

FERNALD, TAFT, FALBY & LITTLE  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
14 GROVE STREET  
P. O. Box 270  
PETERBOROUGH, NEW HAMPSHIRE 03458-0270

603-924-3361

RICHARD R. FERNALD  
SILAS LITTLE  
MARK D. FERNALD  
RICHARD L. PENNINGTON

OF COUNSEL:  
ROBERT TAFT  
J. RODERICK FALBY, JR.

FAX: 603-924-4277

May 20, 2011

Jane Murray, Secretary  
NH Site Evaluation Committee  
Dept. of Environmental Services  
29 Hazen Drive, P O Box 95  
Concord, NH 03302-0095

RE: Antrim Wind Energy, LLC, Docket No. 2011-02

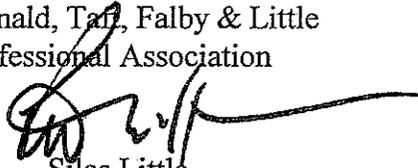
Dear Ms. Murray:

Enclosed please find for filing with the Site Evaluation Committee the original and fourteen (14) copies of Pre-Filed Direct Testimony of Charles A. Levesque, Member, Antrim Planning Board and Martha E. Pinello, Member, Antrim Planning Board together with exhibits referenced in their Pre-Filed Direct Testimony.

Thank you for your attention to this matter. If there is a question concerning this filing, please contact me.

Very truly yours,

Fernald, Taft, Falby & Little  
Professional Association

By: 

Silas Little

Direct Line: 603-924-3364 Ext. 14

sl/djh

enc.

cc: Office Service list; Docket Nol. 2011-02 (w/enc.)  
Town of Antrim Planning Board (w/enc.)

H:\CLIENTS\A-TOWNS\Antrim, Town of\murray.2nd.05.20.11.ltr.wpd

Pre-filed Testimony of Martha E Pinello

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41

THE STATE OF NEW HAMPSHIRE

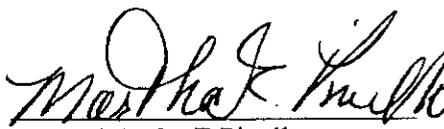
SITE EVALUATION COMMITTEE

Docket No. 2011 – 2

Re: Antrim Wind Energy, LLC

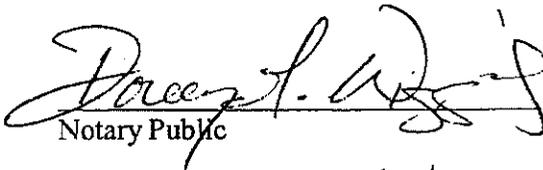
PRE-FILED TESTIMONY OF MARTHA E PINELLO,  
MEMBER, ANTRIM PLANNING BOARD

I hereby affirm, under penalty of perjury, that the within testimony is true to the best of my knowledge and belief.



Martha E Pinello

Sworn to before me this 20 of May, 2011.

  
Notary Public

My commission expires: April 28, 2015

**Doreen M Wiggins**  
Notary Public, State of New Hampshire  
My Commission Expires April 28, 2015

Pre-filed Testimony of Martha E Pinello

1 **Q: Please state your name for the record.**

2 A. Martha E. Pinello

3 **Q: Where do you live?**

4 A: 318 Smith Road, Antrim.

5 **Q: What is the purpose of this testimony?**

6 A: I wish to provide the Site Evaluation Committee (sometimes “the Committee” and  
7 sometimes “the SEC”) with detailed information about the capability and plans of the  
8 Antrim Planning Board with respect to the Antrim Wind Energy proposals and to show  
9 why it will be able to address the issues raised by that proposal in a timely, efficient way  
10 which complies with various statutory requirements. These statements (i) support the  
11 motion of the Planning Board to postpone or adjourn this proceeding and (ii) oppose the  
12 SEC exercising jurisdiction which will pre-empt that of the Antrim Planning Board.

13 **Q: How long have you lived at your present home?**

14 A; Twenty seven years.

15 **Q Is your residence located within sight or hearing of the proposed wind tower  
16 development?**

17 A: Not to my knowledge.

18 **Q: Could you briefly outline your education?**

19 A: I received a BA from the University of Vermont in Anthropology and then took  
20 an MA from the University of Massachusetts–Boston in Anthropology, History and  
21 Botany. I have also earned 35 credits from Keene State College in middle school science  
22 education and education for students with special needs.

