmut Street. He first wanted to applaud the Board for completing and holding this Public Hearing. He then stated he thought Security was a bit extreme. He apologized for coming in late, but asked 'Why is it you are looking at changing the By-Law?'

Wayne Hayward said the Board was here to hear his testimony, and not to answer questions.

Mr. Methia used an example of Dunkin Donuts coming into town, and if the take-out window was too much noise for a neighbor, who would be called for those issues? Would the police be called? Would we come before the Planning Board?

Mr. Methia asked, "Who will enforce these By-Laws?" If the By-Laws are adapted, what do we say to people living within 1600' (4x the blade). Currently, we are saying that you shouldn't be that close, it's a danger zone, an issue zone.

Wayne Hayward said, "If we were proposing Industrial Wind Turbines, but we're not."

Mr. Methia replied, "That's not a good enough answer to that question, and you know that."

Wayne Hayward said, "Yes it is. This By-Law is not going to allow 500' Wind Turbines."

Mr. Methia asked about 'Wind Farms'. 5 or 7 656kW Wind Turbines is a tough argument that 2 (1.25 mega watt) would be less intrusive.

Rene Fleurent, Jr. said the information they received was that multiply Wind Turbines don't make essential multiply noise.

Louise Barteau asked to ask one more question, to which Mr. Hayward allowed her.

Ms. Barteau asked about how abutters are notified regarding Special Permits.

William Roth said, "For Special Permits, abutters within 300' are notified." He also explained that Conservation Commission is within 100'. "Every property owner is notified," he said. "If you rent, you wouldn't be notified, because it goes to the property owner."

Jeffrey Lucas asked Ms. Barteau to put her suggestions in writing.

8:40 p.m. Gary Staffon arrived.

Wayne Hayward asked if there were any comments from the Board members.

Jeffrey Lucas thanked everyone for coming out. He said there were helpful comments, and would hope that people still submit their comments, suggestions or concerns to Mr. Roth.

Francis Budryk said he wanted to make a sarcastic comment. He said, "The Riverside Cemetery for Wind Turbines is a "dead issue".

Gary Staffon apologized for being late. He said that the By-Law was easy, at this point to amend, and suggested that if people have comments or suggestions that they send in that information. He said, "hopefully it will work out well. There are lots of changes happening, and always room for improvement." "It's better than we had," Mr. Staffon said.

Wayne Hayward said that the Board doesn't have authority to ban Wind Turbines all together. He said they are not going to supersede the State. He expressed that they have to tweak the height and setbacks. He said that the public hearing would be kept "technically open" for more testimony to come in, and would encourage people to submit their testimony in writing.

Kaisa Cripps made a motion to leave the public comment window open to submit additional comments until 2/25/13; and was seconded by Peter Nopper. The motion passed unanimously.

In other business, John Farrell stated that he would attend the CPTC Training on his own.

William Roth said that if he wanted to attend, the Board had money to cover all three seats.

Wayne Hayward explained that the annual SRPEDD meeting was coming up on May 1<sup>st</sup> as well.

Jeffrey Lucas made a motion to amend the previous motion on the CTPC Bill to \$150, so as to send three people to the CPTC Training, adding Mr. John Farrell, and was seconded by Kaisa Cripps. The motion passed unanimously.

Kaisa Cripps made a motion to adjourn and was seconded by Gary Staffon. The motion passed unanimously.

The meeting ended at 9pm. The next meeting is scheduled for February 26, 2013.

Respectively submitted,

Patricia A Pacella  
Recording Secretary