1 **Q: Are you presently employed?**

2 A: Yes. I am currently one of three principal investigators employed by Monadnock  
3 Archeological Consulting based in Stoddard, NH.

4 **Q: What sort of work does that involve?**

5 A: We carry out archeological investigations for clients, mostly state agencies such  
6 as the NH Department of Transportation, various municipalities, private developers and  
7 the US military which are required by statutes such as Section 106 of the National  
8 Historic Preservation Act or by internal regulations of the client to determine  
9 archeological conditions in advance of construction or other activities.

10 **Q: Does this work involve project management?**

11 A: Yes. In many cases, we do this work with multiple people and have to observe  
12 strict budgets and timelines. Also, we frequently work with multiple agencies. As a  
13 result, projects have to be planned and managed carefully. The projects range from small  
14 teams of two to teams of 21 in the field and 10 in the laboratory for collections, care and  
15 analysis and interpretation.

16 **Q: Could you give the committee some examples of the projects you have  
17 managed.**

18 A: As early as 1983, I started managing projects in which we carried out  
19 archeological investigations along the proposed route of a highway for the NH DOT. In  
20 1985, I was part of the management team for a similar project investigating the proposed  
21 route of a power transmission line for HydroQuebec. Other projects have involved a  
22 proposed site for dredge spoil for a Trident submarine base; the archeological part of a  
23 Natural Resources Inventory for a new New York state park; similar work for the gardens

1 at The Mount Edith Wharton's estate in Lenox, Massachusetts; receipt of the largest Save  
2 America's Treasures grant ever issued; and for a 10 acre historic sites museum in  
3 Portsmouth, NH.

4 **Q: I am going to show you a document which has been marked MEP Exh A.**  
5 **Can you tell us what it is?**

6 A: It is a copy of my resume.

7 **Q: Do your professional projects take place in a complex regulatory**  
8 **environment?**

9 A: Yes. As a general rule, they are governed by Section 106 of the National Historic  
10 Preservation Act which, in and of itself, is a complex regulatory environment setting both  
11 substantive and procedural standards. I have conducted projects in New Hampshire,  
12 Massachusetts, Maine and New York all of which regulate archaeological research.  
13 Additionally, our clients – such as the DOT and the military – have internal regulations  
14 which may be complex.

15 **Q: Now, apart from your professional life, have you been involved in municipal**  
16 **affairs?**

17 A: Yes, on March 8, 2011, I was elected to the Antrim Planning Board. Before that,  
18 I served in an appointed position as a member and sometime Chairman of the Antrim  
19 Conservation Commission from 1989 until early 2011.

20 **Q: In that connection, have you attended training sessions on the responsibilities**  
21 **of municipal office holders?**

22 A: Yes, I have attended many training sessions, mostly those having to do with the  
23 Conservation Commission, but also on topics – such as the Right to Know Law – which

Pre-filed Testimony of Martha E Pinello

1 govern all town bodies. I have also attended training sessions dealing with the legal  
2 aspects of historic preservation, easements, road law and similar topics. I also look  
3 forward to attending the OEP training sessions for Planning Board members.

4 **Q: Have you also been engaged in other public service activities?**

5 A Yes, I have served on a number of boards and committees including as a trustee of  
6 my church; as a Girl Scout leader; the "Brown Bag" committee providing family support  
7 services to Antrim; I worked with committee members to establish a before-school  
8 program; "Operation Santa" providing family support at Christmas time; the Main Street  
9 centennial celebration committee in Antrim; and various other civic committees.

10 **Q: Before your election to the Planning Board, had you engaged in any planning**  
11 **activities?**

12 A: Yes. In 1986, I was appointed by the Antrim Select Board to serve on The  
13 Citizens Task Force to prepare a response to a proposal of the United States Department  
14 of Energy to site a nuclear waste repository in seven towns including western Antrim.  
15 My particular job on that committee – in addition to our overall responsibilities – was  
16 to locate and document historic structures which would be affected by the proposal. We  
17 located and photographed many such structures and prepared a factual report to refute the  
18 DOE's summary assertion that the site was relatively free of items of historic interest. In  
19 the event, the DOE withdrew its proposal and shifted its interest to Yucca Flats.

20 In 1994 and 1995, the town received a proposal from a private developer to build  
21 a private prison at a site in northern Antrim. Once again, the ordinance did not  
22 contemplate this precise activity. I was appointed to an *ad hoc* committee which  
23 ultimately made recommendations to change our Zoning Ordinance and Site Plan Review

1 Regulations to allow a prison development. In the event, the developer ultimately  
2 withdrew the project.

3 **Q: Before your election, did you attend Planning Board meetings?**

4 A Yes, I attended many such meetings. The best record of my attendance is the  
5 minutes of the meetings.

6 **Q: I believe that six members of the Planning Board in Antrim are elected and  
7 one is appointed *ex officio* by the Select Board. Alternates are appointed by the  
8 regular elected members of the Planning Board. Is that your understanding?**

9 A: Yes.

10 **Q: When you ran for election to the Planning Board, did you issue a statement  
11 about your reasons?**

12 A: Yes.

13 **Q: I am showing you a document marked as MEP Exh B. Is that a copy of your  
14 pre-election statement?**

15 A: Yes.

16 **Q: Who were your opponents in that election?**

17 A: Two former members of the Planning Board, its Chairman – C R Willeke - and  
18 another member – Joe Koziell - and Charles Levesque.

19 **Q: I am showing you a document marked as MEP Exh C. It shows that two  
20 people were elected to the Planning Board on March 8, 2011, and two were not. Is  
21 that an accurate record of the election result?**

22 A: Yes.

1 **Q: Are you “for” the Antrim Wind Project or are you “against” the Antrim**  
2 **Wind Project?**

3 A: Neither. I have not made up my mind. At this point, the “project” is not fully  
4 defined and there has not been a full development of its advantages and disadvantages. I  
5 am “for” insuring that the process is sound and “for” a full development of the facts in  
6 advance of deciding whether to support or oppose the project. The question is one of  
7 assessing the costs and the benefits on a number of issues. I am also “for” the Town  
8 keeping local control of important planning issues.

9 **Q: Is the current set of regulations in Antrim appropriate for making those**  
10 **determinations?**

11 A: Yes and no. Antrim has made a series of choices about land use, which are  
12 reflected in its Zoning Ordinance<sup>1</sup> and the associated regulations. They are based on  
13 prior decisions of the town – expressed through town meeting votes – about land use in  
14 various districts. At present, the ordinance does not allow a wind farm in the relevant  
15 districts, but the use could be permitted through an application for a variance.

16 At the same time, Antrim does not have either an ordinance or regulations  
17 specifically directed to industrial scale wind energy facilities, although we have adopted  
18 the model Small Wind Energy System ordinance promulgated by the Office of Energy  
19 and Planning. In this respect, we are not alone: our research to date has not disclosed  
20 any New Hampshire town with such an ordinance.

21 We are in process of adopting an appropriate ordinance and regulations to address  
22 this concern.

---

<sup>1</sup> See MG Exh 2.

1 **Q: What steps have been taken to adopt new regulations?**

2 A: At our meeting on April 7, the Planning Board adopted a resolution about going

3 forward with this issue. I will read that to you as it was passed<sup>2</sup>:

4 The Antrim Planning Board will name a seven member ad hoc committee to oversee  
5 the investigation of, and to make recommendations for, comprehensive oversight  
6 procedures concerning industrial wind-energy generating facilities within the Town of  
7 Antrim.

8  
9 The committee's work may include the development of procedures, zoning overlay  
10 plans and criteria, the development of zoning district boundaries, detailed site-plan  
11 review regulations for wind energy, and suggestions for matters that might be  
12 covered by letters of agreement between the Town and a wind-energy developer,  
13 including recommendations for project escrow accounts and performance bonds.

14  
15 The recommendations of the ad hoc committee, which should include at least two  
16 Antrim Planning Board members, and four community members, and a member of  
17 the Board of Selectmen will be forwarded to the full Planning Board for review and  
18 implementation within six months of the committee's creation.

19  
20 The Antrim Planning Board will deliver a final report, including its recommendations  
21 and any proposed changes to the Antrim Planning Board procedures, Zoning  
22 Ordinance or site plan regulations, to the Antrim Board of Selectmen within three  
23 months of receiving the ad hoc committee's report.

24  
25 **Q: I am going to show you a composite exhibit marked MEP Exh D containing**

26 **minutes of various Antrim town boards since April, 2009, as published on the**

27 **Antrim town website. Can you identify that document as MEP Exh D?**

28 A: Yes.

29 **Q: Has the Antrim Board of Selectmen approved that process?**

30 A: Yes. At their meeting the following week, they unanimously approved the

31 process.

---

<sup>2</sup> The draft minutes of that meeting state that the new committee will consist of 9 members; this is an error which will be corrected.

1 **Q: Have you taken steps to appoint an *ad hoc* committee?**

2 A: Yes, at our meeting on May 5, 2011, the Planning Board appointed the following  
3 members of the *ad hoc* committee<sup>3</sup>:

4 Eric Tenney, for the Board of Selectmen

5 Andy Robblee, for the Planning Board

6 Myself, for the Planning Board

7 Mary Allen, for the Community

8 Robert Edwards, for the Community

9 Barbara Gard, for the Community

10 For the most part, these people have filed pleadings or statements in this SEC proceeding  
11 which identify themselves and their interests. Their application letters for service on this  
12 committee summarize their qualifications and are attached as MEP Exh E.

13 **Q: How long will this process take?**

14 A: As noted in the resolution, the *ad hoc* committee has 6 months to act from May 5  
15 and the Planning Board has an additional 3 months.

16 **Q: Will this schedule cause AWE “undue delay” in completing its project?**

17 A: I do not believe that it will.

18 In the first instance, we have to answer the question: “Undue delay, compared to  
19 what?” AWE says that might file an application with the SEC at the end of the year,  
20 although it nowhere makes any commitment to do so. It is not clear how advanced it is in  
21 that respect:

---

<sup>3</sup> Ben Pratt was also appointed but then declined to serve by letter. Thus, one more person needs to be appointed.

1           • has it completed its survey work or engineering studies? At the SEC  
2           hearing on April 22, Jack Kenworthy told the SEC that AWE is still  
3           undecided as to what turbines to use to match wind conditions on the site;  
4           this uncertainty is reiterated in the testimony of Jack Kenworthy. *See* page  
5           9, lines 14-15, page 10, lines 1-3. At a hearing before the Antrim  
6           Planning Board on February 2, 2011, Jon Soininen said that  
7           commencement of this work was dependant on wind studies which had  
8           not yet been completed. According to the minutes, “He said that the  
9           evaluation, consideration, data, and information were an expensive  
10          undertaking that could not be done in a speculative environment. At this  
11          time, the placement of the turbines and the roads would not be set until all  
12          the data was in.”

- 13          • has it completed environmental studies?
- 14          • where does it stand with respect to state and federal permitting, all of  
15          which will have to be completed whatever regulations exist in Antrim?
- 16          • will it have the financial capacity to handle the project? All we have heard  
17          to date is that it is somehow affiliated with another company that has  
18          “mobilized” certain capital commitments for other renewable energy  
19          projects.

20          On the other side, I believe that the Antrim boards can and will act without undue  
21          delay. AWE has made much of purported delays in processing its applications for (i) a  
22          height variance and (ii) a building permit. On scrutiny, this criticism is unjustified.

Pre-filed Testimony of Martha E Pinello

1           The Planning Board minutes of April 2, 2009, [MEP Exh D, page 1] show that  
2 AWE (“Eolian Renewable Energy”, as it then was] appeared for a preliminary  
3 consultation<sup>4</sup> with the Planning Board. Jack Kenworthy started the meeting with an  
4 extended presentation of the advantages of a wind farm on part of the project site  
5 containing 6 to 8 turbines and generating 9 to 16 megawatts. After this presentation, he  
6 asked the Board for advice as to how to get permits to erect a meteorological tower.  
7 After substantial discussion and input from the public, he was advised, as follows [*id* at  
8 page 5]:

9  
10           “A variance for height would be necessary from the Zoning Board of Adjustment,  
11 and then a major Site Plan Review with the Planning Board. Eolian would prefer to  
12 apply for the meteorological tower and the variance at the same time.

13  
14           “At first, Mr. Vasques [then the Antrim planning officer] stated that guidance from  
15 Town Counsel would be needed concerning the necessary procedure, but he felt that  
16 the requests would be heard at separate meetings. Mr. Burnside felt that Eolian  
17 should be able to apply for both requests at the same time, because it would be  
18 foolish to set up the meteorological tower if the height variance was not granted. Mr.  
19 Schacht agreed, and the consensus was that both requests should be applied for  
20 simultaneously.” [Emphasis added.]

21  
22           Pursuant to this advice, AWE filed an application with the ZBA for a height variance  
23 on or about July 9, 2009, some 98 days following the preliminary conference. It was  
24 noticed for hearing on July 28 [*id.* at page 92]. The hearing was then continued to  
25 August 11 (site visit) [page 98], August 19 [page 99], September 15 [page 105] and  
26 September 29 [page 113]. On October 13, - that is, some 96 days following the initial  
27 application - the ZBA commenced and concluded its deliberations on the application and  
28 granted the variance. [See MEP Exh D, page 120,124]

---

<sup>4</sup> The SEC will be aware that preliminary consultations are authorized by statute to permit relatively informal and non-binding discussions with potential applicants. RSA 676:4, II.

1        Assuming – contrary to the advice it been given at the April 2 meeting – that the  
2        variance was all that Antrim required, AWE obtained a building permit – the validity of  
3        which is still in question because it was issued before the appeal period had run - and  
4        erected the met tower on or about November 20, 2009.<sup>5</sup>

5        The met tower has been in continuous operation since that date.

6        Following erection of the tower, AWE filed for a building permit on December 17,  
7        2009. Although AWE now claims that it was surprised to learn of it, it learned from the  
8        building inspector that site plan review was necessary before a permit could be issued.

9        As explicitly provided in Antrim’s Subdivision and Site Plan Review Regulations<sup>6</sup>, an  
10       applicant must establish that the project is a “use” permitted in the relevant district.  
11       Section VI B.1(2), (5). This, of course, can be established in a variety of ways, either  
12       through express permission in the ordinance or through a conditional use permit or a  
13       special exception or variance. AWE asserted that the met tower was a “public utility”  
14       within the meaning of the ordinance.

15       The second application was not filed until February 16, 2010, ten and a half months  
16       following the Planning Board’s advice that AWE could file “simultaneously” and over  
17       two months following advice from the Building Inspector. If one must find “blame” for  
18       this delay, that blame surely falls on AWE and its advisors.

19       The Planning Board acted promptly on this application. A hearing was noticed for  
20       March 4, 2010 [MEP Exh D, page 8] and a decision in AWE’s favor was rendered two  
21       weeks later, on March 18. [*id.*, at page 16, 21] The ZBA also acted promptly: an appeal

---

<sup>5</sup> A permit was issued by the Building Inspector on October 22, 2009, before the appeal period had run. Its validity is still in question. By letter dated December 1, 2009, AWE’s attorneys waived any liability on the part of the town for the issuance of an invalid permit.

<sup>6</sup> MG Exh 3.

1 was heard on April 10 [page 125] and upheld on May 18, 2010, [page139, 142] thus  
2 determining that met tower was not a permitted use. The formal notice of denial was  
3 issued on May 20, 2010. Thus, this application was finally denied some 93 days after it  
4 was filed.

5 I do not believe that this history would justify a conclusion that the Antrim boards  
6 acted with excessive delay. It certainly does not justify a conclusion that the boards will  
7 cause undue delay on some future application. At one point, AWE appeared to agree  
8 with this conclusion. At a hearing before the Planning Board on February 1, 2011, [MEP  
9 Exh D, page 60] Jon Soinenen is quoted as saying “If the project were to go to the State  
10 [sic: should be Site] Evaluation Committee (SEC), it would be more onerous and costly  
11 for Eolian.”

12 AWE’s grievance about delay is really directed against the time it takes to appeal  
13 a decision of a town board in court. The legislature has established a system of judicial  
14 appeals to assure fairness in the planning system. Although AWE complains that this  
15 takes time, it does not hesitate – as in this case – to appeal an unfavorable decision to the  
16 courts when that suits its purposes.

17 In any event, the delays in this case – if any – were not prejudicial to AWE. Once  
18 the met tower was in place and collecting data, any prejudice to AWE became entirely  
19 hypothetical; in the real world, it was collecting data on a regular basis and had every  
20 reason to delay any proceedings which would halt its use of the met tower.

21 **Q: Will the process you recommend require new or amended ordinances or new**  
22 **or amended regulations, or both?**

1 A: If the process leads to a decision that industrial scale wind energy will be  
2 permitted in some form, we will certainly need to amend the zoning ordinance or create a  
3 new ordinance specifically for that purpose. The Small Wind Energy System Ordinance  
4 could provide a model in that the language suggested by OEP was incorporated into our  
5 existing Zoning Ordinance.

6 Additionally, it may be more convenient to handle many of the details in  
7 regulations such as site plan review regulations. These would not require town meeting  
8 approval.

9 **Q: How will you go about making these decisions?**

10 A: We have agreed to appoint an *ad hoc* committee which will study these issues,  
11 suggest regulations and ultimately report to the Planning Board within six months. The  
12 Planning Board will then consider the recommendations and propose appropriate changes  
13 to the ordinance for approval by Town Meeting within three months.

14 **Q: Why did you recommend an *ad hoc* committee?**

15 A: Antrim has successfully used *ad hoc* committees in the past to deal with issues of  
16 this sort. The nuclear waste dump and prison issues are good examples.

17 The Planning Board meets at regular times each month and has other items to deal  
18 with. An *ad hoc* committee can meet on a more intensive schedule and can focus  
19 exclusively on the issues at hand. Additionally, an *ad hoc* committee can draw in people  
20 with expertise for help and advice.

21 **Q: Can you give the committee an idea of your major considerations in creating**  
22 **these regulations?**

1 A: At this point, I have to make it clear that I am speaking for myself; the *ad hoc*  
2 committee will decide these issues in its own way, but from my point of view, there are  
3 several over-riding considerations:

4 Firstly, we have to fulfill our statutory duties as a planning board. Some of these  
5 are set out in the Declarations of Purposes (RSA 672:1) which serves as an introduction  
6 to the Planning and Zoning Law. That statute makes it clear that zoning is primarily a  
7 local, municipal matter, but there are constraints on what towns can do. Among other  
8 things, we can't "unreasonably limit" the development of renewable energy facilities  
9 [except when "necessary to protect the public health, safety and welfare"]. But we are  
10 faced with virtually identical constraints with regard to forestry, agriculture, affordable  
11 housing and fisheries. Planning for the "orderly development" of the community takes  
12 into account a lot of competing demands.

13 Secondly, if we are to retain local control of these planning issues, RSA 162-H:1  
14 makes it clear that our regulations must create an "alternative permitting path" which  
15 implements the purposes of that statute. Thus, we have to pay particular attention to the  
16 balance between the environment and the need for renewable energy facilities. Our  
17 Master Plan makes a start on that issue – giving recognition to both demands – but it does  
18 not conclude that work. The new regulations must address this issue, but there are other  
19 issues raised by RSA 162-H which must also be addressed. In the end, the process  
20 requires a full cost-benefit analysis, weighing the expected benefits of a particular wind  
21 project against the expected costs of that project to the environment.

22 Thirdly, we have to conform to the Antrim Master Plan [*see* CAL Exh E] and the  
23 Antrim Open Space Conservation Plan [CAL Exh C]. The Master Plan has two

1 particularly relevant sections with special importance to this issue, one dealing with the  
2 environment, conservation issues and open spaces and the other dealing with energy  
3 efficiency and renewable energy. Our job is to take the principles set out in both of these  
4 sections – which may come into conflict – and reconcile the competing demands. The  
5 Open Space Conservation Plan was adopted by Town Meeting in 2006, [CAL Exh D]  
6 and therefore comprises instructions to us from the town.

7 Fourthly, in my opinion, the process must allow individual consideration of  
8 proposed projects in a way which respects the rights of the applicant and respects the  
9 rights and concerns of neighbors and others, both procedurally and in substance.

10 **Q: Are there particular matters which will need to be addressed in this context?**

11 A: Yes, certainly. I have prepared a tentative checklist of matters which need to be  
12 addressed.

13 **Q: Can you identify the document marked MEP Exh F as your checklist?**

14 A: Yes.

15 **Q: Is that list comprehensive?**

16 A: Probably not. I am sure other issues will come up as we go through the process?

17 **Q: Have you found any prototype industrial scale wind energy ordinances or  
18 other guidance in preparing such regulations?**

19 A: To date, I have not found any ordinance of this type adopted by a New Hampshire  
20 town, but we have located ordinances from Massachusetts, Maine and a couple of other  
21 states. In addition, our own Small Wind Energy Systems ordinance addresses a number  
22 of the relevant issues. Also, the process used by the SEC itself serves as an excellent  
23 model for efficiently collecting the information necessary to pass on some of the

1 important issues, but omits a number of other considerations which would typically  
2 appear in a municipal ordinance.

3 As we move forward, we will seek further guidance from our regional planning  
4 commission, Southwest Regional Planning Commission, the Office of Energy and  
5 Planning and private groups such as the New England Wind Energy Program.

6 **Q: One topic which has been mentioned several times is, “How will the town  
7 supply the expertise necessary to evaluate an application and to supervise  
8 construction?”**

9 A: The legislature has anticipated this question. RSA 676:4-b specifically allows  
10 planning bodies to hire expert consultants and inspectors and to assess the applicant for  
11 these expenses.

12 **Q: Your checklist is lengthy. Are you confident that the *ad hoc* committee and  
13 the Planning Board can complete these tasks within the prescribed time?**

14 A: Yes, I believe that we can do that.

15 **Q: Can you tell us what progress the *ad hoc* committee has made to date?**

16 A: At its first meeting on May 11, the *ad hoc* committee decided to meet on a weekly  
17 basis. Members of the committee undertook to study particular issues and report back to  
18 the whole committee. We also met on May 18. Details are contained in minutes of those  
19 meetings are attached as MEP Exh G.

20 **Q: Do you think this process will create “undue delay”?**

21 A: To the contrary, I think it will lead to an orderly process. Much of the  
22 “confusion” and “delay” in the prior handling of this matter arose from trying repeatedly  
23 and aggressively to force a square peg into a round hole. At present, the Antrim Zoning

1 Ordinance and Regulations do not have provisions specifically addressed to industrial  
2 scale wind energy facilities. Thus, trying to label a met tower clearly designed as a  
3 precursor to a commercial wind farm as a residential use is bound to cause problems of  
4 interpretation. Trying to label itself or a met tower as a “public utility” – when AWE has  
5 never produced or sold any electricity and has not registered itself as a public utility – is  
6 bound to create similar problems. The solution to this is to create an ordinance and  
7 regulations addressed to this specific issue. That is what the Antrim Planning Board is  
8 determined to do.

9 **Q: Would you like to comment on the attempt to amend the Zoning Ordinance**  
10 **last winter?**

11 **A:** Yes. In the later part of 2010, the old Planning Board brought forward a proposal  
12 to amend the Zoning Ordinance to make “renewable energy facilities” a “permitted use”  
13 in the Rural Conservation District and the Highway Business District. These two districts  
14 comprise about 56% of the land area of town. As originally drafted, the definition of  
15 “renewable energy facilities” was broad enough to include solar, geothermal and hydro as  
16 well as wind energy but, in its final form, it was specifically tailored to permit an AWE-  
17 type wind development anywhere in those two districts; other forms of renewable energy  
18 fell by the wayside.

19 As you doubtless know, the procedures for making amendments to Zoning  
20 Ordinances are highly regulated by statute. Ultimately, the proposal must be passed by a  
21 ballot vote at Town Meeting, but the statute also contains specific safeguards as to  
22 hearings, notice, and the like. In moving this proposal forward, the Planning Board and

1 the staff made a number of procedural mistakes and ultimately ran out of time to bring  
2 the proposal to the 2011 Town Meeting.

3 The procedural mistakes were matched, in my view, by substantive mistakes. The  
4 proposal was overbroad in that it allowed wind farm development as a “permitted use” on  
5 any lot in those districts, whereas the nature of that use was not appropriate for all lots.  
6 Among other things, the majority of lots are well under ten acres in size; many are in  
7 residential areas. The proposal did not contain any safeguards for neighbors such as were  
8 found in our small wind energy ordinance or even in permitting for a kennel or a bed and  
9 breakfast business. The specific character of noise generated by wind turbines was not  
10 considered; no fall zone was created, even though the proposed towers were an order of  
11 magnitude higher than the ordinance permits; no lighting restrictions were proposed. The  
12 proposal did not contain any mechanism for balancing environmental impacts of the  
13 proposed development against the need for renewable energy.

14 In my earlier testimony, I outlined the criteria we have to meet in drafting local  
15 legislation. That proposal failed on all counts. Among other things, it would never have  
16 passed muster as an alternative permitting path under RSA 162-H.

17 This process involved numerous hearings, which were well attended by the public  
18 and, in every case I can find, by a representative of AWE. So far as I can find, its only  
19 criticisms of the process were noted in a single comment that the proposal did not contain  
20 any relief from the blanket 35 foot height limitation in the existing ordinance.<sup>7</sup> See

---

<sup>7</sup> “Mr. Soininen suggested that the board might want to consider adding language to Article XIV, H, 2 or 3 – Height Regulation Exceptions – so that either might include “towers associated with Renewable Energy Facilities.” Mr. Soininen was told that his suggestion should be brought up at a public hearing.”

1 Minutes of December 23, 2010. [MEP Exh D, page 31] This obvious defect was never  
2 addressed.

3 During that process, AWE was in constant attendance at the public hearings. At  
4 no point did anyone from AWE challenge the competency of the Antrim Planning Board  
5 or publicly suggest that it was making procedural errors. So far as I am aware, AWE was  
6 fully supportive of the proposal and the way it was being handled.

7 Following the failure of this proposal to reach the 2011 Annual Town Meeting, its  
8 proponents sought to bring it to a Special Town Meeting<sup>8</sup>. This effort ultimately reached  
9 a vote at a specially called, "emergency" meeting of the Planning Board on March 9,  
10 2011. That day is significant because it was the day following the election at which two  
11 members of the planning board were replaced by the voters and the day before two new  
12 members – Mr Levesque and myself – took office. The upshot of that meeting is that the  
13 Planning Board recommended the changes noted above (and others not relevant here) and  
14 asked the Board of Selectmen to call a Special Town Meeting to consider them. [MEP  
15 Exh D, page 84]

16 At its meeting the following Monday, March 14, the Board of Selectmen voted to  
17 call a special town meeting [MEP Exh D, page 160] but it never implemented that vote.  
18 No warrant was issued.

19 At the next regular meeting of the Planning Board four days later, on March 17,  
20 its motions were reconsidered and, by a vote of 4-2 with one abstention, the request to the  
21 Board of Selectmen for a Special Town Meeting was withdrawn. [MEP Exh D, page

---

<sup>8</sup> In this connection, Mr Moore reported that "He had received a phone call from John Soinien [sic] who was concerned with possible legal and administrative oversight." apparently in connection with the form of the notice of meeting. Minutes, Antrim Planning Board, March 3, 2011. [MEP Exh D, page 74; see also pages 75-76]

1   \*\*<sup>9</sup>] The Board of Selectmen honored that request at its meeting of March 21. [MEP Exh  
2   D, page 170]

3           I am as critical as anyone of the procedural errors committed by the Planning  
4   Board during this episode. But that was then and this is now. I do not believe that they  
5   are in any way a reliable guide to future conduct of the Planning Board.

6   **Q:    Some questions have been raised about the procedure for reconsideration at  
7   the meeting of the Planning Board on March 17. Will you comment?**

8   **A:    Our bylaws contain only one rule relating to reconsideration, Rule 7.10. It reads:  
9   “7.10 A motion to reconsider a previous vote by the Board shall be in order only if made by a  
10   member who voted on the original question, or at the discretion of the Chair.” I believe that  
11   we complied with that rule.**

12

13

14

**Exhibit List**

15	MEP Exh A	Pinello Resume
16	MEP Exh B	Election Statement
17	MEP Exh C	Election Results
18	MEP Exh D	Composite Exhibit – Minutes of Town Boards
19	MEP Exh E	Application Letters for <i>ad hoc</i> committee
20	MEP Exh F	Checklist
21	MEP Exh G	Minutes of <i>ad hoc</i> Committee – May 11 and May 18, 2011
22		

---

<sup>9</sup> The minutes for this meeting have not been published. They will be supplied when available.